

---

**(1975) 08 MAD CK 0041**

**In the Madras High Court**

**Case No :** Tax Case No. 305 of 1969 (Reference No. 116 of 1969)

Purushothamdas Gocooldas and Others

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

---

**Date of Decision :** 13-08-1975

**Acts Referred:**

Wealth Tax Act, 1957 — Section 5(1)

**Citation :** (1976) 104 ITR 608

**Hon'ble Judges :** V. Sethuraman, J; V. Ramaswami, J

**Bench :** Division Bench

**Advocate :** T.V. Balakrishnan, for the Appellant; J. Jayaraman, Special Counsel, for the Respondent

---

## **Judgement**

V. Ramaswami, J.—In this consolidated reference in respect of six assessments under the Wealth-tax Act, a common question of law has been referred u/s 27(1) of the Wealth-tax Act. The question that is referred is :

"Whether, on the facts and in the circumstances of the case, each of the assessee is not entitled to exemption in respect of a part of the House No. 8, Nowroji Road, Madras-10, u/s 5(1)(iv) of the Wealth-tax Act?"

2. The assessee in the six cases along with one Aminchand Dwarkadas were partners in a firm of partnership by name Messrs. Gocooldas Jamnadas and Company, Madras. In respect of the assessment year 1964-65, they submitted their individual returns of wealth, the relevant valuation date being October 17, 1963. The assessee's wealth included properties, shares in companies and interest in the firm of partnership, Messrs. Gocooldas Jamnadas and Company, Madras. One of the assets of the partnership was a house bearing No. 8, Nowroji Road, Madras, in which the partners were residing. In their return under the Wealth-tax Act, each of these assessee valued their share in this house separately and claimed deduction u/s 5(1)(iv) of the Wealth-tax Act. The Wealth-tax Officer valued the properties owned by the partnership firm at Rs. 14,68,800. In arriving at the above value, he fixed the value of the house No. 8, Nowroji

Road, at Rs. 5,45,600. With reference to the shares held by each of these assesseees, the Wealth-tax Officer included the value of their share in the firm in each of the individual assessments u/s 4(1)(b) of the Wealth-tax Act. The assesseees claimed that wealth-tax was not payable by the respective assesseees in respect of the value of the assesseees' share in the residential house No. 8, Nowroji Road, to the extent of a sum of Rs. 1,00,000 u/s 5(1)(iv) of the Act. The Wealth-tax Officer rejected this claim on the ground that the property was not owned by the individual assesseees, but it was an asset of the partnership firm and that the assesseees individually were not also using the property exclusively for residential purpose. On an appeal, on an erroneous view that the house No. 8, Nowroji Road, belonged to the Hindu undivided family and not the partnership, the Appellate Assistant Commissioner held that the respective assesseees were entitled to have a deduction of their share in the value of the house up to a maximum of Rs. 1,00,000 as provided u/s 5(1)(iv), Aggrieved by this order, the department preferred six appeals to the Tribunal. By a common order, the Tribunal held that no partner could be said to have an exclusive ownership in any particular property or asset of a partnership firm and that, therefore, Section 5(1)(iv) was not applicable. It may be mentioned that before the Tribunal, it was admitted on behalf of the assesseees that the house No. 8, Nowroji Road, belonged to the partnership firm at the relevant period and formed part of the assets of that firm. The Tribunal accordingly set aside the order of the Appellate Assistant Commissioner and restored the order of the Wealth-tax Officer. At the instance of the assesseees, the above question has been referred,

3. The learned counsel for the assesseees strenuously contended that though the house property was an asset of the partnership firm, the property vested only in the individual partners and the partnership as such not being a legal entity could, not own any property. He also contended that the words "belonging to an assessee" in Section 5(1)(iv) would also include even an interest in a house property held by a partner in respect of the partnership property and that, therefore, even on that ground he would be entitled to claim exemption under that provision.

4. In this case, as already noticed, the Wealth-tax Officer included the value of the interest of each of the individual assesseees in the firm of Gocooldas Jamnadas and Company, Madras, in determining their net wealth. In fact, it was not in dispute that No. 8, Nowroji Road, Madras, was a partnership asset at the relevant date. If that is so, we are unable to see how individual partners could claim any specified right in this specified immovable property as belonging to them. In the case of a partnership asset it is well settled that no partner could claim to have any specific interest exclusively apart from his interest as a partner in the firm as such. His interest in the partnership cannot also be considered as immovable property as his right is only to a share in the division of the partnership assets on dissolution. The Supreme Court in the decision reported in *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, . considered the relative rights of the partners with reference to the partnership

assets and observed thus:

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

5. Earlier in the same judgment, it is further observed thus: "From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) and Sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48."

6. Therefore, the assessee in this case cannot claim to be entitled to any portion of this house property as exclusively belonging to them. The learned counsel for the assessee may be well founded in his contention if the words "belonging to the assessee" in Section 5(1)(iv) would take in not only the right as a full owner, but also the interest of a life interest holder or any other partial interest as held in *Controller of Estate Duty Vs. Estate of Late Sanka Simhachalam* (by accountable person), . But that question does not arise for consideration in this case as the property is an asset of the partnership firm and was not owned by a group of individuals in their own right. We are, therefore, of the view that the Tribunal was right in its conclusion that the assessee in each of these cases were not entitled to claim exemption u/s 5(1)(iv) in respect of house No. 8,

Nowroji Road, Madras. We, accordingly, answer the reference in the affirmative and against the assesseees. The revenue will be entitled to its costs. Counsel's fee Rs. 250.