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**(1960) 01 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 1089 of 1958**

N.

APPELLANT

Vs

SUBRAMANIAN v. WEALTH-TAX OFFICER ELURU.

RESPONDENT

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**Date of Decision :** 19-01-1960

**Acts Referred:**

Constitution of India, 1950 — Article 226, 248

**Citation :** (1960) 40 ITR 567

**Hon'ble Judges :** Seshachalapati, J

**Bench :** Division Bench

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## Judgement

SESHACHALAPATI, J. - This is a petition under article 226 of the constitution of India praying for the issue of a writ of certiorari or any other appropriate writ or direction to call for the records from the Additional Wealth-tax Officer, Eluru, and quash the assessment order dated March 20, 1958, made against the petitioner for the year 1957-58.

The petitioner and his three sons constituted a Hindu undivided family till September 16, 1957, when a partition between them is stated to have taken place. A notice u/s 14(2) of the Wealth-tax Act (XXVII of 1957), was issued to the petitioner and in response thereto the petitioner submitted a return declaring his total wealth at Rs. 11,06,458 comprising of business assets of the value of Rs. 5,71,279 and non-business assets of Rs. 5,35,079. A notice u/s 16(2) was served upon the petitioner to produce the evidence necessary in support of his return. The petitioner appeared through his representative, a chartered accountant, and produced the evidence and made representations. After scrutinising the evidence and considering the representations, the additional wealth-tax Officer passed the assessment order dated March 20, 1958, fixing the total wealth of the petitioner at Rs. 12,25,614 and the tax due thereon at Rs. 4128,07 nP. The tax was directed to be paid on or before the 30th March, 1958. In the counter affidavit filed by the respondent, it is stated that the tax was paid by the petitioner by April 1, 1958. In this petition the petitioner contends that

the respondent cannot take action under the provisions of the Wealth-tax Act, 1957, with respect to Hindu undivided family on the ground that the Wealth-tax Act, 1957, in so far as it enables the levy and collection of wealth-tax on the capital value of the asset of a Hindu undivided family, is beyond the legislative competence of the Union Parliament and consequently any action taken or purported to be taken under provisions of that Act in so far as they relate to Hindu undivided family is lacking in legal sanction and authority.

The Wealth-tax Act of 1957 (XXVII of 1957) was passed by the Union of Parliament and has come into force on the 1st day of April, 1957. It is an Act to provide for the levy of wealth-tax. Section 2(c) defines an "assessee" to be a person by whom wealth-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any proceedings under the Act has been taken for the assessments of the value of his assets. "Net Wealth" is defined in clause (m) of section 2, and the date of valuation in clause (q) Chapter II provides for the charge of wealth-tax and deals with the assets which are subject to such charge. Chapter III deals with the authorities created under the Act. Chapter IV deal with the assessment. Section 14 in Chapter IV casts an obligation on the part of every person whose net wealth on the valuation date was of such amount as to render him liable to wealth-tax to submit a return. Sub-section (2) authorises the Wealth-tax Officer, if he is of opinion that the net wealth of any person is of such an amount as to render him liable to wealth-tax under the Act, to serve a notice upon such person requiring him to furnish within a period not less than 30 days the particulars of net wealth of such persons on the valuation date in the form prescribed. Section 16(1) provides that if the Wealth-tax Officer is satisfied that the return made u/s 14 is complete, he may assess the net wealth of the assessee and determine the amount of tax. u/s 16(2) it is provided that if the Wealth-tax Officer is not satisfied with the return, he may call upon the assessee to produce evidence in support of his return and after hearing the objection assess the net wealth of the assessee and determine the amount payable. Where a person fails to make a return in response to a notice u/s 14(2) or fails comply with the notice u/s 16(2) and 16(4) the Wealth-tax Officer may make assessment to the best of his judgment. Chapter V deals with liability to assessment in special cases. Chapter VI provides for appeals, revisions and references, and Chapter VII deals with the provisions relating to the payment and recovery of wealth-tax. The only relevant section for the purposes of this case is the charging section 3, which reads as follows :

"Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule."

The contention of the learned counsel for the petitioner is that the above provision is ultra vires the powers of the Union Parliament in so far as it

authorises the levy of wealth-tax on the net wealth of a Hindu undivided family. It is argued that the wealth-tax is referable to and founded on entry 86 of List 1 to the Seventh Schedule to the Constitution of India, and that that entry does not authorise the imposition of the tax on the net wealth of a Hindu undivided family. Entry 86 is in these terms :

"Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

On the language of the entry, it is contended that tax on the capital value of the assets can be levied on individuals and companies and since a Hindu Undivided family is a separate legal entity not falling within the scope of the expressions "individuals" or "companies", the imposition of tax on the net wealth of a Hindu Undivided family u/s 3 of the Wealth-tax Act is incompetent and ultra vires the powers of the Union Parliament.

It is also urged that by legislative practice the Hindu undivided family has acquired the special significances as a unit for the purpose of assessments under the Income Tax Act and other fiscal enactments and the omission to include the Hindu undivided family in entry 86 of List 1 to the Seventh Schedule of the Constitution, can only mean and imply that the constitution-makers have by design excluded the Hindu Undivided family from the scope of that entry.

For the respondent it is contended, first, that the expression "individuals" occurring in entry 86 is of sufficient amplitude to take in a Hindu undivided family; and secondly, even on the assumption that it does not, the competence of the Union Parliament to make laws for the taxation of the net wealth of a Hindu undivided family can be sustained by the language of the residuary entry, 97 read with article 248 of the Constitution.

The principal question that falls to be determined is whether the expression "individuals" in entry 86 can comprehend a Hindu undivided family.

Then question that has been raised and debated before me in this writ petition had been decided by a Bench of the Bombay High Court in Mahavirprasad Badridas v. Yagnik, In that case also it was contended that to the extent to which the Union Parliament authorised the levy of tax on a Hindu undivided family, the legislation was ultra vires, and in support of that contention reliance was placed on entry 86 of List I to the Seventh Schedule of the Constitution. It was also urged there that the Hindu undivided family will not fall within the scope of the expression "individuals" as it is a corporation and that by and not corporations. These contentions were negated by the Bench in a judgment with the reasoning and conclusions of which, I am in entire agreement. It would really be unnecessary to cover the same ground as the questions raised have been fully discussed there.

It is now settled law that in interpreting a constituent and organic instrument such the Constitution, that construction most beneficial to the widest possible

amplitude of its powers must be adopted and that its provisions cannot be cut down by a narrow and technical construction (vide : British Coal Corporation v. The King).

In James v. Commonwealth of Australia the Privy Council observed :

"It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge."

In United Provinces v. Mt. Atiqah Begum Gwyer, C.J., observed as follows :

"I think, however, that none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

Bearing these principles in mind, it has to be seen whether the word "individuals" in entry 86 can comprehend a Hindu undivided family. Two reasons are suggested as to why it could not : (i) that a Hindu undivided family is something in the nature of a corporation or a quasi-corporation and distinct from its constituent members and therefore, would not fall within the expression "individuals"; and (ii) that the legislative practice in India has always differentiated between "individuals" and a Hindu undivided family as units for purposes of taxation, and the omission to add a Hindu undivided family in entry 86 means that it is excluded from the scope of that entry.

The first question depends upon what exactly is the nature of a Hindu undivided family. That it is certainly not a company within the meaning of entry 86 is obvious, because the company here referred to is a company registered under the provisions of the Indian Companies Act.

A Hindu joint family consists of males lineally descended from a common male ancestor together with their wives and unmarried daughters. This body is purely a creature of law and cannot be created by act of parties, save in so far as that by adoption or marriage a stranger may be affiliated as a member. If there is a custom to that effect. An undivided family which is the normal condition of Hindu society is ordinarily joint not only in estate but in food and worship. Coparcenary in accordance with the law of Mitakshara is a narrower body than the joint family and consists of only those persons who take by birth an interest in the property of the holder for the time being and who can enforce a partition. In such a coparcenary there is community of interest and unity of possession between all the members thereof and upon the death of any one of them the others take by survivorship, that in which, during the deceased's lifetime, they had a common interest and common possession. (Vide *Katama Natchiar v. Sirmut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Swamy Periya Odaya Taver*. No individual member while the family remains undivided property that he, that particular

member, has a definite share, either in the corpus or in the income. Till a partition takes place his interest remains a fluctuating interest enlarged by deaths and diminished by births in the family. It is only on a partition that he becomes entitled to a definite and definable share.

As observed by a Bench of the Allahabad High Court in Commissioner of Income Tax v. Sarwan Kumar, "a family is an association of people. It is a natural as distinct from an artificial association." It is true that in some decided cases a Hindu undivided family has been called a corporation or something in the nature of a corporation. But as pointed out by a Bench of the Madras High Court consisting of Subrahmania Ayyar and Boddam, JJ., in Sokkanadha Vannimundar v. Sokkanadha Vannimundar a joint family though at times spoken of by judges as corporation cannot be taken as a legal person in the strict sense of term.

A Hindu coparcenary governed by the Mitakshara system is a creature of law and it can be disrupted at will by any member demanding a partition. A corporation is the creature of a statute and its dissolution will have to be made and done in a prescribed manner. Every Hindu coparcenary represents a natural relationship constituted by birth between persons within the family and a stranger cannot become a member thereof except by adoption or affiliation, as the case may be. A Corporation is not so restricted and is liable to several variations for reasons other than those that operate in the case of a Hindu coparcenary. It would be training the language to say that a Hindu coparcenary which consists of human beings related by ties of blood with community of interest and unity of possession is something in the nature of an artificial person with a perpetual succession and wholly distinct and dissociated from the persons that constitute it. The learned judges of the Bombay High Court in Mahavirprasad's case referred to above have rejected the contention that a Hindu undivided family is a corporation, and I may respectfully add, correctly.

The contention of Mr. K. Ranganathachary, who appeared in other writs that raise the same question, is that by legislative practice in this country the expression "individuals" must be construed to mean only "human beings" and not "corporations" or bodies like the Hindu undivided family. As stated already the words employed in the entries in List I should be given their natural and grammatical meaning. It was pointed out by Tendolkar, J., in J. N. Duggan v. Commissioner of Income Tax that :

"..... if there is a plain natural meaning which can be given to the words used in any legislative entry in Schedule VII to the Government of India Act, it is not competent to narrow down the meaning of such plain words by giving to the words an artificial meaning which they may have acquired by a long course of parliamentary practice. Parliamentary practice becomes relevant and of the utmost importance when the words themselves are ambiguous or where the Act is silent with regard to the extent of the scope of legislative power."

Can it be said that there is ambiguity with respect to the expression

"individuals" ?

The expression "individual" is not defined in the Wealth-tax Act. Not has it been defined in the Indian Income Tax Act. As observed by the Supreme Court in Commissioner of Income Tax v. Sodra Devi "there is authority for the proposition that the word individual does not mean only a human being, but is wide enough to include a group of persons forming unit." I shall now refer to some of the decisions that have taken that view.

In Commissioner of Income Tax v. Salem District Urban Bank Ltd., a Full Bench of the Madras High Court has held that a co-operative central bank consisting of certain number of shareholders some of whom are individual persons and the rest co-operative societies, was an association of individuals within the meaning of section 3 of the Income Tax Act and, therefore, could be assessed to Income Tax as such. It was also observed that "individual" is not there used as denoting only a person, but takes in also a corporate body created by a statute, which is an individual within the meaning of the section.

In Commissioner of Income Tax v. Madras Bar Council Leach, C.J., has held that a Bar Council is an individual or association of persons within the meaning of section 3 and therefore, its income is taxable. In Commissioner of Income Tax v. Trustees of Sir Currimbhoy Ebrahim Baronetcy Trust it was held that the corporation was an individual within the meaning so section 3 of the Income Tax Act, and not an association of individuals and was a such chargeable to Income Tax. This decision was later affirmed by the Privy Council in Currimbhoy Trust v. Commissioner of Income Tax.

In In re Ramratan Das and Madan Gopal a Bench of the Allahabad High Court held that the expression "individual" in the proviso to section 55 is used in a slightly wider sense than the same word occurring in the section itself, and that it includes a Hindu undivided family.

In Commissioner of Income Tax v. Ahmedabad Mill-owners Association Sir John Beaumont, C.J., however, took the view that the expression "association of individuals" occurring in section 3 of the Indian Income Tax Act of 1922 meant only an association of human beings and not an association of companies.

From the authorities cited above it is clear that the expression "individual" used in section 3 of the Indian Income Tax Act has been construed to mean and include not only individuals as such, but an association or body of individuals. The principle of those decisions can be applied to the construction of the expression "individual" in entry 86 of List 1 to the Seventh Schedule of the constitution. In that view it cannot be said that an association or body of individuals such as a Hindu undivided family does not fall within the scope and meaning of the expression "Individuals" used in the entry. In the light of the above cases it cannot be said that there is a well-defined legislative practice pressing against the contention that the expression "Individuals" cannot take in and comprehend a body of individuals like a Hindu undivided family. I am,

therefore, of opinion that entry 86 of List 1 to the Seventh Schedule to the Constitution is comprehensive enough to justify the imposition of the wealth-tax on the Hindu undivided family.

Mr. Kondaiah, type learned counsel for the respondent, has sought to place reliance upon entry 97 in List 1. He contended that the Constitution in enumerating the various heads of legislative power in the Union List has sought to exhaust the entire field of legislation of the Union Parliament and if by any inadvertence any power is not specifically conferred and could not be reasonably implied, the residuary entry in 97 should be resorted to. In the view I have taken that the expression "individuals" in entry 86 is comprehensive enough to include a Hindu undivided family, there is no need to further pursue the contention of the learned counsel as to the scope and applicability of entry 97.

For the above reasons, the writ petition fails and is dismissed with costs. Advocates fee Rs. 100.

Petition dismissed.