
(1984) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : R.C. No. 21 of 1981

S. Gopalreddi

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 29-10-1984

Acts Referred:

Wealth Tax Act, 1957 — Section 2, 2(1), 27(1), 3, 4

Citation : (1985) 48 CTR 247

Hon'ble Judges : Y.V. Anjaneyulu, J;A. Raghuvir, J

Bench : Division Bench

Judgement

Anjaneyulu, J.—This reference arises under s. 27(1) of the WT Act, 1957 ("the Act" for short). The assessment years involved are 1975-76 and 1977-78. The assessee is an HUF. The WTO found that the wife of the Karta has wealth in her individual capacity in excess of Rs. 1,00,000. Consequently he taxed the net wealth in the case of the assessee-joint family at the higher rates specified in para (2) of Part I of Sch. I to the WT Act. It may be pointed out that for the purpose of wealth tax in the case of every HUF which has at least one member, whose net wealth assessable for the assessment year exceeds Rs. 1,00,000 wealth tax is payable by the joint family on its net wealth at the higher rates specified therein. The assessee's contention is that the expression "member" occurring in para (2) of Part 1 of Sch. 1 refers to a male member who is a coparcener and not a female member. According to the assessee, as the family did not consist of more than one coparcener and only a female member of the family has wealth exceeding Rs. 1,00,000 the higher rates of wealth tax specified above cannot be applied. The revenue rejected the above contention and it was affirmed by the ITAT.

2. The assessee-family holds interest in a partnership through its Karta. The ITO included the value of the partnership interest acting under s. 4(1)(b) of the WT Act, 1957. The assessee contended that s. 4 comes into operation for purposes of computation of net wealth in the case of "individuals" and it can have no

application for computation of new wealth in the case of an HUF. In that view, it was claimed that the provisions of s. 4(1)(b) cannot be pressed into service for purposes of inclusion of the value of partnership interest held by the assessee-family in the partnership firm through its Karta. The revenue rejected the above contention also and it was affirmed by the IT Appellate Tribunal.

3. Aggrieved by the decision of the Tribunal, the assessee sought a reference of the following two questions of law for the opinion of this court under s. 27(1) of the Act.

"1. Whether, on the facts and in the circumstances and on a correct interpretation of Part I-A of paragraph A of the Schedule to the Finance Act read with the relevant provisions of the WT Act, the Tribunal is correct in holding that the word "member" occurring therein takes in a female member of a Mitakshara HUF and, therefore, the assessee HUF is rightly assessed to tax at the higher rate prescribed in the said Finance Act ?

2. Whether, on the facts and in the circumstances of the case, the inclusion of the value of the partnership share under s. 4(1)(b) of the Act or under s. 2(m) of the Act in the net wealth is correct in law ?"

4. As far as the first question is concerned, an identical question came up for consideration before this Court in connection with the levy of Income Tax also. In our judgment in R.C. 3/81/ dt. 26-10-1984 since reported as *S. Venka Reddy v. CIT* 1985 Tax LR 716 we upheld the view that the expression "member" occurring in Part I of Sch. I is not restricted to a male member alone. Learned counsel appearing for the assessee has not been able to show how the expression "member" occurring in part (2) of Part I of Sch. I to the WT Act refers only to a male member and not to a female member. In our opinion, it has application in the case of female members also possession wealth of more than the minimum specified therein. In our opinion, the revenue rightly subjected the net wealth held by the assessee-family to tax at the higher rates specified in para (2) of Part I of Sch. I to the WT Act. We accordingly answer the first question in the affirmative, that is to say, in favour of the revenue and against the assessee.

5. The second question relating to the assessment of the partnership interest held by the assessment family under s. 4(1)(b) is not free from difficulty. Section 4 refers to the computation of the net wealth of an "individual". The provisions contained in cls. (a) and (b) undoubtedly come into operation only in the case of computation of net wealth of an individual as distinguished from an HUF. The contention of the Id. counsel for the assessee that s. 4 goes out of application altogether in a case where the computation of wealth is other than that of an "individual" is not without force. It is not possible to read clause (b) of sub-s. (1) of s. 4 independently because it does not by itself convey any sense. Clause (b) has to be necessarily read with the opening part of s. 4(1) in order to make the sense complete. We may for purpose of convenience quote below the provision.

"Section 4(1) - In computing the net wealth of an individual, there shall be included, as belonging to that individual

(a) xx xx xx

(b) where the assessee is a partner in a firm or a member of an association of persons (not being a cooperative housing society), the value of his interest in the firm or association determined in the prescribed manner."

6. It is clear that the language of s. 4(1)(b) authorises the inclusion of the value of the partnership interest where the assessee is a partner in a firm and that authorisation is for purpose of computing the net wealth of an individual. Learned standing counsel for the revenue draws our attention to the expression "assessee" occurring in clause (b) of s. 4(1) and states that the said expression includes an HUF also by whom wealth tax is payable under the Act. It is, therefore, argued that the use of the expression "assessee" supports the plea that the provision contained in s. 4(1)(b) authorises the inclusion of the value of partnership interest while computing the net wealth of an HUF also. Learned standing counsel wants us to read s. 4(1)(b) as an independent provision applicable for the computation of net wealth not only of individuals as specified in the opening part of s. 4(1) but also in connection with the computation of net wealth of HUF. Reliance is placed on the decision of the Gujarat High Court in *Sudhakar Manibhai and Kulinsingh Manibhai Vs. Commissioner of Wealth-tax*, .

7. There is no doubt that the decision of the Gujarat High Court supports the plea urged by the Id. standing counsel for the revenue. The Gujarat High Court interpreted the provisions contained in s. 4(1)(b) independently without reference to the opening part of s. 4(1) dealing with the computation of the net wealth of an "individual", and individual alone.

8. If the opening part of s. 4(1) is ignored, s. 4(1)(b) as such does not convey the necessary sanction to include the partnership interest in the computation of net wealth of an HUF. It is not permissible for this court to introduce words that do not form part of s. 4(1)(b) so as to made it applicable while computing the net wealth of an "HUF" also. It must be noted that clause (b) is an indivisible part of sub-s. (1) which has to be read along with the opening part relevant for computing the net wealth of an "individual" only. The Gujarat High Court has also placed reliance on the principle that an HUF consists of a plurality of individuals and, therefore, the expression "individual" takes in its sweep a plurality of individuals. This principle may be good for the purpose of holding that an AOP or a BOI constitute an individual for the purpose of wealth tax, as held by the Supreme Court in *CWT v. Kripashankar Dayashankar Worah*. But this principle will have no application in the case of a distinct assessable entity like HUF which is treated as a separate unit for the purpose of Wealth Tax. It is not permissible to proceed on the basis that because a joint family consists of a plurality of individuals it is covered by the expression "individual". Such an interpretation would ignore the charging s. 3 of the Act which refers to an HUF as a distinct unit

of assessment. We are not, therefore, persuaded to accept the view that an HUF comes within the meaning of "individual" for purposes of the opening part of s. 4(1) of the WT Act. This need not, however, detain us. Section 3, which is the charging section, provides a complete answer. Wealth tax is leviable on the net wealth on the corresponding valuation date of every HUF as per charging s. 3. It cannot be disputed that the partnership interest held by a joint family in a partnership firm through its Karta is an "asset" of the joint family and forms part of its net wealth. This is the clear effect of s. 2(e) and s. 2(m) r/w s. 3 of the WT Act. Reading s. 3 together with s. 2(e) and 2(m) of the Act, there can be no escape from the conclusion that an HUF is liable to pay wealth tax in respect of the value of the partnership interest held by it. If there is a direct sanction in the charging section itself to levy wealth tax, it is not necessary to look elsewhere for a sanction to tax the value of partnership interest admittedly owned and possessed by the joint family. We are, therefore, of the view that the revenue was justified in including in the net wealth of the assessee family, the value of the partnership interest held by it through its Karta as forming part of its net wealth under s. 3 of the Act.

9. Learned counsel for the assessee then contended that, in the event of partnership interest held by an HUF being taxed under charging s. 3 itself, the valuation of such partnership interest cannot be made in the manner prescribed by r. 2(1) of the WT Rules, 1957 for purposes of s. 4(1)(b) of the Act as the said rule is only for the purpose of s. 4(1)(b) of the Act. We do not see any reason why the principle of valuation provided in r. 2(1) cannot be taken as a guidance by the WTO for the purpose of valuing the partnership interest held by an HUF also. Section 7 of the Act provides that the value of any asset shall be estimated to be the price which in the opinion of the WTO it would fetch, if sold, in the open market on the valuation date. In order to determine the open market valuation, the WTO can take all relevant material into account including the principle of valuation as per r. 2(1). Courts have held that the valuation of assets for purposes of ED Act, which does not provide exhaustive rules for the valuation of each asset, can be determined taking guidance from the WT Rules. That being so, we do not see why the WTO cannot seek guidance from r. 2(1) of the WT Rules for the purpose of valuing the partnership interest held by an HUF for the purpose of WT Act itself. It will be open to the WTO to consider all the materials to determine the open market valuation and, while doing so, the WTO can also take guidance from the principles of valuation in r. 2(1) of the WT Rules.

10. We, therefore, answer the second question of law referred to us to effect that the inclusion of the value of the partnership interest in the computation of the net wealth of the assessee under s. 2(m) r/w s. 3 of the WT Act is perfectly valid.

11. We accordingly answer both the questions in favour of the revenue and against the assessee. No costs. Advocate's fee Rs. 300.