
(1960) 01 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1089 of 1958

N.V. Subrahmanyam

APPELLANT

Vs

Additional Wealth Tax Officer, Eluru

RESPONDENT

Date of Decision : 19-01-1960

Acts Referred:

Wealth Tax Act, 1957 — Section 3

Citation : AIR 1961 AP 75

Hon'ble Judges : Seshachelapati, J

Bench : Single Bench

Advocate : C. Kondaiah, K. Mangachary, for the Appellant;

Final Decision : Dismissed

Judgement

Seshachelapati, 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 20-3-1958, made against the petitioner for the year 1957-58.

2. The petitioner and his three sons constituted a Hindu undivided family till 16-9-1957, when a partition between them is stated to have taken place. A notice u/s 14(2) of the Wealth Tax Act (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. 5,71,399/- 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 20-3-1958 fixing the total wealth of the petitioner at Rs.

12.25.614/- and the tax due thereon at Rs. 4,128.07nP. 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 1-4-1958.

In this petition, the petitioner contends that the respondent car/not 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 assets of a Hindu undivided family it is beyond the legislative competence of the Union Parliament and consequently any action taken Or purported to be taken under the provisions of that Act in so far as they relate to Hindu undivided family is lacking in legal sanction and authority.

3. The Wealth Tax Act of 1957 (Act XXVII of 1957) was passed by the Union 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 assessment 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 it provides for the charge of wealth tax and deals with the assets which are subject to such a charge.

Chapter III deals with the authorities created under the Act. Chapter IV deals with the assessment. Section 14 in Chanter 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 person 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.

Under Section 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 objections assess the net wealth of the assessee and determine the amount payable. Where a person fails to make a return in response to notice u/s 14(2) or fails to comply with the notice under Sections 16(2) and 16(4) the Wealth Tax Officer may make assessment of his best judgment. Chanter 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;

(3) "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."

4. The contention of the learned counsel for the petitioner is that the above provision is ultra vires the powers of 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 the Entry 86 of List 1 to the VII schedule to the Constitution of India, and 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."

5. On the language of the Entry, it is contended that the tax on 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 Union Parliament.

6. It is also urged that by legislative practice the Hindu undivided family has acquired the special significance as a unit for the purpose of assessment under Income Tax Act and other fiscal enactments and the omission to include the Hindu undivided family in Entry 86 of List I to the VII 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.

7. 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, Entry 97 read with Article 248 of the Constitution.

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

9. The 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 Vs. M.S. Yagnik, Second Wealth Tax Officer, C-II Ward, Bombay, . 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 the contention reliance was placed on Entry 86 of List 1 to 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 legislative practice the word "individuals" can mean only human beings 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.

10. It is now settled law that in interpreting a constituent and organic instrument such as 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 AIR 1935 158 (Privy Council) .

11. In *Tames v. Common Wealth of Australia* 1936 A.C. 578 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."

12. In AIR 1941 1 (Federal Court) 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"

13. Bearing these principles in mind, it has to be seen whether the words "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 the Entry 86 means that it is excluded from the scope of that Entry.

14. The 1st 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 there referred to is a Company registered under the provisions of the Indian Companies Act.

15. 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 is, in which during the deceased's lifetime, they had a common interest and common possession, (vide *Katama Natchier v. Rajah Mootoo Vijaya Raganadha* 9 M. I. A. 539). No individual member while the family remains undivided can predicate of the joint 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,

16. As observed by a bench of the Allahabad High Court in *Commissioner of Income Tax Vs. Sarwankumar*, minor, under the guardianship of his father Manohar Lal Verma, 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 *Subrahmanya Ayyar and Boddam JJ.* in *Sokkanadha Vannimundar v. Sokkanadha Vannimundar* ILR Wad 344 a joint family though at times spoken of by judges as a corporation cannot be taken as a legal person in the strict sense of the term.

17. 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 straining 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 Badridas Vs. M.S. Yagnik*, Second Wealth Tax Officer, C-II Ward, Bombay, referred to above have rejected the contention that a Hindu undivided family is a corporation, and I may respectfully add, correctly.

18. The contention of Mr. K. Ranganatha Chary, 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. Commr. of Income Tax Bombay* AIR 1953 Bom 261 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."

19. Can it be said that there is ambiguity with respect to the expression "individuals"?

20. The expression "individual" is not defined in the Wealth Tax Act. Nor has it been defined in the Indian Income Tax. As observed by the Supreme Court in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. 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 a unit." I shall now refer to some of the decisions that have taken that view.

21. In *The Commissioner of Income Tax Vs. The Salem District Urban Bank, Limited*, Full Bench of the Madras High Court has held that a Co-operative Central Bank consisting of certain number of share-holders 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 corporation body created by a statute, which is an individual within the meaning of the Section.

22. In *COMMISSIONER OF Income Tax, MADRAS Vs. THE BAR COUNCIL, MADRAS*, 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 *The Commissioner of Income Tax Vs. The Trustees of The Sir Currimbhoy Ebrahim Baronetcy*, it was held that the corporation was an individual within the meaning of Section 3 of the Income Tax Act, and not an association of individuals and was as such chargeable with Income Tax. This decision was later affirmed by the Privy Council in AIR 1934 116 (Privy Council)

23. In the matter of *In Re: Income Tax of Madan Gopal*, bench of the Allahabad High Court held that the expression "individual" in 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.

24. In *COMMISSIONER OF Income Tax, BOMBAY RESIDENCY Vs. AHMEDABAD MILLOWNERS 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.

25. 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 "Individuals" in Entry 86 of List I to the Seventh Schedule of the Constitution. In that view it cannot be said that an association or body of individuals such as 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 also be said that there is a well defined legislative practice pressing against the contention that the expression "individual" cannot take in and comprehend a body of individuals like a Hindu undivided Family. I am, therefore, of opinion that the Entry 86 of List I to the VII Schedule to the Constitution is comprehensive enough to justify the imposition of the wealth tax on the Hindu undivided family.

26. Mr. Kondiah, the learned counsel for the respondent has sought to place reliance upon the Entry 97 in List I. 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.

27. For the above reasons, the Writ Petition fails and is dismissed with costs. Advocate's fee Rs. 100/-.