
(1984) 10 AP CK 0010
In the Andhra Pradesh High Court
Case No : R.C. No. 18 of 1981

S. Venka Reddy

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), 4, 4(1)

Citation : (1985) 49 CTR 271 : (1986) 159 ITR 683

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

Bench : Division Bench

Advocate : S. Dasaratha Rama Reddy, for the Appellant; M. Suryanarayana Murthy, for the Respondent

Judgement

Anjaneyulu, J.—This reference arises u/s 27(1) of the Wealth-tax Act, 1957 ("the Act" for short). The assessment years involved are 1976-77 and 1977-78. The assessee is a Hindu undivided family. The Wealth-tax Officer 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 sub-para (2) of Part I of Schedule I to the Wealth-tax Act. It may be pointed out that for the purpose of wealth-tax in the case of every Hindu undivided family 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 sub-para (2) of Part I of Schedule I 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 Income Tax Appellate Tribunal.

2. The assessee-family holds interest in a partnership through its karta. The

Income Tax Officer included the value of the partnership interest acting u/s 4(1) (b) of the Wealth-tax Act, 1957. The assessee contended that section 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 net wealth in the case of a Hindu undivided family. In that view, it was claimed that the provisions of section 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 Income Tax 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 u/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 Wealth-tax Act, the Tribunal is correct in holding that the word "member" occurring therein takes in a female member of a Mitakshara Hindu undivided family and, therefore, the assessee-Hindu undivided family 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 u/s 4(1)(b) of the Act or u/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 *S. Venka Reddy Vs. Commissioner of Income Tax, Andhra Pradesh-II*, Hyderabad, we upheld the view that the expression "member" occurring in Part I of Schedule 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 sub-para (2) of Part I of Schedule I to the Wealth-tax 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 possessing 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 sub-para (2) of Part I of Schedule I to the Wealth-tax 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 assessee-family u/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 clauses (a) and (b) undoubtedly come into operation only in the case of computation of net wealth of an individual as distinguished from a Hindu undivided family. The contention of the learned counsel for the assessee that

section 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-section (I) of section 4 independently because it does not by itself convey any sense. Clause (b) has to be necessarily read with the opening part of section 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 - ...

(b) where the assessee is a partner in a firm or a member of an association of persons (not being a co-operative 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 section 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 section 4(1) and states that the said expression includes a Hindu undivided family 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 section 4(1)(b) authorises the inclusion of the value of partnership interest while computing the net wealth of a Hindu undivided family also. Learned standing counsel wants us to read section 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 section 4(1) but also in connection with the computation of net wealth of Hindu undivided families. 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 learned standing counsel for the Revenue. The Gujarat High Court interpreted the provisions contained in section 4(1)(b) independently without reference to the opening part of section 4(1) dealing with the computation of the net wealth of an "individual", and individual alone.

8. If the opening part of section 4(1) is ignored, section 4(1)(b) as such does not convey the necessary sanction to include the partnership interest in the computation of net wealth of a Hindu undivided family. It is not permissible for this court to introduce words that do not form part of section 4(1)(b) so as to make it applicable while computing the net wealth of a "Hindu undivided family" also. It must be noted that clause (b) is an indivisible part of sub-section (I) 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 a Hindu undivided family 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

association of persons or a body of individuals constitute an individual for the purpose of wealth-tax, as held by the Supreme Court in *Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah*, . But this principle will have no application in the case of a distinct assessable entity like a Hindu undivided family 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 section 3 of the Act which refers to a Hindu undivided family as a distinct unit of assessment. We are not, therefore, persuaded to accept the view that a Hindu undivided family comes within the meaning of "individual", for purposes of the opening part of section 4(1) of the Wealth-tax 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 Hindu undivided family as per charging section 3.

9. 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 section 2(e) and section 2(m) read with section 3 of the Wealth-tax Act. Reading section 3 together with section 2(e) and 2(m) of the Act, there can be no escape from the conclusion that a Hindu undivided family 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 u/s 3 of the Act.

10. Learned counsel for the assessee then contended that in the event of partnership interest held by a Hindu undivided family being taxed under charging section 3 itself, the valuation of such partnership interest cannot be made in the manner prescribed by rule 2(1) of the Wealth-tax Rules, 1957, for purposes of section 4(1)(b) of the Act as the said rule is only for the purpose of section 4(1)(b) of the Act. We do not see any reason why the principle of valuation provided in rule 2(1) cannot be taken as a guidance by the Wealth-tax Officer for the purpose of valuing the partnership interest held by a Hindu undivided family 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 Wealth-tax Officer, it would fetch, if sold in the open market on the valuation date. In order to determine the open market valuation, the Wealth-tax Officer can take all relevant materials into account including the principle of valuation as per rule 2(1). Courts have held that the valuation of assets for purposes of the Estate Duty Act, which does not provide exhaustive rules for the valuation of each asset, can be determined taking guidance from the Wealth-tax Rules. That being so, we do not see why the

Wealth-tax Officer cannot seek guidance from rule 2(1) of the Wealth-tax Rules for the purpose of valuing the partnership interest held by a Hindu undivided family for the purpose of the Wealth-tax Act itself. It will be open to the Wealth-tax Officer to consider all the materials to determine the open market valuation and, while doing so, the Wealth-tax Officer can also take guidance from the principles of valuation in rule 2(1) of the Wealth-tax Rules.

11. We, therefore, answer the second question of law referred to us to the effect that the inclusion of the value of the partnership interest in the computation of the net wealth of the assessee u/s 2(m) read with section 3 of the Wealth-tax Act is perfectly valid.

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