

(1960) 10 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ. Petition No's. 20 and 21 of 1959

P. Ramabhadra Raju

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-10-1960

Acts Referred:

Constitution of India, 1950 — Article 246
Wealth Tax Act, 1957 — Section 3

Citation : AIR 1961 AP 355 : (1962) 45 ITR 118

Hon'ble Judges : P. Chandra Reddy, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : M. Bhujanga Rao and P. Sitarama Raju, for the Appellant; M. Srinivasa Rao for C. Kondaiah for I.T. Department, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—In these petitions under Article 226 of the Constitution of India, the constitutionality of Section 3 of the Wealth-Tax Act, 1957 (XXVII of 1957) (hereinafter referred to as the Act) is challenged.

2. The Wealth Tax Officer, Eluru passed orders on 26-1-1958 and 22-11-1958 assessing the petitioner and his adopted son as a Hindu Undivided family to wealth-tax for the years 1957-58 and 1958-59 respectively u/s 16(3) of the Act, and the assets of the family were made eligible to a tax of Rs. 27,779-85 nP. for the year 1957-58 and Rs. 37, 491-98 nP. for 1958-59. By notices dated 26-1-1958 and 22-11-1958, the assessee was required to pay the taxes u/s 30 of the Act on or before 15-2-1958 and 24-12-1958 respectively. Thereupon, the assessee moved this court to remove those orders on certiorari.

3. The principal contention urged on behalf of the petitioner is that Section 3 of the Act, which enables the Revenue to tax a Hindu Undivided Family, is beyond the legislative competence of the Union Parliament and, consequently, the proceedings started by the proper Wealth-tax Officer u/s 14 read with Section 3, are invalid. The point for consideration is whether, it was competent for the

Parliament to make a taxing law as respects Hindu Undivided families.

4. It is convenient at this stage to advert to the relevant sections of the Act, which was passed by the Union Parliament in 1957 and which came into force on 1-4-1957. Section 2(c) defines an assessee as a person by whom Wealth tax or any other sum of money is payable under this Act. and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the value of his assets. Section 3, which is the charging section and which mainly falls to be interpreted here, recites:

"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."

Section 14(1) in Chapter IV casts an obligation, on the part of every person, whose net wealth on the valuation date was of such an amount as to render him liable to wealth-tax, to submit a return to the Wealth tax officer, while 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 the period of not less than thirty days the particulars of the net wealth of such person on the valuation dated in the form prescribed.

Section 16(2) provides that if the Wealth-tax Officer is not satisfied with the return submitted by the assessee, he may call upon the assessee to produce evidence in support of his return and, after hearing his objections, compute the net wealth of the assessee and determine the amount payable by him. Section 16(4) empowers the Wealth-tax Officer to require the assessee by notice to produce or cause to be produced on a date specified in the notice such accounts, records, or other documents as the Wealth-tax Officer may require.

If the assessee fails to make a return in response to a notice u/s 14(2) or fails to comply with the terms of the notice issued under Sub-section (2) or Sub-section (4), the Wealth tax Officer would estimate the net wealth of the assessee to the best of his judgment u/s 16(5) of the Act. In the instant case, the proper officer accepted the returns submitted by the assessee and made the computation of the wealth of the petitioner's family on that basis.

5. In this petition, the attack is concentrated on Section 3 of the Act which, as we have already stated, is the charging section and which subjects the capital assets of the Hindu family to tax. We are, therefore, called upon to decide whether Section 3 so far as it bears on the assets of a joint Hindu family, is ultra vires the powers of the Parliament. The answer to this is provided by the constitution of entry 86 in list I of the seventh Schedule on which the impugned legislation is founded. That entry reads:

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

6. The argument pressed upon us on the language of the entry is that it does not empower the Parliament to make a taxing law in respect of a Hindu undivided family and that the word "individuals" occurring in that entry cannot take in a joint Hindu family. It is urged by Sri Bhujanga Rao, learned counsel for the petitioner, that a Hindu undivided family being a corporation and not a mere association of individuals, cannot fall within the connotation of "individual".

7. To substantiate this theory of his, the learned counsel calls our attention to some observations in the judgment of the Bombay High Court in *Apaji Narhar v. Ramchandra Ravji*, 1LR 16 Bom E9. The statement which has given rise to this argument is found at page 39 of the report and is in these terms :

" "the family property" to borrow the language of Mr. Mayne, is owned by the whole coparcenary as a sort of corporation."

To the same effect are the following remarks at page 78 :

"No doubt the joint family is a corporate body, a Sort of corporation, but a corporation in which there are share-holders, but no shares."

8. Sri Bhujanga Rao urges that the law as stated in *Chuckun Lall Singli v. Poran Chunder Singh* 9 Suth WR 483 also lends countenance to the proposition advanced by him. The observations relied on by. the learned counsel are as follows:

"It appears to me that the joint family is, as regards the enjoyment of the joint property, a single entity. As long as the members, who have, what may be termed, vested interests in the property, choose to continue in a state of commensality and in joint-fruition and enjoyment of the profits of the property, they cannot be said to possess individually any several proprietary right other than the right to call for partition -- a right which they may alien".

We do not think that the passage extracted above is of any avail to the petitioner.

9. The learned counsel then called in aid a passage in Sumpath Iyengar's Commentary on the Wealth Tax. The learned author thinks that a Hindu Undivided family cannot be treated as an individual or a collection of individuals and, there fore, the Act should be regarded as ultra vires the Constitution in so far as the Hindu Undivided families are concerned, Again, the author in another context says;

"It is impossible to justify the vires of the Wealth Tax Act on the score that a Hindu Undivided family, after all, consists of individuals. A Hindu undivided family springs from the personal law governing the Hindus and it is a legal entity quite apart from the members composing it".

10. It is true that ILR 16 Bom 29 and some other decided cases describe a joint

Hindu family as a sort of corporation or something in the nature of corporation but we feel that it is so called in a loose sense. It is not a corporation or a legal person in the strict sense of the term. It is difficult to posit that it is a legal entity having existence apart from the individuals- We feel that it is a collection of individuals, no doubt with certain distinct features of its own.

A joint Hindu family is a creature of law and it is not an artificial body like a corporation which is brought into existence under a statute. A joint Hindu family can be disrupted at the will of the members thereof by demanding partition, whereas dissolution of a corporation has to be brought about in a specific manner. In our judgment, a joint Hindu family cannot be regarded as a legal person or a juristic entity with independent existence.

11. This proposition finds support in *Sokkanadha Vannimundar v. Sokkanadha Vannimundar*, ILR 28 Mad 344. It was ruled there that a joint Hindu family cannot be taken as a legal person in the strict sense of the term so as to constitute a partnership. The learned Judges stated that the legal relation subsisting between the members of a family carrying on business may have some sort of resemblance to that of partner but it is not identical with it. They added that a joint Hindu family, though at times spoken of by the Judges as a sort of corporation cannot strictly be described as a corporation or is equivalent to a legal person.

12. The next question for consideration is whether the expression "individual" occurring in entry 86 is comprehensive enough to include a joint Hindu family. When once we reach the conclusion that a joint Hindu family is nothing more than a group of individuals, no doubt with certain special features, the problem does not present much difficulty. That the expression "individuals" cannot merely mean individual human beings but is wide enough to comprehend individuals forming a unit, is evident from the judgment of their Lordships of the Supreme Court in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, . Bhagwati J., who delivered the leading opinion of the court observed at page 834 as follows :

"..... 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.

It has been held that the word "individual" includes a Corporation created by a statute e.g., a University or a Bar Council or the trustees of a baronetcy trust incorporated by a Baronetcy Act".

13. In this connection, we should remember that it is a well-settled canon of construction that legislative Acts should be construed broadly and not in a narrow or a pedantic sense. The Constitution, being an organic instrument, should receive a construction most beneficial to the widest possible amplitude of its powers and its provisions cannot be cut down by a narrow and technical construction.

14. In *James v. Commonwealth of Australia*, 1936 AC 578 at p. 614 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. It is not that the meaning of the word changes, but the changing circumstances illustrate and illuminate the full import of that meaning."

15. In AIR 1941 16 (Federal Court) at p. 25, Sir Mawrice Linford Gwyer, C. J. observed:

"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."

16. Bearing these principles in mind, if we construe the word "individual" the conclusion is inescapable that it covers a Hindu undivided family which composes of several individuals.

17. There are rulings of the various High Courts to this effect. *Commr. of Income Tax v. Sarwankumar*, AIR 1945 All 286 contains the proposition that a family is an association of people, It is a natural as distinct from an artificial association.

18. A Full Bench of the Madras High Court in *The Commissioner of Income Tax Vs. The Salem District Urban Bank, Limited*, ruled that a co-operative Central Bank composing certain share-holders some of whom were individual persons and the rest co-operative societies, was an association of individuals within the meaning of Section 3 of the Indian Income Tax Act. Likewise, a Bench of the Madras High Court consisting of Lionel Leach, C. J. and Lakshman Rao, J. decided that a Bar Council is an individual within the words of Section 3 of the Indian Income Tax Act (Vide *COMMISSIONER OF Income Tax, MADRAS Vs. THE BAR COUNCIL, MADRAS.*, The principle enunciated by the Bombay High Court in *The Commissioner of Income Tax Vs. The Trustees of The Sir Currimbhoy Ebrahim Baronetcy*, is that a Corporation is an individual within the purview of Section 3 of the Indian Income Tax Act. This was confirmed by the Judicial Committee of the Privy Council in AIR 1934 116 (Privy Council)

19. We may now refer to a recent judgment of the Bombay High Court in *Mahavirprasad Badridas Vs. M.S. Yagnik*, Second Wealth Tax Officer, C-II Ward, Bombay, where the learned Judges had to consider the very question now posed before us. After an elaborate discussion on the topic they came to the conclusion that Section 3 of the Act is intra vires and could be justified with reference to entry 86. They expressed the opinion that a Hindu undivided family fell within the connotation of the word "individual", the family being a body of individuals and that it was not excluded from the sweep of entry 86. The learned Judges

also said that a Hindu undivided family was not a corporation.

20. Our learned brother, Seshachalapati, J. also took the same view in N.V. Subrahmanyam Vs. Additional Wealth Tax Officer, Eluru, . The judgment contains a very instructive discussion on the subject.

21. It was then argued by Sri Bhujanga Rao that the legislature itself has made a distinction between an individual and a Hindu undivided family in Section 3 and that this itself furnishes a clue to the construction of the word "individual" as being confined to persons and excludes a Hindu undivided family from the scope of entry 86. We are unable to accede to this proposition. The Parliament used the word "individual" in a narrow sense to distinguish it from a Hindu undivided family. In considering this question, one has to remember that under the Act a Hindu undivided family as a unit and also an individual as a unit are liable to be taxed, and the word "individual" is used in the section in its narrower connotation. Therefore, that does not furnish any index to the interpretation of item 86 in list I of the Seventh Schedule.

22. For these reasons, we uphold the validity of Section 3 of the Act in its relation to Hindu undivided families and the Wealth Tax Officers are authorised to initiate proceedings in assessing the capital assets of Hindu undivided families. No exception could, therefore, be taken to the action taken by the Wealth Tax Officer, Eluru and the orders in question could not be successfully impeached.

23. In the result, the writ petitions are dismissed with costs in W. P. No. 20 of 1959 Advocate's fee Rs. 100/-.