Wealth-Tax Officer, Calicut

Vs

C. K. Mammed Kayi

Civil Appeal No. 1543 of 1971

(E. S. Venkataramiah, V. D. Tulzapurkar JJ)

07.04.1981

JUDGMENT

TULZAPURKAR J. –

1. This appeal, by certificate granted by the Kerala High Court, raises the question whether Mapilla Marumkkathayam tarwads of North Malabar-Muslim undivided families governed by the Marumakkathayam Act (Madras Act 17 of 1939)-fall within the expression "individual" and are assessable to tax under s. 3 of the W. T. Act, 195 ?

The chequered history through which this litigation has passed may briefly be indicated in order to appreciate how the aforesaid question arises for our determination. At the relevant time the deceased respondent was the karnavan of a Mappilla Marumakkathayam tarwad registered as impartible within the meaning of s. 20 (1) of the Mappilla Marumakkathayam Act (Madras Act 17 of 1939). He was assessed to wealth-tax for the assessment year 1957-58 on the net wealth of his tarwad considered as an individual under s. 3 of the W. T. Act, 1957 and on completion of assessment a demand notice, dated July 16, 1958, was served on him for payment. On September 10, 1958 he filed a writ petition being O. P. No. 674 of 1958 seeking to quash the said assessment and the demand notice on the ground of unconstitutionality of the W. T. Act, No. 27 of 1957 (hereinafter called "the Act"). Four other writ petitions were also filed by the karnavans of HUFs of Malabar and Cochin governed by the Madras Marumakkathayam Act, No. 22 of 1923, challenging the constitutionality of the Act. Since common questions of law arose for determination, the High Court disposed of the writ petitions by a common judgment. The constitutionality of the Act was challenged on two grounds - (a) that parliament was not competent to include an HUF in the charging s. 3 of the Act in view of entry 86 in List I of the Seventh Schedule of the Constitution, and (b) that the charging s. 3 of the Act was violative of art. 14 of the Constitution. The High court repelled the first ground of challenge and held that Parliament was competent to include an HUF in s. 3 of the Act as constituting a body or group of individuals coming within the term "individuals" in entry 86, but accepted the latter ground of challenge by its judgment rendered on July 1, 1951. It took the view that there was discrimination as between HUFs and Muslim Mapilla tarwads which were also undivided families and, therefore, the charging section in so far as it governed undivided families was hit by art 14. The High Court observed that the department had failed to substantiate its contention that Muslim Mapilla tarwads were so insignificant in number that the existence could be ignored in the context of the attack under art. 14. The department carried the matter in appeal to this court. By its judgment dated February 17, 1964, this court set aside the judgment and orders of the High Court and remanded the cases to the High Court to consider whether art. 14 applied to the cases or not after giving the parties opportunity of putting forward their respective cases supported by facts and figures. In doing so, this court observed that on the question raised under art. 14, the

High Court seemed to take the view that it was for the State to show that art. 14 was not applicable, that this was not correct and that it was for the party who came forward with the application that equality before the law or equal protection of laws was being denied to him to adduce facts to prove such denial.

On remand, out of the two contentions initially formulated by the assessees, the first relating to the constitutionality of the ACt in relation to entry 86 in List I had in the meantime been squarely dealt with and overruled by this court in the case of Banarsi Dass v. WTO [1965] 2 SCR 355; 56 ITR 244 and, therefore, the same was not pressed and only the second contention regarding the validity of the charging s. 3 as being violative of art. 14 was argued before the High Court. Each one of the three learned judges, who heard the matter, ultimately rejected the challenge and held that was s. 3 was not violative of art. 14, but each one did so for different reasons and in that process the majority reached the conclusion that non-HUFs like Mapilla Marumakkathayam tarwads, were altogether outside the purview of the charging s. 3 and hence the assessment made and the demand notice served on the deceased, respondent, deserved to be quashed. Justice Velu Pillai took the view that the legislative entries in a Constitution were to be widely and liberally construed but not the provisions of a taxing statute, that though the term "individuals" in entry 86 of List I would be comprehensive enough to include a body or group of individuals like HUFs, similar construction of the expression "individual" in s. 3 of the W. T. Act so as to include non-HUFs like Mapilla Marumakkathayam tarwads was not warranted, that the term "individual" in s. 3 of the Act occurred in antithesis with the term "Hindu undivided family"and if all undivided families were included in the term "individual" there was no necessity to mention HUF as a distinct taxing unit. He, therefore, came to the conclusion that non- HUFs were not covered by the term "individual" and were, therefore, outside the charging section of the ACt, but their exclusion from the charging section did not attract the vice of discrimination under art. 14 inasmuch as it had been established that there were only 22 Mapilla Marumakkathayam tarwads in the whole country and as such constituted an insignificant or microscopic minority and their exclusion from the charging provision was neither deliberate nor material and, therefore, s. 3 did not violate art. 14. Justice V. P. Gopalan Nambiyar, however, took the view that the expression "individual" in s. 3 of the Act, properly read, included a group of individuals who were members of a Mapilla Marumakkathayam tarwad but since such interpretation of the term "individual" led to differential treatment to such non-HUFs as compared to HUFs including Hindu Marumakkathayam tarwads and would be violative of art. 14 he would read down that expression so as to exclude Mapilla Marumakkathayam tarwads and on reading down the expression as aforesaid, s. 3 avoided the vice of discrimination under art. 14. Justice T. S. Krishnamoorthy Iyer, however, took the view that the expression "individual" in s. 3 of the Act included group of individuals who were members of a Mapilla Marumakkatahyam tarwad as, according to him, the specific mention of "Hindu undivided family" as a separate assessable entity in the charging section could not restrict the meaning of the term "individual" and, therefore, Mapilla Marumakkathayam tarwads were assessable under s. 3 of the Act and that even after inclusion of such group of individuals within the expression "individual", the charging s. 3 of the Act was not violative of art. 14 of the Constitution. He took the view that the equality clause permitted the Legislature a wider discretion to classify persons, properties or transactions into different categories and tax them differently under its power of taxation, that a Hindu Marumakkathayam tarwad and a Mapilla Marumakkathayam tarwad were not similarly situate, that the classification made by the Legislature was rational and, therefore, the ACt which provided for a lower limit of exemption to individuals and higher limit of exemption of HUFs could not amount to hostile discrimination against group of individuals constituting the Mapilla Marumakkathayam tarwad. In his view, there was no substance in the challenge to so. 3 of the ACt under art. 14 and the

writ petition was liable to be dismissed. However, in accordance with the view of the majority that Mapilla Marumakkathayam tarwads were outside the purview of s. 3 of the Act, the writ petition was allowed and the assessment made and demand notice served on the deceased respondent were quashed. In other words, though all the learned judges repelled the challenge to the charging section based on art. 14 of the Constitution, the majority reached that conclusion by holding that Mapilla Marumakkathayam tarwads were outside the purview of s. 3 of the Act. It is this latter view which is being challenged before us by the department in this appeal. Counsel for the revenue urged two contentions in support of the appeal. In the first place, he supported the construction placed by Krishnamoorthy Iyer J., on the expression "individual" in s. 3 of the Act that it took in a body or group of individuals like Mapilla Marumakkathayam tarwad for being assessed to wealth-tax. Secondly, he urged that such construction was in accord with the long legislative practice obtaining in the taxing scheme in the country under which Mapilla Marumakkathayam tarwads have always been treated and assessed in the status of individual-a legislative practice that has been judicially noted by this court in the case of V. Venugopala Ravi Varma Rajah v. Union of India [1969] 74 ITR 49. On the other hand, counsel for the respondent assessee canvassed for our acceptance the view taken by Velu Pillai J., that the expression "individual" in s. 3 did not cover non-HUFs like Mapilla Marumakkathayam tarwads and these were, therefore, outside the purview of the charging provision. He attempted to strengthen that view by contending that the expression "individual" in s. 3 meant a single individual as a human being and according to him this was clear from the fact that references to "wife", "daughter" and "child" of an individual occur in s. 4 of the Act. He further pointed out that under s. 5 (1) (ii), wealth-tax was not payable by an assessee in respect of his interest in the coparcenary property of any HUF of which he is a member but there was no corresponding exclusion of interest of the assessee in the property of a non-HUF like a Mapilla Murumakkathayam tarwad from the incidence of the tax and this also suggested that the term "individual" in s. 3 was not intended to include a Mapilla Marumakkathayam tarwad.

Section 3 of the Act at the material time ran thus :

> "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."

It cannot be disputed that the canon of construction applicable to entries in the three Legislative Lists occurring in a Constitution would be different from the canon of construction that would apply to terms or expressions used in a taxing statute. The object of an entry in any legislative list is to demarcate as wide a legislative filed as possible by the use of compendious words or expressions while the rule of construction applicable to a taxing statute must ensure that "the subject is not to be taxed unless the language of the statute clearly imposes the "obligation" [per Lord Simonds in Russell v. Scott [1948] AC 422 (HL)]. It is, therefore, clear that because the expression "individual" occurring in entry 86 of List I of the Seventh Schedule to the Constitution takes within its ambit, an HUF, it would not automatically follow that the term "individual" occurring in s. 3 of the W. T. Act, 1957, would include a non-HUF like a Mapilla Marumakkathayam tarwad, but the question will have to be considered in the light of the scheme of the W. T. Act itself. The enactment is intended to provide for the levy of wealth-tax; the general scheme thereof is to assess all persons who happen to possess or earn wealth beyond a particular limit fixed by the statute to wealth tax and since Act imposes a general tax on the entire wealth of the community the presumption would be of equality of incidence rather than exemption of a few. Secondly, the term "individual" under s. 13 (2) of the

General Clauses Act, 1897, can be read in plural and as such would include a body or group of individuals like a Mapilla tarwad. Thirdly, there is no warrant for suggesting that the two terms "individual" and "Hindu undivided family" have been used in antithesis with each other, for, s. 3 being the charging provision, is merely concerned with specifying different assessable units for purposes of assessment of wealth and imposition of the levy; it cannot be disputed that the Legislature can select persons, properties, transactions and objects for the imposition of a levy and for that purpose classify as many different assessing units as it could reasonably think necessary and this is how three assessable units, namely, "individual", "Hindu undivided family" and "company" (which was later omitted) have come to be specified in s. 3. In our view, the specific mention of an HUF in the section does not result in the exclusion of group of individuals who only form a unit by reason of their birth like a Mapilla tarwad from the operation of the section. It is difficult to accept the argument that if the term "individual" was intended to include joint families or undivided families it was redundant to specify HUFs.

In the context of the argument that the term "individual" can refer only to a single human being it will be apposite to refer to what this court has observed in CIT v. Sodra Devi [1957] 32 ITR 615. At page 620 of the report this court has said :"... word 'individual ' has not been defined in the Act (Indian Income-tax ACt, 1922) and 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 (natural) unit."

The contention that because there are references to "wife," 'daughter" and "child" of an individual in s. 4, the term "individual" in s. 3 should be construed as referable to a single human being cannot obviously be accepted. Similarly, the absence of provisions similar to those applicable to HUF for assessing groups of individuals who form non-HUFs [provisions like s. 5 (1) (ii)] cannot affect or control in any manner the charging section. On construction, therefore, we are clearly of the view that the term "individual" in s. 3 includes a group of individuals like a Mapilla tarwad.

Furthermore, we would like to point out that the aforesaid construction would be in accord with the legislative practice obtaining in the taxing scheme in the country whereunder Parliament has always been treating and assessing Mapilla Marumakkathayam tarwads in the status of "individual" under the various taxing statutes. In V. Venugopala Ravi Varma Rajah v. Union of India [1969] 74 ITR 49 (SC), a case arising under the Expenditure-tax Act (29 of 1957), the question for determination was whether s. 3 of that Act was violative of art. 14 of the Constitution because an HUF (specifically mentioned as a distinct assessing unit) governed by the Marumakkathayam law had to pay tax at a higher rate by reason of the amalgamation of the expenditure of all the members of the family whereas a Mapilla undivided family was required to pay tax at a lower rate since the members of such family governed by the Marumakkathayam law were liable to be taxed as individuals under the section and this court answered the question in the negative. While doing so this court pointed out how Parliament had been accustomed in enacting tax laws to make a distinction between an HUF consisting of Hindus and undivided families of Mapillas and how for purposes of taxing statutes Mapilla tarwads have always been regarded as individuals. The relevant observations in this behalf run as follows (pp. 56, 57) :

> "Under the taxing Acts the scheme of treating a HIndu undivided family as a distinct taxable entity has been adopted for a long time, e.g. the Indian Income-tax Act, 1869 (IX of 1869), the Indian Income-tax Act, 1870 (IX of 1870,) the Indian Income tax Act, 1871 (XII of 1871), Act No.VIII of 1872, Act No.II of 1886, Act No. VII of 1918, Act No. XI of 1922, Act No. 43 of 1961, have treated a Hindu undivided

> family as a distinct taxable entity. Similarly, under the Wealth-tax Act, 1957 (27 of 1957), and the Gift-tax ACt, 1958 (18 of 1958), the Hindu undivided family is made a unit of taxation. Under the Business Profits Tax Act, 1947 (21 of 1947), and the Excess Profits Tax Act, 1940, also the Hindu undivided family was made a unit of taxation. For the purposes of these Acts Mapilla tarwads governed by the Marumakkathayam law have been regarded as individuals".

For all these reasons we hold that the term "individual" in s. 3 of the Act includes within its ambit Mapilla Marumakkathayam tarwads and they are well within the purview of the taxing provisions of the enactment. Further, even after their inclusion in the term "individual" s. 3 of Act would not be violative of art. 14 for the same reasons for which s. 3 of the Expenditure-tax Act, 1957, has been held to be not so violative by this court in V. Venugopala's case [1969] 74 ITR 49 (SC).

In the result, the appeal is allowed but there will be no order as to costs.

Appeal allowed.

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