

M/S. Juggi Lal Kamlapat Bankers and Another

Vs

Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, Respondents

Civil Appeal No. 816 (NT) of 1978

(V. B. Eradi, V. D. Tulzapurkar, D. P. Madon JJ)

15.12.1983

JUDGMENT

TULZAPURKAR, J. -

1. This appeal by certificate is directed against the judgment and order dated October 4, 1977 of the Allahabad High Court where by the High Court upheld the reference made by the Wealth Tax Officer (respondent 1) to the Valuation Officers (respondent 2 and 3) for valuing certain buildings belonging to the appellant 1 firm as well as the notices issued by the Valuation Officers to appellant 2 in furtherance of the reference. The appellants had by means of a writ petition challenged the reference as well as the notices on certain grounds and had prayed for a mandamus restraining respondents 2 and 3 from valuing the buildings. The writ petition having been dismissed, the appellants have come up in appeal to this Court.

2. Most of the material facts giving rise to this appeal are not in dispute and may briefly be stated as follows : Appellant 1 (M/s. Juggi Lal Kamlapat, Bankers) is a partnership firm. appellant (Padampat Singhania) was one of the partners in the firm in his capacity as a Karta of a Hindu undivided family up to March 15, 1972. He was being assessed to wealth tax in the status of H.U.F. and the assets so assessed for wealth tax included the interest of the family in appellant 1 firm. For the assessment years 1967-68 to 1972-73 wealth tax returns were submitted by appellant 2 in the status of H.U.F. and therein the family's interest in appellant 1 firm was included. since appellant 1 firm owned a number of buildings in Kanpur in the returns so submitted the book-value of those building had been adopted by appellant 2 for valuing the interest of the family in appellant 1 firm. Respondent 1 felt that the market values of those building was much more than such book-value. He, therefore, referred the question of valuation of those buildings to respondents 2 and 3 (the concerned Valuation Officers) under Section 16-A of the Wealth Tax, Act, 1957 (hereinafter referred to as 'the Act'). Respondents 2 and 3 issues notices under Section 38-A(1)(b) of the Act to appellant 2 intimating that they would inspect the buildings for determining the fair market value thereof and requested him to afforded necessary facilities for such inspection and to produce certain records connected with those buildings. On receiving the notices appellant 2 realised that respondent 1 had referred the question of valuation of the concerned buildings to respondents 2 and 3 under section 16-A of the Act and that the notices issued by respondents 2 and 3 were in furtherance of such reference. On September 9, 1974 appellant 2 addressed a letter to respondent 1 contending that none of the properties referred to the Valuation Officers belonged to him and that the reference to them was unauthorised and the same should be withdrawn. He also addressed letter to respondents 2 and 3 in which he contended that reference made to them by respondent 1 was invalid and requested each one of them to return the reference back to the Wealth Tax Officer. Since these contention were not accepted by the respondents, the appellants filed a writ petition in the High Court challenging

the reference made by respondent 1 as well as the notices issued by respondents 2 and 3.

3. On behalf of the appellants the following contentions were urged in support of the writ petition : (1) For the assessment of appellant 2, respondent 1 could not refer to respondents 2 and 3 the valuation of buildings which did not belong to him but belonged to appellant 1 firm; (2) the interest of an H. U.F. in a partnership firm was not exigible to wealth tax; (3) the interest of appellant 2 in appellant 1 firm had to be valued in accordance with Rule 2 of Wealth Tax Rules, 1957, and hence Section 16-A of the Act had no application; (4) the valuation of the concerned buildings forming part of the assets of the business of appellant 1 firm had to be determined in accordance with the commercial principles under Section 7(2)(a) and not under Section 7(1) of the Act, and (5) the respondents 2 and 3 could not issue the notices to appellant 2 as he was neither the owner of the buildings nor was in occupation thereof.

4. In regard to the first contention the High Court took the view that though it was true that a partner of a firm could not claim ownership in specific properties belonging to the partnership firm either during the continuance of the partnership or even on its dissolution but was entitled to get a share in the profits during its continuance and was further entitled, upon its dissolution or his retirement therefrom, to the value of his share in the surplus of the partnership assets left after a deduction of liabilities and prior charges on the date of dissolution or retirement, it was clear that having regard to Section 29 of the Partnership Act (which enables a partner to transfer his interest in the partnership firm) and Section 2(e) and 4(1)(b) of the Act the interest of a partner in the partnership firm will have to be regarded as part of his net wealth under the Act. As regards the second contention which was elaborated to the effect that even if the interest of an individual in a partnership firm could be regarded as an asset within the meaning of Section 2(e) of the Act, the interest of an H.U.F. in the partnership firm could not be regarded as such asset and was not, therefore, exigible to wealth tax [for which reliance was placed on the circumstances that under Section 4(1)(b) of the Act provision has been made for determining the value of an individual's interest in a partnership firm but no corresponding provision obtains in the Act for inclusion of the interest of H.U.F. in a partnership firm for purposes of assessment), the High Court took the view that from the said circumstances relied upon it did not follow that the interest of an H.U.F. in a partnership firm could not be regarded as a part of net wealth of such family or was not liable to wealth tax, especially when the charging provision namely, Section 3 of the Act expressly levied wealth tax on the net wealth of every Hindu undivided family and there was no reason why its interest in a partnership firm, which was property, could not be regarded as a part of its assets liable to the charge under the section. With regard to the third and fourth contentions the High Court held that Rule 2, Section 7 and Section 16-A(1)(b)(ii) had to be read harmoniously and Rule 2 did not exclude the application of Sections 7 and 16-A for valuing an asset of a partner in a partnership firm and that notwithstanding the non obstante clause contained in Section 7(2) it was an enabling provision giving a discretion to the Wealth Tax Officer either to value the assets of a business as a whole or valuing each asset thereof separately and in that behalf the Wealth Tax Officer had the power to refer such valuation to the Valuation Officer under Section 16-A. As regards the last contention the High Court negatived the same by observing that appellant 2 as a partner could be regarded as an agent of appellant 1 firm and the Valuation Officers could issue notices to him requiring and to produce books, documents and records relevant for the valuation of those buildings. In this view of the matter the High Court dismissed the writ petition but its decision is challenged in this appeal.

5. Counsel for the appellants raised substantially two contentions in support of the appeal. In the first place counsel has contended that there is no provision for the inclusion of a Karta's interest in a

partnership firm in the H.U.F.'s net wealth for wealth tax purposes under the Act and this would be clear from Section 4 of the Act. Elaborating this contention counsel has pointed out that Section 4(1) is applicable to the computation of the net wealth of an individual and that the said provision is a deeming provision whereunder certain assets though held in reality by some others are to be treated as belonging to that individual and included in his net wealth for purposes of his wealth tax assessment and one such deeming provision is to be found in clause (b) thereof which provides that where the assessee is a partner in a firm the value of his interest in a firm determined in the prescribed manner shall be included in computing the net wealth of such individual and what is urged is that there is no provision to be found in the Act which provides of the inclusion of Karta's interest in a firm in the H.U.F.'s net wealth. Counsel strenuously urged that but for the deeming provision which is to be found in clause (b) even the interest of a partner (in his individual capacity) would not have become includible in his net wealth. In other words, according to counsel, there is a lacuna in the Act as regards the inclusion of a karta's interest in the partnership firm in his H.U.F.'s net wealth and, therefore, the Department's attempt to include the interest of appellant 2 (as a karta) in appellant 1's firm in the net wealth of his H.U.F. is not warranted by any of the provisions of the Act. Secondly, counsel has urged that assuming that appellant 2's interest (as a Karta of his H.U.F.) in appellant 1 'firm is exigible to the wealth tax under the Act, the valuation of such interest being governed by Section 7(2)(a) of the Act read with Rule 2-A of the Wealth Tax Rules, 1957 it is not open to the Wealth Tax Officer to refer the valuation of specific house properties belonging to the firm to the Valuation Officers under Section 16-A of the Act; in fact, according to him, the valuation of the assets of the partnership business of appellant 1 as a whole having regard to its balance sheets for the concerned years ought to have been undertaken by the Wealth Tax Officer and as such the book-values of the house properties as appearing in the balance sheets ought to have been accepted by him and, therefore, the reference made by the Wealth Tax officer to Valuation Officers as well as the notices issued by the latter, being incompetent and unjustified in law, are liable to be quashed. For the reasons which we shall presently indicate neither of the contentions has any substance and both are liable to be rejected.

6. In order to deal with the first contention mentioned above it will be necessary to set out the material provisions of Section 4 of the Act. Clauses (a) and (b) of Sub-section (1) of Section 4 run as follows :

4. Net wealth to include certain assets. - (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual -

(a) the value of assets which on the valuation date are held -

(i) by the spouse of such individual to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, or

(ii) by a minor-child, not being a married daughter, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, otherwise than for adequate consideration, or

(iii) by a person or association of person to whom such assets have been transferred by the individual directly or indirectly otherwise than for adequate consideration for the immediate or deferred benefit of the individual, his or her spouse or minor child (not being a married daughter or both, or

(iv) by a person or association of persons to whom such assets have been transferred by the individual otherwise than under an irrevocable transfer, or

(v) by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, directly or indirectly, on or after June 1, 1973, otherwise than for adequate consideration,

whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise :

provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act, 1958 (18 of 1958), or is not chargeable under Section 5 of that Act, for any assessment year commencing after March Act, 31, 1964, but before, April 1, 1972, the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the 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.

It is true that Section 4(1) deals with the computation of the net wealth of an individual and it is also true that same enacts a deeming provision in the sense that certain assets which do not in fact or in reality belong to that individual (the assessee) but to some one else are to be treated as belonging to that individual and are to be included in his net wealth. But, in our view, a careful reading and analysis of clauses (a) and (b) thereof will make it clear that there is a great difference between the cases covered by sub-clauses (i) to (v) of clause (a) and the case covered by clause (b). Clause (a) refers to five situations in all of which the asset is held by someone other than the individual concerned (the assessee) (e.g. held by the spouse or minor child of such individual to whom such asset has been transferred by such individual directly or indirectly otherwise than for adequate consideration, etc.) and it is provided that such asset held by that someone else shall be treated as belonging to the assessee - a deeming provision in the real sense of creating a legal fiction, while under clause (b) it is provided that where the individual assessee is a partner in a firm it is the value of his interest in the firm determined in the prescribed manner that is to be treated as belonging to him and is includible in his net wealth. In other words clause (b) is not a deeming provision in the sense in which a deeming provision is made in clause (a). It cannot be said that the interest of a partner in a firm does not belong to him; it in fact belongs to him and no legal fiction is required for treating it as belonging to him; and the proper way to interpret clause (b) would be that the deeming part of it relates to the quantum of his interest in the firm determined in the prescribed manner which is to be treated as belonging to him and includible in his net wealth. It is impossible to accept the contention that but for clause (b) of Section 4(1) the interest of a partner (where he happens to be an individual assessee) in a firm would not have been exigible to wealth tax under the Act. As we shall presently point out a partner's interest in a firm either in his individual capacity or in his capacity as a karta of H. U.F. is otherwise exigible to wealth tax under the other provisions of the Act and the deeming provision contained in Section 4(1)(b) properly understood must be held to be referable to the quantification of his interest in the firm determined in the prescribed manner that is made includible in his net wealth.

7. Section 3 of the Act read with the definitions of "net wealth" as given in Section 2(m) and "assets" given in Section 2(e) clearly brings out the exigibility of a partner's interest in a firm either in his

individual capacity or his capacity as a Karta of an H.U.F. to wealth tax under the Act. Section 3 which is a charging provision runs thus :

3. Charge of wealth tax. - Subject to the other provisions contained in this Act, there shall be charged for every assessment 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 Schedule I.

Section 2(m) defines "net wealth" thus :

"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than -

(here follow three types of debts which are not to be reckoned with which we are not concerned).

Section 2(e) defines "assets" thus :

"assets" includes property of every description, movable or immovable, but does not include -

(here follow certain specified properties with which we are not concerned).

8. On reading the aforesaid provision together it will appear clear that wealth tax has been levied on the net wealth of an individual or an H.U.F. meaning thereby the aggregate value of all the assets belonging to such assessee minus all the debts owed by him. Under the definition of "assets" property of every description, movable or immovable is included, and since it cannot be disputed and was not disputed before us that a partner's interest in a firm either in his individual capacity or in his capacity as a karta of an H.U.F. is property, the same would be includible in the expression "assets" which will have to be taken into account while computing the net wealth of such individual or H.U. F. and on such net wealth the charge of wealth tax has been imposed under Section 3. It is thus clear that there is no lacuna in the Act as regards the making of a Karta's interest (representing his H.U.F.) in the partnership firm exigible to wealth tax. The first contention, therefore, must fail.

9. The second contention of counsel for the appellant has been that even if it be held that appellant 2's interest (as a karta of his H.U.F.) in the appellant 1's firm is exigible to the tax under the Act the valuation of such interest would be governed by Section 7(2)(a) of the Act read with rule 2-A of the Wealth Tax Rules, 1957 and since it is a case of valuing such interest in the partnership business of appellant 1 firm the Wealth Tax Officer while first valuing the assets of the business as on the valuation dates, accepted the book-values of the specific house properties as appearing in the balance sheets and could not refer the valuation thereof to the valuation Officers under Section 16-A of the Act which being inapplicable could not be resorted to; in this connection reference was also made by counsel to sub-section (2) of Section 4 whereunder it is provided that in making any rules with reference to the valuation of the interest referred to in clause (b) of sub-section (1) (being a partner's interest in a firm) the Board shall have regard to the law for the time being in force relating to the manner in which accounts are to be settled between partners of a firm on the dissolution of a

firm. The substance of the argument, in brief, has been that Section 7(1) which enables the Wealth Tax Officer to determine the value of any asset, other than cash, at the market price thereof on the valuation date for the purposes of the Act is inapplicable to the instant case and, therefore, Section 16-A is not attracted and hence the valuation reference made by the Wealth Tax Officer to the Valuation Officers regarding specific house properties is liable to be set aside. As we shall demonstrate presently, the contention proceeds on an entire misconception of the relevant provisions of the Act and the Rules.

10. We have already indicated above that a partner's interest in a firm, either in his individual capacity or as a Karta of an H.U.F., is property or asset liable to be included in the net wealth of the concerned assessee and is exigible to wealth tax under the Act. Once that position is accepted it is clear that such asset will have to be valued for the purposes of the Act and in this behalf Rule 2(1) of the Wealth Tax Rules, 1957 prescribes the manner of valuing such interest. It runs thus :

2. Valuation of interest in partnership or association of persons. -- (1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of the asset in the event of dissolution of the firm or association, or in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. the sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

The aforesaid rule clearly says that in order to determine the valuation of a partner's interest in the firm, first the net wealth of the firm has to be determined, which determination, of course, is governed by Section 7 of the Act and the rule goes on to provide as to how the net wealth of the firm so determined shall be allocated among the partners of the firm, which allocated amount will be regarded as the value of the interest of each partner in the firm. Coming to the precise contention raised by counsel, the material provisions of the Act and the rules having a bearing thereon would be Sections 7(1), 7(2)(a), 7(3) and Rules 2-A and 2-B and these are as under :

7. Value of assets, how to be determined. - (1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purpose of this Act, 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.

##(Explanation. - * * *)##

(2) Notwithstanding anything contained in sub-section (1), -

(a) where the assessee is carrying on a business for which accounts are maintained by his regularly, the Wealth Tax Officer may, instead of determining separately the value

of each assessee held by assays in such business determine the net value of the assets of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed.

(3) Notwithstanding any thing contained in sub-section (1), where the valuation of any asset is referred by the Wealth Tax Officer to the Valuation Officer under Section 16-A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date, or, in the case of an asset being to in that sub-section.

Rules 2-A and 2-B run thus :

2-A. Determination of the net value of assets of business as a whole. -- where the Wealth Tax Officer determines under clause (a) of sub-section (2) of Section 7 the net value of the assets of such business, he shall make the adjustments specified in Rules 2-B, 2-C, 2-D, 2-E, 2-F and 2-G.

2-B. Adjustments in the value of an asset disclosed in the balance sheet. - (1) the value of an asset disclosed in the balance sheet shall be taken to be -

(a) In the case of an asset on which depreciation is admissible, its written down value;

(b) in the case of an asset on which no depreciation is admissible, its book-value;

(c) in the case of closing stock, its value adopted for the purposes of assessment under the Income Tax Act, 1961, for the previous year relevant to the corresponding assessment year.

(2) Notwithstanding anything contained in sub-rule (1) where the market value of an asset exceeds its written down value of its book-value or the value adopted for purposes of assessment under the Income Tax Act, 1961, as the case may be, by more than 20 per cent, the value of that asset shall, for the purposes of rules 2-A, be taken to be its market value.

On a fair reading of the aforesaid provision it will appear clear that the primary method of determining the value of assets for the purposes of the Act is the one indicated in Section 7(1), inasmuch as it provides that the value of any assets, other than cash, for the purposes of this Act shall be estimated to be its market price on the valuation date. Then comes sub-section (2) which provides that in the case of a business for which accounts are maintained by the assessee regularly the Wealth Tax Officer may instead of determining separately the valuation of each asset held by the assessee in such business, determine the net value of the business as a whole having regard to the balance sheet of such business as the valuation date and making such adjustments therein was may be prescribed. It is true that sub-section (2) commences with a non obstante clause, but even so, the provision itself is an enabling one conferring discretion on the Wealth Tax Officer to determine the net value of the assets of the business as a whole having regard to its balance sheets as on the valuation date, instead of proceeding under sub-section (1). In other words, it is optional for the Wealth Tax Officer to resort to either of the methods even in the case where the net value of a business carried on by the assessee is to be determined. Thirdly, even when he proceeds under sub-section (2) he has to determine the net value of the business as a whole having regard to the balance

sheet of such business as on the valuation date; the phrase "having regard to the balance sheet of such business' as judicially interpreted means that the Wealth Tax Officer has to take into consideration or account the balance sheet of such business for such valuation and not that such balance sheet is conclusive or binding or decisive of the values of assets appearing therein. Frothily, the said sub-section also says that the Wealth Tax Officer has to "make such adjustments therein as may be prescribed" and in this behalf Rules 2-A and 2-B already quoted above indicate what adjustments the Wealth Tax Officer has to make while determining the net value of the business as a whole. Particularly sub-rule (2) of Rule 2-B clearly provides that where the market value of an asset exceeds its written down value or book-value by more than 20 per cent, the value of that asset for the purposes of Rules 2-A shall be taken to be its market value. In other words, it is clear that even where the Wealth Tax Officer has resorted to Section 7(2) for determining the value of assets of a business as a whole written down values or book-values of specific assets as appearing in the balance sheet are not sacrosanct and when the market value exceeds the written down value or book-value by more than 20 per cent, the Wealth Tax Officer has to adopt the market value of such assets for the purposes of this Act. This is apart from the position that the resort to Section 7(2) itself is discretionary and optional, the provision being an enabling one.

11. Since in the instant case the Wealth Tax Officer was of the view that the book-values of specific house properties as indicated in the returns filed by appellant 2 were far far below their market values, he was justified in making a reference to the Valuation Officers under Section 16-A of the Act and the notices issued by the Valuation Officers in pursuance of such reference were also valid.

12. In the result the appeal fails and is dismissed with costs.

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