
(1963) 08 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 1592 and 1593 of 1962

Sarjerao Appasaheb Shitole

APPELLANT

Vs

Wealth Tax Officer, A-Ward, Belgaum

RESPONDENT

Date of Decision : 06-08-1963

Acts Referred:

Constitution of India, 1950 — Article 14
Income Tax Act, 1961 — Section 55
Wealth Tax Act, 1957 — Section 3

Citation : (1964) 52 ITR 372

Hon'ble Judges : K.S. Hegde, J; Ahmed, J

Bench : Division Bench

Advocate : B.V. Krishnaswami Rao, for the Appellant; D.M. Chandrasekhar, for the Respondent

Judgement

Hegde, J.—These petitions are connected. One Sarjerao Appasaheb Shitole has filed both these petitions. He is the karta of his family. As karta of his family, he has been assessed to wealth-tax for the assessment years 1958-59 and 1959-60. In pursuance of the afore-mentioned assessments, two demand notices for the two assessment years mentioned above have been issued to him on October 24, 1962. In these petitions, he prays that this court may be pleased to call for the assessment proceedings in question and quash the demand notices issued to him by issuing writs of certiorari or such other writs or orders or directions as we deem fit.

2. Sri B.V. Krishnaswami Rao, the learned counsel for the assessee, in the course of his arguments, attacked the impugned notices on three different grounds. They are :

(i) Wealth-tax on lands and buildings is ultra vires of the powers of Parliament;

(ii) Under any circumstance, Parliament could not have imposed wealth-tax on undivided families; and

(iii) the Wealth-tax Act, 1957 (27 of 1957), (to be hereinafter referred to as the "Act") is violative of article 14 of the Constitution in so far as it provides for the levy of tax on Hindu undivided families only and as such is liable to be struck down.

3. Before proceeding to consider the points formulated above, it is necessary to mention that according to the assessee, in the above proceedings wealth-tax has been levied on non-agricultural lands and buildings. This contention of the assessee has not been controverted by the revenue. We may now proceed to consider the validity of the contentions advanced on behalf of the assessee.

4. This court upheld the vires of the "Act" as such in W.P. No. 256 of 1959 in G.M. Gopalkrishna v. Wealth-tax Officer. But in that case the court was not called upon to consider the special facts put forward now. Therefore, that decision is not relevant for our present purpose as it does not bear on the points which arise for determination in these cases.

5. Dealing with the first point, Sri B.V. Krishnaswami Rao, urged that entry 86 of List I of the Seventh Schedule must be read subject to entry 49 of List II of the Seventh Schedule; if so read, it would be seen that Parliament cannot impose any tax on "lands and buildings" as that field is reserved for the State by entry 49 of List II of the Seventh Schedule. This question was considered by us in Krishna Rao L. Balekai v. Third Wealth-tax Officer, City Circle I, Bangalore, wherein myself, speaking for the Bench, observed that the "Act" is not ultra vires of the Central Legislature in so far as it relates to non-agricultural lands, as the same, for the purpose of Wealth-tax, falls within entry 86 of List I of the Seventh Schedule to the Constitution. In the present case, as in Balekai's case, assistance was tried to be taken from the decision of this court in D.H. Hazareth v. Gift-tax Officer. But the contention based on that case was rejected with these observation :

"We do not think that any support is available from that decision for the contention advanced on behalf of the petitioner. In that case this court had to consider whether Parliament was competent to enact the Gift-tax Act. Therein, it was conceded that there was no specific entry in List I authorising or empowering Parliament to enact the Gift-tax Act. The question for decision was whether the Gift-tax Act could be justified on the basis of the residuary powers. This court came to the conclusion that so far as "lands and buildings" are concerned, the legislative power to levy gift-tax vests with the State Legislature and, therefore, Parliament was not competent to enact the Gift-tax Act under the residuary powers. The ratio of that decision is not applicable to the facts of the present case."

6. Court have repeatedly laid down that every entry in the three Lists should be considered as a field of legislative : those entries must be given the widest possible connotation. Entry 86 of List I of Schedule VII read : "Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and

companies; taxes on the capital of companies."

7. Dealing with this entry, we observed in *Balekai*'s case :

"It cannot be denied, nor has it been denied before us, that the word "asset" includes within its fold "land" as well. If that be so, then, "land" other than "agricultural land" comes within the scope of entry 86. It is trite to say that every entry found in the Seventh Schedule is a topic of legislation. The same will have to be given the widest possible connotation. Hence, we are clearly of the opinion that Parliament had competence to enact the law in question."

"We see no conflict between entry 86 of List I of the Seventh Schedule and entry 49 of List II of the same Schedule. Those entries will have to be construed harmoniously. If so construed, it follows that the power to impose wealth-tax on non-agricultural lands and buildings is within the legislative jurisdiction of Parliament. This is also view taken in *Mammad Keyi v. Wealth-tax Officer, Calicut*; *Jugal Kishore v. Wealth-tax Officer, Special Circle, "C" Ward, Kanpu* : *Mahavirprasad Badridas v. Yagnik*, and *Ramabhadra Raju v. Union of India*.

8. Now coming to the second point formulated, it was urged that entry 86 of List I does not empower Parliament to levy wealth-tax on undivided families of that entry only speaks of "individuals and companies". In reply to this contention, it was urged on behalf of the revenue, that the word "individual" brings within its fold "undivided families" as well, as the latter is primarily a collection of individuals. This is the view taken by various High Court : see *Mahavirprasad v. Yagnik*; *Mammad Keyi v. Wealth-tax Officer, Calicut*, and *Ramabhadra Raju v. Union of India*. These decisions in my view lay down the law correctly.

9. But the second point can be decided on a much simpler basis. It is not the case of the assessee that the power to levy wealth-tax on undivided families can be found either in List II or List III of the Seventh Schedule. I have said it often - and I shall repeat - that our Constitution has not left any legislative field vacant. Whenever a question arises as to the source of power, the task of the court is to locate that power in one or the other of the Lists. The entire legislative sphere has been distributed between the three Lists. If the legislative powers distributed in the three Lists are added up, they are equivalent to the powers of the British Parliament, if there are no other obstacles under our Constitution. As mentioned earlier, it is not the case of the assessee that the power in question can be located either in List II or List III. Therefore, it follows that Parliament has power to legislate on the subject either under entry 86, failing that under the residuary power given to it under entry 97. It makes no difference whether the source of the power is in entry 86 or in entry 97. Therefore, we hold that Parliament had competence to enact a law providing for imposing wealth tax on undivided families.

10. Now we come to the attack based on article 14 of the Constitution. It was said that while Parliament has provided for the levy of wealth-tax on Hindu undivided families, no such provision is made in the "Act" as against the other

undivided families such as Moplah Marumakkathayam Tarwad and hence it should be held that Parliament has made a hostile discrimination against the Hindu undivided families. This contention of the assessee finds support from the decision of the Kerala High Court in *Mammad Keyi v. Wealth-tax Officer, Calicut*. Therein their Lordships held that the Hindu undivided families of wealth have been singled out by the Act from other similar joint families in the country and the State has thereby denied equal protection of the law to the former.

11. It was said that no rational difference is shown as between Marumakkathayam Tarwad, which, undoubtedly, is a Hindu undivided family and the Moplah Marumakkathayam Tarwad.

12. The learned counsel for the revenue strenuously contended that we should not accept as correct the view taken by the Kerala High Court in *Mammad Kayi v. Wealth-tax Officer, Calicut*. According to him, for the purpose of taxation, an undivided family is only a collection of individuals; "individual" should not be equated to a human being; the word "individual" is only a name for an unit of taxation. That nomenclature is equally applicable to a group of individuals who have formed a voluntary association of those who are associated together because of birth. According to him, a Moplah Marumakkathayam Tarwad is assessable as an "individual" or as "an association of individuals". The burden laid on such undivided families is heavier than that laid on the members of the Hindu undivided families (see the rates mentioned in the Schedule). Therefore, it is not open to the petitioner to complain about a legislation which discriminates in his favour. The second line of argument adopted by the learned counsel for the revenue is that, while considering question like equality before law and equal protection of law, the court must take the realities of life into consideration; it must guard itself against taking a pedantic view of the matter and thereby make a mountain of a mole hill. According to him the rule of equality before law is not sullied because of insignificant differences and petty inequalities. He urged that the number of Moplah tarwads in existence are so few that it is not unlikely that Parliament completely lost sight of them. He asserted that such unconscious omissions in an all-India measure cannot be considered as a discrimination. According to him the special treatment given to Hindu undivided families is saved by the rule of classification.

13. The complaint that the Hindu undivided families have been picked out for hostile discrimination proceeds on the basis that while the Hindu undivided families are liable to pay tax under the "Act", the other undivided families are exempt from payment of the tax in question. This grievance does not appear to be correct. Section 3, the charging section in the "Act", say :

"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."

14. It is true that undivided families other than Hindu undivided families are not specifically mentioned in this section. But it was urged on behalf of the revenue that they are liable to be taxed as "individuals". This contention is supported by a catena of decisions. In *Hotz Trust of Simla v. Commissioner of Income Tax*, the court laid down that a body of trustees comes within the meaning of "other association of individuals" as used in section 3 and elsewhere in the Income Tax Act and can be grouped as a unit for the purpose of taxation. In the course of the judgment, this is what Addison J., who delivered the judgment of the Bench, observe :

"After careful consideration, I can see no difficulty in holding that a body of trustees comes within the meaning of "other association of individuals," as used in section 3 and elsewhere in the Act. No difficulty apparently has arisen on this score in England where the corresponding phrases used is "body of persons." Even if "other association of individuals" must be ejusdem generis with the preceding words, those words are "individual, Hindu undivided family, company, firm". Now, firm is a shortened name for the partners constituting it. It is true that they contract together to be partners, while the trustees are constituted apparently without their consent, though as a matter of fact, they would usually be consulted. In my opinion that does not bring trustees outside the term "other association of individuals". Hindi undivided family also occurs in the list and that is an involuntary association brought about by the mere birth of individuals. From the trust deed itself it is apparent that the trustees are a business associations with full powers to carry on the business, extend it, accumulate income and borrow capital which can be repaid by instalments up to half the annual income. It appears to me that by this trust deed a very effective business association has been created, and certainly quite as effective as a firm or private company, if not more so. It is clear that the association referred to need not be a legal entity capable of suing or being sued in its own names, just as the same proposition is clear in the case of the English Acts."

15. In *Mian Channu Factories Union v. Commissioner of Income Tax* a Bench of the Lahore High Court held that where a partnership union purports to consist of two firms and one Hindu undivided family and the shares of the members of the members of the firm are not mentioned in the deed of partnership and the partnership is undoubtedly a trading concern, it cannot fall within the definition of the word "firm" as given in the Income Tax Act; it is more appropriate to regard it as "other association of individuals".

16. A Special Bench of the Madras High Court in *Commissioner of Income Tax v. Salem District Urban Bank Ltd.* held that a corporate body created by statute is an individual within the meaning of section 3 and, therefore, a co-operative society registered under the Co-operative Societies Act must fall within the same category; it is a corporate body and has perpetual succession; consequently a co-operative bank registered under the Co-operative Societies Act, some of the shareholders of which are persons while the majority of them consists of co-

operative societies, is an association of individuals within the meaning of section 3 of the Income Tax Act and can be assessed to Income Tax as an association of individuals. In the course of the judgment, this is what Leach C.J., speaking for the Bench, observe :

"I consider that the opinion expressed in *Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income Tax* is preferable to that expressed in *Commissioner of Income Tax v. Ahmedabad Mill Owner's Association*. While it is true that ordinarily in conversation the use of the word "individual" would be taken to denote a person, the word has in fact a far wider meaning. The first definition of the word given in the Oxford Dictionary is "one in substance or essence; forming an indivisible entity; indivisible." It is also defined as "existing as a separate indivisible entity, numerically one, single". If a corporate body created by a statute is an individual within the meaning of the section and I hold that it is - a co-operative society registered under the Co-operative Societies Act must fall within the same category. It is corporate body and has perpetual succession. I consider that it is not reasonable to suppose that the legislature intended that there should be a difference in the meaning of the word "individual" and the plural "individuals". If the word "individual" includes a corporation, the words "association of individuals" must embrace an association of corporate bodies and therefore the assessee is an "association of individuals".

Support for the opinion that the assessee comes within section 3 is to be found in the decision of the Allahabad High Court in *Ram Rattan Das Madan Gopal v. Commissioner of Income Tax* and of the Lahore High Court in *Mian Channu Factories Union v. Commissioner of Income Tax*. In the former case a Bench of the Allahabad High Court held that the word "individual" in the proviso to section 55 of the Income Tax Act includes an undivided Hindu family. In the Lahore case, which was also decided by a Bench, a "ginning factories union" which was composed of two firms and a Hindu undivided family was assessed to Income Tax on the basis that it was an association of individuals. To give the word "individual" the meaning of "person" only would, it seems to me, be to disregard the scheme of the Act and to rob the word of an accepted meaning. It follows that in my opinion the first question referred should be answered in the affirmative."

17. The same view was expressed by a Bench of the Bombay High Court in *Mahavirprasad Badridas v. Yagnik*.

18. A Bench of the Andhra Pradesh High Court also subscribed to that view in *Ramabhadra Raju v. Union of India*. In that case, in support of the view taken by him, the learned Chief Justice quoted a passage from the judgment of Bhagwati J. in *Commissioner of Income Tax v. Sodra Devi*. That passage reads thus :

"..... 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."

19. The same view was taken by the Kerala High Court in *Mammad Keyi v. Wealth-tax Officer, Calicut*. There is no doubt that the preponderance of judicial opinion is in favour of the view that the word "individual" includes a "group of individuals" knit together either by agreement or by an involuntary association brought about by their mere birth.

20. From the foregoing, it is seen that non-Hindu undivided families are not exempt from taxation under the "Act". They are liable to be assessed to tax as "individuals". The incidence of tax leviable on them is heavier than that imposed on the Hindu undivided families. Hence the petitioner can have no legitimate grievance. He cannot be considered as an aggrieved party. In this case, we are not concerned with the question whether those undivided families which are assessable to tax at a higher rate can assail the validity of the "Act" or not? The aforementioned aspect of the case was evidently not presented to the Bench which decided *Mammad Keyi's* case.

21. Now that we have come to the conclusion that these petitions fail on the ground that the petitioner is not an aggrieved party, it is unnecessary to consider the second contention advanced by the learned counsel for the revenue, namely, that the discrimination complained of is of such minor significance and the law ought not to take notice of it.

22. In the result, these petitions fail and the same are dismissed with costs. Advocate's fee Rs. 100 (one set).

Ahmed Ali Khan, J.

23. I agree.

24. Petitions dismissed.