

(1972) 11 AHC CK 0011

In the Allahabad High Court

Case No : Wealth-tax Reference No. 378 of 1970

Ramji Mehrotra

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 13-11-1972

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)

Citation : (1973) 92 ITR 470

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; R.R. Misra, for the Respondent

Judgement

Satish Chandra, J.—The Income Tax Appellate Tribunal has, u/s 27(1) of the Wealth-tax Act, 1957, referred to us the following question of law :

"Whether, on the facts and in the circumstances of the case, the assessee's status was correctly taken as that of an "individual" ?"

2. Shri Ramji Mehrotra, the assessee, was a member of a Hindu undivided family along with his father, mother, a brother and an uncle and aunt and four cousins. In 1951, there was a partial partition in the family at which a sum of five lacs of rupees was divided between some of the members of the family. In 1953 another partial partition took place in the family, with the result that the assessee became separated from all the other members of the family. He was a bachelor. He became the exclusive owner of the properties allotted to him at the partition. For the assessment year 1966-67, the assessee claimed in the return filed by him that his status was that of a Hindu undivided family. The Income Tax Officer did not accept this contention. He held that the assessee being the sole coparcener he did not constitute a Hindu undivided family. He assessed him in the status of an individual. This view was affirmed by the Appellate Assistant Commissioner. The assessee failed before the Appellate Tribunal as well.

3. On facts, the position is that the properties, the income of which is the subject-

matter of dispute, belonged to a Hindu undivided family. After the partition these properties came into the exclusive ownership of the assessee. It is settled law that an individual by himself cannot constitute a Hindu undivided family. There must be more than one person before a Hindu undivided family can come into existence. It is not necessary that the two members should both be males. The Hindu undivided family can validly consist of a male with a female, like a husband and wife, or a person with his unmarried daughter. A Hindu undivided family can consist of females as well, provided at least one of the female members is capable of adding a male member to the family. For instance a Hindu undivided family can consist of a widow with a right of adoption and her unmarried daughter. In such a case the widow can by adoption add a male member to the family. (See *Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others*,).

4. For the assessee, reliance was placed upon *Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore*, . In that case, A constituted a Hindu undivided family along with his wife, two unmarried daughters and his adopted son, B. The Supreme Court observed that the expression "Hindu undivided family" in the Income Tax Act is used in the sense in which a Hindu joint family is understood under the personal law of the Hindus. Under the Hindu system of law, a joint family may consist of a single male member and widows of deceased male members, and the Income Tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members. It was held that after the death of "A", the property of the joint family did not cease to belong to the family merely because the family was represented after "A's" death by a single coparcener "B", who alone possessed rights which an owner of property might possess. Learned counsel for the assessee particularly invited our attention to the following observations :

"Property of a joint family, therefore, does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property may possess. In the case in hand the property which yielded the income originally belonged to a Hindu undivided family. On the death of Buddappa, the family which included a widow and females born in the family was represented by Buddanna alone, but the property still continued to belong to that undivided family and income received therefrom was taxable as income of the Hindu undivided family."

5. On facts, the Hindu undivided family continued despite the death of the eldest male member. After his death his adopted son along with the other female members continued in the status of a Hindu undivided family. It is in this context that the court observed that the property continued to retain its status as belonging to a Hindu undivided family. This decision is an authority only for the proposition that even if some members of a Hindu undivided family, like females, may not possess powers of transfer, yet the family can continue as a Hindu undivided family and the property belonging to it retains that character.

6. The decision of the Supreme Court in *N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh*, shows that, for purposes of wealth-tax, a Hindu undivided family can validly consist of a person with his wife and minor daughters, even though he has no sons. It was observed that the property which is joint family property of a Hindu undivided family does not cease to be so because of the temporary reduction of the coparcenary unit to a single individual.

7. A coparcenary is a much smaller body than a Hindu undivided family. Females cannot be members of a coparcenary, though they are members of a Hindu undivided family. If a Hindu undivided family consists of only one person who has powers of transfer over the property, the family nonetheless continues to retain its status as a Hindu undivided family so long as there is at least one other member, male or female.

8. There are some observations in the decision of the Supreme Court in *T.S. Srinivasan Vs. Commissioner of Income Tax, Madras*, which may suggest that a Hindu undivided family can consist of husband and wife, these observations were explained by the Supreme Court in *Narendranath's* case, and it was observed that the observations were made in the context of the precise question canvassed before the court. The question whether there was in any event, without a son conceived or born, a Hindu undivided family consisting of the appellant in that case and his wife and whether the properties received on partition belonged to that Hindu undivided family was neither raised nor argued before the court and it had no occasion to consider it.

9. We are in respectful agreement with the decision of the Mysore High Court in *C. Krishna Prasad Vs. Commissioner of Income Tax, Bangalore*, in which it was held that in order to constitute a joint family, there must be more than one member; and one member cannot by himself constitute a joint family. Though a member taking a share on partition of joint family properties has the potentialities of becoming a joint Hindu family, until he marries he cannot be considered as a Hindu undivided family.

10. The Madras High Court in *K.R. Ramachandra Rao Vs. The Commissioner of Wealth Tax*, held that in the absence of persons entitled to a claim on the estate, a sole surviving coparcener does not constitute a Hindu undivided family for purposes of assessment to wealth-tax.

11. In the present case, the assessee does not have any other person, male or female, as a member of his family. As a sole coparcener, he cannot, in law, be deemed to constitute a Hindu undivided family. He was rightly assessed in the status of an individual.

12. We answer the question referred to us in the affirmative, in favour of the revenue and against the assessee. The department will be entitled to costs. Fee of the learned counsel is assessed at Rs. 200.