(1998) 12 MAD CK 0027

In the Madras High Court

Case No : Tax Case No. 113 of 1994 (Reference No. 77 of 1994)

W.P.A.R. Rajagopalan APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:
Wealth Tax Act, 1957 — Section 3

Citation : (2000) 241 ITR 344

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : R. Janakiraman, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The assessee along with his two elder brothers constituted a Hindu undivided family till September 15, 1952, when

there was a partition among the brothers. At that point of time, the assessee was a bachelor and remained so till June 7, 1960. During that period

the assessee was assessed as an individual for the purpose of wealth-tax. The assessee got married on June 7, 1960. A daughter was born to them

on February 9, 19,63, and the assessee celebrated the marriage of his daughter on February 9, 1981.

2. The assessment year with which we are concerned is 1982-83. The asses-see filed a wealth-tax return disclosing the wealth of the assessee in

the capacity of a specified Hindu undivided family. The return filed for the year 1982-83 was the very first return filed by the assessee under the

Wealth-tax Act and that return was filed under the amnesty scheme. The claim made by him in a revised return subsequently filed that he should be

assessed as an individual for the assessment year 1982-83 was rejected by the Income Tax Officer. The assessee was assessed as a specified

Hindu undivided family. In appeal, the Deputy Commissioner (Appeals) accepted the assessee''s claim that he should be treated as an individual.

However, on further appeal to the Tribunal, the order of the Income Tax Officer was restored. The assessee is now before us seeking answers to

the two questions which have been referred to us at his instance questioning the correctness of the order of the Tribunal. The questions are as to

whether the Tribunal was right in holding that the property obtained by the assessee at the partition should be held to be that of the joint family after

his marriage on June 7, 1960, and as to whether the Tribunal was right in holding that the status of the assessee for the assessment year 1982-83

was the Hindu undivided family and not individual.

3. As noticed earlier, the assessee had not been assessed to wealth-tax at any point of time prior to the assessment year 1982 83. In that year, the

assessee was admittedly having a family which consisted of himself, his wife and a married daughter. The property held by him at that point of time

was property which had been allotted to his share at a partition in the year 1952, that partition being one at which the ancestral properties had

been divided among the assessee and his brothers, there could be no doubt that the property which was held by the assessee during the previous

year relevant to the assessment year 1982-83 was joint family property and not individual property.

4. Learned counsel for the assessee however contended that the property is not that of the Hindu undivided family as even though the family of the

assessee can be termed as a Hindu undivided family, the property belonged only to the assessee as an individual and not to the Hindu undivided

family. In the submission of counsel property held by a member of a Hindu undivided family can be regarded as property of such a family only if

there is a plurality of persons within the family who can claim a share in the property. As neither the daughter nor the wife could claim a share in the

property, the property though ancestral to the assessee could not be regarded as property belonging to the Hindu undivided family.

5. Learned counsel for the assessee further submitted that as the assessee was a bachelor at the time of the partition in the year 1952, the property

which came to vest in him after the partition was the property which he was free to deal with as he liked, and that property did not assume or resume the character of property of a Hindu undivided family when the assessee subsequently acquired a family.

6. Learned counsel placed reliance on the decision of the Supreme Court in the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax,

Bombay, , and submitted that the decision of the apex court supports the assessee''s claim that the property can be regarded as belonging to a

Hindu undivided family only when within that family there exists more than one member capable of claiming a share. In the absence of such a sharer

the property would be the individual property of the person in whom it vests even if he be a Hindu and has a family which is undivided.

7. In the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , the Supreme Court after reviewing the earlier decisions

observed thus (page 783) :

The joint Hindu family, with all its incidents, is thus a creature of law and cannot be created by act of parties, except to the extent to which a

stranger may be affiliated to the family by adoption. But the absence of an antecedent history of jointness between the appellant and his ancestors

is no impediment to the appellant, his wife and unmarried daughter forming a joint Hindu family. The appellant''s wife became his sapinda on her

marriage with him. The daughter too, on her birth, became a sapinda and until she leaves the family by marriage, the tie of sapindaship will bind her

to the family of her birth. As said by Golapchandra Sarkar Sastri in his ''Hindu law'' (eighth edition, page 240), ''those that are called by nature to

live together, continue to do so'' and form a joint Hindu family. The appellant is not by contract seeking to introduce in his family strangers not

bound to the family by the tie of sapindaship. The wife and unmarried daughter are members of his family. He is not by agreement making them so.

And as a Hindu male, he himself can be the stock of a fresh descent so as to be able to constitute an undivided family with his wife and daughter.

8. With regard to the facts of that case, the court observed as under (page 795) :

Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property for

the first time when the appellant threw what was his separate property into the family hotchpot. The appellant has no son. His wife and unmarried

daughter were entitled to be maintained by him from out of the income of

Kathoke Lodge while it was his separate property. Their rights in that

property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have

neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property

for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was even after the property

was thrown into the family hotchpot; the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the

property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu law it belongs to the family, as it

would have, if the property were to devolve on the appellant as a sole surviving coparcener.

9. The distinction pointed out by the Supreme Court is very material for deciding as to whether the absence of a second sharer within the Hindu

undivided family renders what is otherwise joint family property individual property. In cases where the property held by the person who claims it

to be his own, had in fact been held by a joint family earlier and is ipso facto capable of being held by other sharers as well in future if and when the

family comes into existence and a son whether by birth or adoption is added thereto. Such property continues to retain the character of joint family

property even when the family is reduced to a single male member as in the case of a sole surviving coparcener. Though such a sole surviving

coparcener may be assessable as an individual, as he cannot be said to have a family, unless there are in fact present female members in the family,

the character of the property continues unaltered as joint family property, though for the time being it is not shared with any other member of the

family and may or may not be subject to any charge in favour of anyone else for any purpose.

10. In cases where a Hindu undivided family exists but does not have any ancestral property and the property is sought to be treated for the first

time as belonging to the Hindu undivided family, before it can be so treated as property belonging to a joint family, such a family should have at

least two members capable of claiming a share in the property. If the property is held by the person who seeks to impress it for the first time with the character of joint family property notwithstanding any declaration that he may make, that property will continue to be property which he can

deal with as he likes subject only to the incidents to which similar property in the hands of any others are subject.

11. In the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , the court held that though there existed a Hindu undivided

family, the Hindu undivided family is not the same as the coparcenary which is normally a smaller body, and the head of every Hindu undivided

family is not to be assessed as manager of a Hindu undivided family unless the Hindu undivided family has an income of its own or assets of its

own. The assessee in that case did not have a son but only had a wife and daughter and sought to impress his separate property with the character

of joint family property. He could not on that score alone, treat the income from that property as income of the joint family. The fact that the wife

and the daughter had a right to claim maintenance from the property was not sufficient to regard that separate property subsequently impressed

with the character of joint family property as property belonging to the Hindu undivided family for the purpose of assessment under the Income Tax

Act.

12. What was emphasised by the court in the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , was that two factors

must coalesce : (1) there must exist a plurality of persons constituting a Hindu undivided family, and (2) that the property which is to be treated as

property belonging to the Hindu undivided family must be property which had been held earlier by a coparcenary in which a member of that family

was one of the coparceners.

13. In the case of N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, , the apex court held that the ancestral property allotted

to a member whose family consisted of himself, his wife and his daughter was the property belonging to the Hindu undivided family and required to

be assessed as such, notwithstanding the absence of a son who alone could claim partition. In that case, the two factors referred to earlier

coalesced--there existed a family and the property was ancestral. The Supreme Court disagreed with the High Court which had held that in the

absence of a son who could claim a partition, the property though ancestral was only to be assessed as individual property of the assessee therein.

14. In this case, the assessee had admittedly received his share of ancestral property at a partition. The property had the character of joint family

property. That property was held for some time by the assessee by himself as he was a bachelor between 1952 and 1960. During the period the

character of the property as joint family property was not erased though it was open to him to deal with the property as he liked in the period.

When the assessee got married and acquired a family, that family constituted a Hindu undivided family and the ancestral property which the

assessee had received at the partition, became the property of that Hindu undivided family.

15. In cases where the property even at the time it vested in the hands of the head of the family had the character of ancestral property, the

absence of a son, who can claim partition does not render what is joint family property individual property. The test is not as to whether his issues

are male or female. The test is whether the property was ancestral.

16. Learned counsel for the assessee submitted that at least two High Courts, those at Patna and Madhya Pradesh, have held that in cases where

an individual receives his share of the ancestral property at a partition and is assessed as an individual, he should continue to be so assessed even

after he acquires a family, until such time he begets a son who can claim a share in the property. Counsel referred to the decision of the Patna High

Court in the case of CIT v. Shankar Lal Budhia [1987] 165 ITR 380 and that of the Madhya Pradesh High Court in the case of Commissioner of

Income Tax Vs. Vishnu Kumar Bhaiya, . With great respect to the learned judges who decided those cases, we are unable to agree with that line

of reasoning.

17. Learned counsel for the Revenue, on the other hand, referred to the decisions of the Allahabad, Karnataka and Andhra Pradesh High Courts

in the cases of Prem Kumar Vs. Commissioner of Income Tax, , Bharath Kumar D. Bhatia Vs. Commissioner of Income Tax, and Ashok Kumar

Ratanchand Vs. Commissioner of Income Tax, , wherein it has been held that an individual who receives ancestral property at a partition and who

subsequently acquires a family, but has no male issues would hold that property only as property of the Hindu undivided family.

18. For the reasons given by us in the earlier paragraphs, we answer the '' questions referred to us in favour of the Revenue and against the

assessee.

