(1984) 07 KAR CK 0035

In the Karnataka High Court

Case No : T.R.C. Nos. 1 to 4/81

Muthukali Chettiar K.S. — APPELLANT

Vs

Commissioner of Wealth-tax, Karnataka. — RESPONDENT

Date of Decision : 05-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 64(2)
Wealth Tax Act, 1957 — Section 4(1a)

Citation : (1985) 29 KarLJ 16

Hon'ble Judges : S. A. Hakeem, J;K. Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-The question referred in these references under S. 27(1) of the Wealth Tax Act, 1957 relates to the extent of the interest of the assessee in the converted property for the purpose of inclusion in the net wealth in his wealth Tax return.

2. Since the question raised is common for all the assessment years, viz, 1971-72 to 1974-75, the same will be disposed of by this common order.

3. The assessee was to Wealth Tax on the value of his moveables and immoveables. On March 15, 1971 certain immoveable properties owned by the assessee, as separate properties, were thrown into the family hotchpot by means of a declaration. Those properties consisted of buildings, factory, vacant sites and certain agricultural lands. The Hindu Undivided Family (''HUF'') of which the assessee was the manager comprised of his wife and two minor sons.

4. It was contended before the Wealth Tax Officer that the value of the properties thrown into the common stock of the joint family should not be assessed in the hands of the assessee. The Wealth Tax Officer rejected that contention placing reliance on S. 4(1A) of the Wealth Tax Act. He held that the entire value of the said properties should be assessable in the hands of the assessee and accordingly included the value thereof in the assessee''s net wealth.

5. Being aggrieved by the assessments, the assessee appealed to the Appellate

Assistant Commissioner of Wealth Tax and urged to exclude the value of the converted properties from his assessment. But the Appellate Assistant Commissioner did not accept that contention. He observed that under S. 64(2) of the I.T. Act, 5961 the income of the ''HUF'' in the converted properties was already included in the net income of the assessee and since S. 4(1A) of the Wealth Tax Act is similar to S. 64(2) of the I.T. Act, 1961 the value of the converted properties should also be included in the Wealth Tax assessment of the assessee.

6. The assessee thereupon appealed to the Income Tax Appellate Tribunal. The Tribunal dismissed the appeals by following its earlier judgment in I.T.O v. Dr. K.V. Subbaraj I.T.A Nos. 460 to 470 (Bang) 75-76 arising under S. 64(2) of the I.T. Act, 1961.

The Tribunal, however, at the instance of the assessee has referred the question, the substance of which we have already set out at the beginning and the exact question would be set out at the end of this order.

7. The answer to the question turns upon the scope of S. 4(1A) of the Wealth Tax Act, The said provision so far as material, as it then stood, is set out below for immediate reference:

4(1A): "Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), then, not withstanding any thing contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computing the net wealth of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1972,...

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the converted property or any part thereof, in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to be assets belonging to the individual and not to the family;

(c) any part of the converted property in so far as it is attributable to the interest of the spouse or any minor child of the individual in the property of the family and where there is a partition (partial or total) amongst the members of the family, the converted property or any part thereof which is received by the spouse or minor child on such partition shall be deemed to be assets transferred indirectly by the individual to the spouse or minor child and the provisions of subsec, (1) shall, so far as may be, apply accordingly:

Provided that the property referred to in clause (b) or clause (c) shall, on being included in the net wealth of the individual, be excluded from the net wealth of the family or, as the case may be, the spouse or minor chili of the individual.

Explanation (d) to sub-sec. (7) reads:

"the expressions ''interest of the individual in the property of the family'' and ''interest of the spouse, or any minor child of the individual in the property of the family, mean, respectively, the proportion in which the individual or, as the case may be, the spouse or minor child would be entitled to share the property of the family if there had been a total partition in the family as on the valuation date of the family relevant to the assessment year for which the individual is to be assessed under sub sec. (1A)".

This section was inserted by Finance (No. 2) Act, 1971 with effect from April 1, 1972 against the backdrop of the following two decisions of the Supreme Court: In Goli Ishwariah v. C.G.T, Andhra Pradesh (76 ITR 675) the Supreme Court observed that if a member of HUF converts his separate property into joint family property by impressing it with the character of property belonging to the family or throwing it to the common stock of family then that would not amount to a transfer.

In C.I.T. Gujarat v. Keshwalal Lallubhai Patel (55 ITR 637) the Supreme Court held that the partition of a joint Hindu family property cannot also be termed as a ''transfer'' within the meaning of the Income Tax Act. It was to supersede the views taken in these decisions that S. 4(1A) of the Wealth Tax Act and S. 64(2) of the I.T. Act, 1961 were inserted by the said amendment Act.

8. The effect of these provisions is that if a coparcener converts at any time after December 31,1969, his separate property into property belonging to the ''HUF'', he shall be deemed to have transferred the property for the members to hold it jointly. Further, the converted property or any part thereof, in so far as it is attributable to the interest of the individual therein shall be deemed to be assets or the income, as the case may be, of the individual and not of the family. Likewise, the converted property in so far as it is attributable to the interest of the spouse or any minor son of the individual will be deemed to be the assets transferred indirectly by the individual to the spouse or minor son and will be includible in the wealth or income of the individual, as the case may be, in accordance with the provisions of S. 4(1) of the Wealth Tax Act or S. 64(1) of the I.T. Act, 1961. Similar would be the effect in the event of a partition of the converted property amongst the members of the family.

9. Mr. Prasad, learned Counsel for the assessee, however, submitted that this intent of the Parliament has not been achieved by the provisions of S. 4(1A) of the Wealth Tax Act or S. 64(2) of the I.T. Act, 1961 and the said provisions are practically unworkable. He urged that by reason of the deeming provisions under S. 4(1A)(a) of the Wealth Tax Act, what has been considered as not a transfer of the converted property has been held to be a transfer to the members of the family and if it is a transfer to the members of the family, then, clause (b) would

be unworkable since it refers to the interest of the individual in the property of the family.

10. We do not think that we could accept these, contentions. No statute, to our knowledge, is free from gibberish. We must first understand the intelligible purpose of the statute and then try to honour the purpose so found. Professor Reed Dickerson in his book "The Interpretation and Application of Statutes'' (1975 Edition), at page 97 states:

"Once legislative purpose has been reliably ascertained, the only remaining problem is to determine the extent to which the language used in the statute can sustain a meaning that not only is co-extensive or consistent with that purpose but appears to be the most plausible one under the circumstances."

Clause (a) in our opinion was not intended to create a fiction of transfer to the members of the family. It, indeed, clearly states that the Individual shall be deemed to have transferred the converted property through the family to the members of the family for being held by them jointly. ''Through the family'' in the context in which it is used, means ''by reason of the family'' and not apart from the family. Upon transfer, the members of the family hold the converted property jointly.

Cl. (b) would be consistent with this idea when it states that the converted property or any part thereof in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to be the assets of the individual and not of the family. The method of ascertaining the interest of the individual in the property of the family has been provided under Cl. (d) to the Explanation. It envisages a notional partition of the converted property for the purpose of ascertaining the respective shares which they are legitimately entitled to. No doubt the said Explanation refers to a total partition but the total partition need not be a partition of ail the ''HUF'' properties of the family as contended by Sri Prasad. The partition referred to in the Explanation having regard to the other provisions of S. 4(1A) appears to be a partition contemplated for the purpose of determining only the interest of the individual in the converted property.

That was also the view taken by the Gujarat High Court in Kalyanbhai Trikamlal Shah v. C.W.T. Gujarat (136 ITR 750) and the Madras High Court in C.I.T. v. C.S. Ayyaswamy Iyer (132 ITR 97) on the analogous provision of S. 64(2) of the I.T. Act, 1961.

11. As to the next contention of Mr. Prasad that the notional share-attributable to the individual in the converted property should be clubbed and assessed in the hands of the smaller family consisting of individual and his wife and not in the hands of the individual alone, we may point out that although the individual along with his wife may constitute a smaller family, the wife is not entitled to a share in the partition. Under the Mitakshara law practised, in Southern India, the mother is not entitled to any share upon partition between the sons and the father. In ''Mulla Principles of Hindu Law'' (15th Edition) at page 436, it is staled:

"Madras State-In Southern India the practice of allotting shares upon partition to females has long since become absolute."

This passage has been quoted with approval by the Supreme Court in Lakshmi Chand Khajuria and others v. Smt. Ishroo Devi-(AIR 1977 SC 1694).

Apart from that, the entire scheme provided under S. 4(1A)(a)(b) and (c) of the Wealth Tax Act is for computing the Interest of the individual in the converted property and that the individual''s interest is required to be determined in the manner provided under the Explanation.

12. The Division Bench decision of this Court in C.W.T. v. G.M. Manjunath (TRC 28/1965-D.D. September 30, 1966) holding that the status of the assessee was that of a ''HUF'' for the purpose of Wealth Tax assessment, cannot be relied upon In this case since that was not a case in which the scope of S. 4(1A) of the Wealth Tax Act was considered.

13. Before concluding, it must be pointed out that the question referred makes a reference to the income of the individual in the converted property. The reference to the ''income'' attributable to the converted property is plainly inappropriate since the case arises under the Wealth Tax Act. The question, therefore, may be recast as follows:

"On the facts and in the circumstances of the assessee''s case, when the assessee has thrown his self-acquired property into the common hotch-pot of the Hindu Undivided Family consisting of himself, his wife and minor children, whether the Tribunal was right in law in holding that the value of the converted property falling to the share of the assessee on notional partition. Is assessable in the hands of the assessee in his status as individual and not as Hindu Undivided Family consisting of the assessee and his wife?"

For the reasons stated, we answer the question in the affirmative and against the assessee in T.R.C. Nos. 2, 3 and 4 of 1981.

14. In T.R.C. No. 1 of 1981 the said question does not arise for consideration. Both parties did not notice that S. 4(1A) of the Act was inserted by Finance (No. 2) Act 1971 which came into force with effect from April 1, 1972 and therefore, it would be applicable for the assessment years 1972-73 onwards. On this ground alone, we answer the question in T.R.C. No. 1 of 1981 in the negative and in favour of the assessee.

In the circumstances, we make no order as to costs.