

BOMBAY HIGH COURT

Abhay L. Khatau

Vs.

Commissioner of Wealth-Tax

Wealth-Tax Reference No. 3 of 1962

(Tambe and V.S. Desai, JJ.)

03.03.1965

JUDGMENT

V.S. Desai, J.

1. The short question which arises for consideration on the present reference is whether a group of trustees can be assessed to wealth-tax under the Wealth-tax Act in respect of the wealth held by them as trustees. This question has been referred to us by the Tribunal under section 27(I) of the Wealth-tax Act, 1957, in the form of two questions, which are as follows :

"(1) Whether the assessments under the Wealth-tax Act are valid ?

(2) If the answer to the above question is in the affirmative, whether the status of the assessee is 'individual' ?"

2. The charging section, which is section 3, of the Wealth-tax Act provides that

"subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from 1st April, 1957, a tax (hereinafter referred to as the '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 is argued on behalf of the assessee that it is only an individual, Hindu undivided family or a company that can be taxed to wealth-tax, and neither a group of individuals or an association of persons. The assessee in the present case, it is contended, is not an individual, but a group of persons or an association of persons, and do not, therefore, fall within the ambit of section 3. The contention raised by the assessee in the present case has been answered by the Calcutta High Court against the assessee in *Suhashini Karuri v. Wealth-tax Officer, Calcutta*¹, It has been held

in that case that-

"joint trustees must be taken to be a single unit in law and not as an 'association of persons' and there is nothing wrong in treating such a unit as an individual holding property and becoming assessable under section 3 of the Wealth-tax Act for

¹1961 46 I.T.R. 953

purposes of wealth-tax."

The view taken in that case was that having regard to the nature of joint trusteeship, all the co-trustees together formed, as it were, a collective trustee, and the body of trustees, therefore, could be regarded as a unit for the purposes of taxation and fell within the term "individual". In taking this view, the learned judges who decided the case found support in the observations of the Supreme Court in the case of *Commissioner of Income-tax v. Sodra Devi*². In that case, their Lordships of the Supreme Court were concerned with the interpretation of the word "individual" in section 16 of the Indian Income-tax Act. It was observed that the word "individual" was wide enough to include a group of persons forming a unit. In a recent decision of the Supreme Court in Civil Appeals Nos. 124 to 129 of 1964, Banarsi Dass's case decided on 8th December, 1964, the Supreme Court after having referred to its decision in Sodra Devi's case have observed again that though the word "individual" 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.

3. Mr. Palkhivala, learned counsel appearing for the assessee, has sought to argue that a comparison of section 3 of the Indian Income-tax Act with section 3 of the Wealth-tax Act will show that while under section 3 of the former Act, individuals, Hindu undivided family, company, local authority and every firm and other associations of persons or partners of the firm are brought within the ambit of the charging section, only three of them, viz., individual, Hindu undivided family and company, are charged under section 3 of the Wealth-tax Act. This would, according to the learned advocate, indicate that associations or groups of persons forming a unit, are not intended to be charged to wealth-tax. In the first place, this argument was advanced in the Calcutta case to which we have already made a reference, and has been negatived there. As pointed out in that case, if having regard to the nature of the group, it could be treated as a single collective unit, the term "individual" will be wide enough to include it. Secondly, it seems to us that the mere difference in the language of section 3 of the Indian Income-tax Act and section 3 of the Wealth-tax Act will not be sufficient to warrant that some of the categories or items mentioned in the former Act are intended to be omitted in the latter Act. If the words retained in the latter Act are sufficiently wide in their ambit to include even those categories or items which have been additionally mentioned in the first Act, it could not be said that they were intended to be omitted simply because they have not been similarly additionally stated in the latter Act. Mr. Palkhivala has then argued that if groups or associations of persons who are capable of being treated as units were intended to be included in the word "individual", there was no reason

whatsoever to mention a Hindu undivided family separately. His argument, therefore, is that the mention of the Hindu undivided family, which is an association of persons, implies that other associations of persons are intended to be excluded. We do not think that the argument is sustainable. Although a Hindu undivided family consists of a number of persons it is not an association of persons or a firm or a company which is created by the act of the parties. It consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Its fundamental principle is the tie of sapindaship arising by birth, marriage or adoption. The Hindu undivided family with all its incidents is purely a creature of Hindu law and cannot be created by act of parties. It is because of the

²1957 32 I.T.R. 615

peculiar characteristic of the institution which distinguishes it from an association of persons or a firm or a company that the taxation laws which want to treat it as a unit for taxation have mentioned it as a distinct unit. We do not therefore think that the argument can be advanced that the mention of the Hindu undivided family as a unit of taxation under section 3 of the Wealth-tax Act is intended to exclude other groups or associations of persons which are capable of being treated as a unit.

4. In the result, therefore, our answers to both the questions, which have been referred to us, are in the affirmative. The assessee will pay the costs of the Commissioner.

Answer accordingly