Seth Banarsi Das Etc.

Vs

Wealth Tax Officer, Special Circle Meerut, Etc.

Civil Appeals Nos. 124 To 129 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, J. C. Shah, S. M. Sikri, R. S. Bachawat JJ)

08.12.1964

JUDGMENT

GAJENDRAGADKAR, C.J. -

The common question of law which this group of six appeals raises for our decision is whether Section 3 of the Wealth-Tax Act, 1957 (No. 27 of 1957) (hereinafter called 'the Act') in so far as it purports to levy a charge of wealth tax in respect of the net wealth of a Hindu undivided family at the specified rate, is valid. The respective appellants in these appeals who constitute Hindu undivided families were charged under section 3 and they challenged the validity of the said charge on the ground that the said section was ultra vires. The writ petitions filed by these appellants were heard by a Special Bench of the Allahabad High Court consisting of Gurtu, Upadhya, and Jagdish Sahai, JJ. Gurtu and Jagdish Sahai, JJ. have rejected the appellants' contention and have upheld the validity of the impugned provision. According to Jagdish Sahai, J., the impugned section is intra vires, because Parliament had legislative competence to enact the said provision under Entry 86 in List I of the Seventh Schedule to the Constitution. Gurtu, J. who agreed with the said conclusion, however sustained the impugned provision under Entry 97 in List I read with Art. 248 of the Constitution. Upadhya, J. held that neither of the said provisions conferred legislative competence of Parliament to enact the impugned provision, and so, he came to the conclusion that the said provision was ultra vires and the charge levied against the appellants was, therefore, invalid. In accordance with the majority decision, the writ petition filed by the respective appellants were dismissed. The appellants then applied for and obtained certificates from the said High Court, and it is with the certificates issued in their favour that they have come to this Court in appeal.

The Act was passed in 1957 to provide for the levy of wealth tax. Section 3 of the Act provides that 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 individuals, Hindu undivided family and company at the rate or rates specified in the Schedule. The three Constitutional provisions relevant to the decision of the point raised before us in these appeals may now be set out.

Entry 86 in List I deals with taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies. Entry 97 in the said List refers to any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. Article 248 reads thus :-

> "(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

> (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists".

The appellants contend that the word "individuals" used in Entry 86 cannot take in Hindu undivided families. The taxes which Parliament is empowered to levy under this Entry can be levied only on individuals and not on groups of individuals, and on companies. A Hindu undivided family consists of different coparceners who are, no doubt, individuals, but inasmuch as the impugned provision purports to levy wealth tax on the capital value of the assets of the Hindu undivided families as such, the tax is not levied on individuals, but on groups of individuals, and, therefore, is outside the scope of Entry 86. The appellants further urge that if the Hindu undivided families are outside the scope of Entry 86, they cannot be subjected to the levy of wealth tax under Entry 97, because Entry 97 refers to matters other than those specified in Entries 1 to 96 in List I as well as those enumerated in Lists II and III. Since wealth tax is a matter which is specifically enumerated in Entry 86 of List I, Entry 97 cannot be held to take in the said tax in respect of Hindu undivided families. In regard to Art. 248, the appellants' argument is that the said article must be read together with Entry 97 in List I, and if wealth tax in respect of the capital value of the assets of hindu undivided families is outside both Entry 86 and Entry 97, the residuary power of legislation conferred on Parliament by Art. 248 cannot be invoked in respect of the tax imposed on the capital value of the assets of Hindu undivided families by the impugned provision. That is how the validity of the impugned provision has been challenged before us.

On the other hand, the respondent, the Wealth Tax Officer, seeks to sustain the validity of the impugned provision primarily under Entry 86 in List I. It is contended on his behalf that the word "individuals" used in Entry 86 is wide enough to take within its sweep groups of individuals and as such, Hindu undivided families fall within the scope of the area covered by Entry 86. In the alternative, it is argued that Entry 97 which is a residuary entry, would take in all matters not enumerated in List II or List III including any tax not mentioned in either of those Lists. According to the respondent, the word "matter" mentioned in Entry 97 cannot take in taxes specified in Entry 86, but it refers to the subject-matter in respect of which Parliament seeks to make a law under Entry 97. The subject-matter of the tax imposed by the impugned provision is the capital value of the assets of a Hindu undivided family and if that is held not included in Entry 86, it would fall within the scope of Entry 97, because it satisfies the requirement specified by the said Entry, namely, that the said matter should not have been enumerated in List II or List III. In regard to Art. 248, the respondent's case is that this article prescribes the residuary power of legislation conferred on Parliament and must be read independently of the Lists. In other words, even if the impugned provision cannot be sustained by reference to Entry 86 or Entry 97 in List I, the power of Parliament to levy the tax imposed by the impugned provision can, nevertheless, be claimed under the provisions of Art. 248. That, in its broad outlines, is the nature of the controversy between the parties in the present appeals.

Logically, the first question to consider is whether the impugned provision can be referred to Entry 86 or not. In construing the word "individuals" used in the said Entry, it is necessary to remember that the relevant words used in the Entries of the Seventh Schedule must receive the widest interpretation. As Gwyer, C.J., has observed in The United Provinces v. Mst. Atiqa Begum and Others ([1940] F.C.R. 110, 134), "none of the items in the Lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. I deprecate any attempt to enumerate in advance all the matters which are to included under any of the more general descriptions; it will be sufficient and much wiser to determine each case as and when it comes

before the Court".

Another rule of construction which is also well-established is that it may not be reasonable to import any limitation in interpreting a particular Entry in the lists by comparing the said Entry or contrasting it with any other Entry in that very List. While the Court is determining the scope of the area covered by a particular Entry, the Court must interpret the relevant words in the Entry in a natural way and give the said words the widest interpretation. What the Entries purport to do is to describes the area of legislative competence of the different legislative bodies, and so, it would be unreasonable to approach the task of interpretation in a narrow or restrictive manner.

The appellants no doubt contrast Entry 86 with Entry 82 and contend that the said contrast brings out an element of limitation or restriction which should be imported in construing Entry 86. Entry 82 refers to taxes on income other than agricultural income. The argument is that the power to levy taxes on income is not conditioned by reference to individuals or companies; it is an unlimited extensive power. In contrast with this Entry, it is urged that limitation is introduced by Entry 86, because it seeks to confer power to levy taxes on the capital value of the assets of individuals and companies. The assessees are indicated by this Entry, and that that itself introduces an element of limitation. The appellants attempt to place their case alternatively by emphasizing the fact that the word "individuals" in the context cannot mean companies, because companies are separately and distinctly mentioned; that again, it is said, introduces an element of limitation on the denotation of the word "individuals". "Individuals", therefore, must mean individuals and cannot mean groups of individuals, that is the main contention raised by the appellants. We are not impressed by this argument. It is true that Entry 82 does not refer to the assessees, and that is natural because what it purports to do is to recognise the legislative competence of Parliament to levy taxes on income, the only limitation being that the income must be other than agricultural income. Since Entry 86 refers to taxes on the capital value of the assets, the Constitution-makers must have thought that it was necessary to specify whose assets should be subject to the taxes contemplated by the Entry, and that explains why individuals and companies are mentioned. Since companies are specifically mentioned along with individuals, it may be permissible to content that companies in the context are not included in the word "individuals", or it may perhaps be that since Entry 86 wanted to specify that the taxes leviable under it have to be taxes on the capital of the companies, it was thought desirable that companies should be specified as a matter of precaution along with individuals. However that may be, it is not easy to understand why the word "individuals" cannot take in its sweep groups of individuals like Hindu undivided families. The use of the word "individuals" in the plural is not of any special significance, because under section 13(2) of the General Clause Act, 1897 (No. 10 of 1897), words in the singular shall include the plural, and vice versa.

The basic assumption on which the appellants' argument rests is that the Constitution-makers wanted to exclude the capital value of the assets of Hindu undivided families from taxes. That is why their contention is that the impugned provision would not be sustained either under Entry 86 or under Entry 97 of List I or even under Art. 248. It is difficult to accept this argument. On the face of it, it is impossible to assume that while thinking of levying taxing on the capital value of assets, Hindu undivided families could possible have been intended to be left out. We can think of no rational justification for making any such assumption. In this connection, it is significant that on the appellants' case, the capital value of the assets of Hindu undivided families would never become the subject-matter of wealth tax. Hindu undivided families, it is urged, are groups of individuals and, therefore, should be outside Entry 86 and individuals who constitute such Hindu undivided families could not be subjected to the levy of the tax, because the body of coparceners who constitute such Hindu undivided families is a fluctuating body and their shares in the capital assets of their

respective families are liable to increase or decrease and cannot be definitely predicated for the accounting year as a whole, unless partition is made. Prima facie, such a position appears to be plainly inconsistent with the scheme of Entry 86 and it cannot be upheld unless the word "individuals" is reasonably incapable of including groups of individuals.

It is true that when tax is levied on the capital value of the assets of Hindu undivided families, in a sense the assets of individual coparceners are aggregated, and on the aggregate value a tax is levied; but how the taxes should be levied and at what rate, is a matter for the legislature to decide; that consideration cannot enter into the discussion of the legislative competence of Parliament to enact the law. It is hardly necessary to emphasise that groups of individuals, the capital value of whose assets would be subjected to the payment of wealth tax, would naturally be groups of individuals who form a unit and who own the said assets together. The fact that the rights of the individuals constituting the group are liable to be decreased or increased does not make any difference when we are dealing with the question as to whether the word "individuals" in wide enough to include groups of individuals. We do not see anything in the context of Entry 86 which can be said to introduce an element of restriction or limitation while interpreting the word "individuals". Ordinarily, individuals would be treated as such and the capital value of their separate assets would be taxed; but if individuals form groups and such groups own capital assets, it is difficult to see why the power to levy taxes on such capital assets should be held to be outside the scope of Entry 86.

It is, however, urged that in interpreting the word "individuals", it would be relevant to take into account the legislative history of tax legislation. Section 3 of the Indian Income-tax Act, 1922 (No. XI of 1922) is pressed into service for the purpose of this argument. The said section provides, inter alia, that where any Central Act enacts that income-tax shall be charged for any year at any rate, tax at that shall be charged for that year in accordance with the provisions of this Act in respect of the total income of the previous year of every individuals, Hindu undivided family, company or local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. The argument is that section 3 recognises that the word "individual" would not include Hindu undivided family, and so, Hindu undivided family has been separately mentioned by it. It is pointed out that this distinction between an individual and a Hindu undivided family has been recognised even in the earlier Income-tax Acts. Section 3(7) of Act II of 1886, for instance, defines a 'person' as including a firm and a Hindu undivided family; and section 5(i)(f) of the said Act which provides for exceptions to the charging section 4, refers to any income which a person enjoys as a member of a company, or of a firm, or of a Hindu undivided family, when the company, or the firm, or the family is liable to the tax. Basing themselves on the distinction which is made by the Income-tax Acts between an individual and a Hindu undivided family, the appellants contend that the word "individuals" should not be interpreted to include Hindu undivided family.

Assuming that the legislative history in the matter of tax legislation supports the distinction between individuals and Hindu undivided families, we do not see how the said consideration can have a materials bearing on the construction of the word "individuals" in Entry 86. The tax legislation may, for convenience of other valid reasons, have made a distinction between individuals and Hindu undivided families; but it would not be legitimate to suggest that the word "individuals" occurring in an organic document like the Constitution must necessarily receive the same construction. Take, for instance, the traditional concept of income as recognised by the tax law. It has been held by this Court in Navinchandra Mafatlal v. The Commissioner of Income-tax Bombay City ([1955] 1 S.C.R. 829, 857.) that the said traditional concept of income cannot introduce considerations of restriction or limitation in interpreting the word "income" in Entry 54 in List I of the Seventh Schedule to the

Government of India Act, 1935, which corresponds to Entry 82 in List I of the Seventh Schedule to the Constitution. In that case, the validity of the tax levied on capital gains was impeached on the ground that capital gains cannot be regarded as income, and so, Entry 54 did not justify the levy of the tax on capital gains. In rejecting this contention, this Court held that the word "income" occurring in Entry 54 must receive the widest interpretation and could, therefore, be interpreted to include a capital gain. In holding that the word "income" included capital gain, this Court observed that the said conclusion was reached not because of any legislative practice either in India or in the United States or in the Commonwealth of Australia, but "because such was the normal concept and connotation of the ordinary English word 'income'. Its natural meaning embraces any profit or gain which is actually received".

Similarly, in Navnitlal C. Javeri v. K. K. Sen, Appellate Assistant Commissioner of Income-tax, Bombay ([1965] 1 S.C.R. 909.), when this Court had occasion to consider the validity of section 12(IB) read with section 2(6A)(e) of the Indian Income-tax Act, 1922 (No, 11 of 1922) as it stood in 1955; the question which was raised for its decision was whether it was competent to Parliament to treat a loan advanced to a shareholder of a company as his income. In answering the said question in favour of the impugned provision, this Court observed that "though Parliament cannot choose to tax as income an item which in no rational sense can be regarded as a citizen's income, it would, nevertheless be competent to Parliament to levy a tax on a loan received by the shareholder if it was satisfied that the said loan could rationally be construed as his income. In considering this question, however, it would be inappropriate to apply the test traditionally prescribed by the Income-tax Act as such". Therefore we do not think that the legislative history in the matter of the denotation of the word "individuals" on which the appellants rely, can really afford any material assistance in construing the word "individuals" in Entry 86.

Reverting then to Entry 86, the question which we have to ask ourselves is whether on a fair and reasonable construction, the word "individuals" in the context of the Entry can legitimately be narrowed down to individuals as such and not to include groups of individuals. If the object of making the Entry is to enable Parliament to levy taxes on the capital value of the assets, how can it be said to be reasonable to introduce a limitation on the denotation of the word "individuals" and to say that taxes could not be levied on the capital value of the assets which belong to groups of individuals. If the individuals constitute themselves into a group and such group owns capital assets, it is not easy, to understand why the value of such assets should not be included within the legislative field covered by Entry 86. The Constitution makers were fully aware that the Hindu undivided families and if the object was to levy taxes on the capital value of the assets, it is inconceivable that the word "individuals" was introduced in the Entry with the object of excluding from its scope such a large and extensive area which would be covered by Hindu undivided families. We are, therefore, satisfied that the impugned section is valid, because Parliament was competent to legislate in respect of Hindu undivided families under Entry 86.

This question has been considered by several High Courts and the reported decisions show consensus in judicial opinion in favour of the construction of Entry 86 which we have adopted (vide Mahavirprasad Badridas v. M. S. Yagnik, Second Wealth-tax Officer, C-II Ward, Bombay (37 I.T.R. 191.) (Bombay High Court's decision); N. V. Subramanian v. Wealth Tax Officer, Eluru (40 I.T.R. 567.) (Andhra Pradesh High Court's decision - single Judge Bench); P. Ramabhadra Raju v. Union of India (45 I.T.R. 118.) (Andhra Pradesh High Court's decision - Division Bench); Sarjerao Appasaheb Shitole v. Wealth Tax Officer, A. Ward, Belgaum (52 I.T.R. 372.) (Mysore High Court' decision); and Rajah Sir, M. A. Muthiah Chettiar v. Wealth Tax Officer, Special Investigation Circle 'A', Madras (53 I.T.R. 504.) (Madras High Court's decision) We ought to add that these reported

decisions show that the validity of the impugned provision was challenged before the High Court on the ground that the Hindu undivided family is an association and as such, the capital value of its assets could not be taxed under Entry 86. That naturally raised the question about the true legal character and status of Hindu undivided family, and the contention that they were associations has been rejected. Since that argument has not been pressed before us, we have not thought it necessary to consider it.

Before we part with these appeals, we may refer to an earlier decision of this Court in which the word "individual" fell to be considered. In Commissioner of Income-tax, Madhya Pradesh & Bhopal v. Sodra Devi; Damayanti Sahni v. Commissioner of Income-tax, (32 I.T.R. 615.) the question which arose for the decision of this Court had relation to the construction of section 16(3) of the Indian Income-tax Act. 1922. That sub-section provides that in computing the total income of any individual for the purpose of assessment, there shall be included the items specified in clause (a) and (b). What is the denotation of the word "individual" was one of the points which has to be considered in that case. According to the majority decision, though the word "individuals" is narrower than the word "Assessee", it does not mean only a human being, but is wide enough to include a group of persons forming a unit "It has been held", observed Bhagwati, J. who spoke for the majority, "that the word 'individual' includes a corporation created by a statute, e.g., a university or a bar council, or trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind". We are referring to this case only for the purpose of showing that the word "individual" was interpreted by this Court as including a group of persons forming a unit.

Since we have come to the conclusion that Entry 86 covers cases of Hindu undivided families, it following that the impugned provision is valid under the said Entry itself. That being so, it is unnecessary to consider whether the validity of the impugned provision can be sustained under Entry 97 or under Art. 248 of the Constitution.

The result is, the appeals fail and are dismissed with costs.

Appeals dismissed.

</html