TATAVARTHI RAJAH AND ANR. A

v.

COMMISSIONER OF WEALTH TAX, HYDERABAD

APRIL 4, 1997

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.] B

Wealth Tax Act, 1957 : Section 20.

HUF—Partition—Taking place of—Held : Partition of joint family property amongst members of HUF in metes and bounds—Condition precedent—Difference between partition for purposes of Wealth Tax and Income Tax and partition for purpose of Hindu Law pointed out—Income Tax Act, 1961, S. 171—Income Tax Act, 1922, S. 25-A. C

Section 20—Applicability of—Held : Applicable even to cases where severance of joint family was claimed to have taken place prior to coming into force of the Act. D

Section 20 and 5(1)(ii)—Object of—To avoid a situation where neither the HUF nor the individual members could be taxed in respect of the joint family property.

E

The appellant-assessee was a Hindu joint family, which consisted of four members. One of them gave a registered notice expressing her desire to separate and subsequently she filed a suit for partition. The other members of the joint family filed their written statements agreeing to the partition. Preliminary and final decree for partition were passed. For assessment years 1958-59, 1959-60 and 1960-61 the Wealth Tax Officer (WTO) made the assessment on the basis that there was no partition by metes and bounds and that the Hindu Undivided Family (HUF) consisted of four members. Before the Income Tax Appellate Tribunal, the assessee contended that there was severance in the status of the HUF when the first registered notice was issued and on the date when the suit for partition was filed as well as on the date when the written statements were filed. Considering that the said contention went to the root of the matter, namely, whether the assessee was in existence at all, the Tribunal cancelled the assessment orders in respect of the three Assessment Years and remitted the matter to the WTO to decide afresh as to who the assessee F G H

A was and what assets formed part of his net wealth. The High Court held the cancellation of assessments for the said three AY's as unjustified in terms of Section 20 of the Wealth Tax Act, 1957. Hence this appeal.

Dismissing the appeal, this Court

B HELD : 1.1. Section 20 of the Wealth Tax Act, 1957 is similar to the provision contained in Section 25-A of the Income Tax Act, 1922 and Section 171 of the Income Tax Act, 1961. These provisions in the tax laws make a departure from the personal law governing partition in a joint Hindu family. Under the Hindu law a mere declaration of an intention to C severe the joint status of the members of the Hindu undivided family is sufficient to constitute partition and the moment such declaration is made, the joint family comes to an end and, thereafter the members of the undivided family become separated in status and they held the joint family property as tenants under common ownership with definite shares in that property. But for the purpose of assessment of Income Tax and Wealth D Tax and legislature has imposed the requirement that for a partition in a Hindu undivided family, it is necessary that the joint family property should be partitioned among the various members or group of members in definite portions. [612-E-H]

E 1.2. Like the rationale for the introduction of Section 25-A in the Income Tax Act, 1922, the object underlying Section 20 of the Wealth Tax Act, 1957 is also to avoid a situation where neither the Hindu undivided family nor the individual members can be taxed in respect of the property of the joint family. Section 20 of the Act is applicable even to cases where severance of joint family is claimed to have taken place prior to coming F into force of the Act. [612-H; 613-D-F]

Lakshmichand Baijnath v. *CIT,* [1959] Supp. 1 SCR 415, referred to.

2. The High Court has rightly observed that no distinction can be made between the case where partition is alleged to have taken place before G the commencement of the Act and where the partition is said to have taken place after the commencement of the Act because the idea behind Section 20 of the Act as well as Section 171 of the Income Tax Act, 1961 is that for a given assessment year either the Hindu undivided family must be assessed or its members must be assessed individually and unless the joint H family properties are divided in definite portions and allotted to each

individual members, it cannot be said that a particular member can be assessed with respect to particular properties or income, as the case may be, and a mere division in status does not indicate which member is entitled to which of the properties. [615-G-H; 616-A-B] A

Goswami Brijratanlalji Maharaj **v.** *CWT,* **(1971) 79 ITR 373 (Guj.), approved.** B

Shri Srilal Bagri **v.** *CWT,* **(1970) 77 ITR 901, overruled.**

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 5957-59 of 1983.

C

From the Judgment and Order dated 26.8.82 of the Andhra Pradesh High Court in R.C. No. 58 of 1977.

B. Parthasarthy and S. Rajappa for the Appellants.

Ranbir Chandra, B. Krishna Prasad, C. Radha Krishna and Rajeev Sharma for the Respondent. D

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. These appeals by the assessee raise the question whether the provisions of Section 20 of the Wealth Tax Act, 1957 (hereinafter referred to as 'the Act') can be applied to a case where the partition in the Hindu undivided Family in accordance with the principles of Hindu Law has taken place before the commencement of the Act. E

The assessee was a Hindu joint family constituted by T. Nagapotha Rao and his three sons. Sitarama Rao, Raja and Satyanarayana Murthy. Sitarama Rao died in 1947 and Nagapotha Rao died in 1950. Thereafter the family constituted of the two minor coparceners Raja and Satyanarayana Murthy and Smt. Mahalakshmamma, widow of Nagapotha Rao and Smt. Raja Syamala, widow of Sitarama Rao. Differences arose between Smt. Raja Syamala and the other members of the family and on October 7, 1950 Smt. Raja Syamala gave a registered notice expressing her desire to separate. On April 7, 1954 she filed a suit (O.S. No. 47 of 1954) for partition in the court of Subordinate Judge, Tanali. In the said suit Smt. Mahalakshmamma on behalf of herself and her two minor sons filed a written statement on October 27, 1954 agreeing to the division of all the F G H

A family properties into four equal shares. On attaining majority Raja as well as Satyanarayana Murthy filed written statement making similar request. On the basis of compromise between the parties a preliminary decree for partition was passed in the said suit on April 1, 1956. The final decree was passed in the suit on March 16, 1961. The present appeals relate to B assessment year 1958-59, 1959-60 and 1960-61. In respect of these years returns were filed by the assessee as a Hindu undivided Family consisting of three members, namely, Smt. Mahalakshmamma and her sons Raja and Satyanarayana Murthy. The Wealth Tax Officer made the assessment on the basis that there was no partition by meters and bounds and that Hindu C undivided family consisted of four members including Smt. Raja Syamala and the properties allotted to Smt. Raja Syamala were included in the joint properties of Hindu undivided family. On appeal it was submitted on behalf of the assessee before the Appellant Assistant Commissioner that the assessee should be treated as a Hindu undivided family with three D members and not four members. This contention of the assessee was, however, rejected by the Appellate Assistant Commissioner. On further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') the assessee raised an additional ground that there was servance in status of Hindu undivided family as early as on October 7, 1950 when the first registered notice was issued by Smt. Raja Syamala to the E other three members and on April 7, 1954 when Smt. Raja Syamala filed the suit for partition as well as on October 27, 1954 when Smt. Mahalakshmamma, on behalf on herself and her two minor sons, filed the written statement claiming that all the properties be divided in four equal shares. The said additional ground was permitted to be raised by the F Tribunal since, according to the Tribunal, it went to the root of the matter, namely, whether assessee was in existence at all. After considering the submissions of both sides the Tribunal has state that the present claim of the assessee is that in fact on the valuation dates for all these assessment years there was no Hindu undivided family of the Type taken by the Wealth G Tax Officer and the family was, if at all, disrupted a long time before the Wealth Tax Act came into force and accordingly the provisions of Section 20(2) of the Act do not apply and the Wealth tax Officer ought to have assessed the assessee on what exactly were his assets rather than on the assets held by all the members of the erstwhile family together. The H Tribunal felt that the assessee had reasonable ground for the present claim

to be considered in the light of the facts and the law applicable to them and if the family had acquired different status long before the Act came into force, the family as assessed for these assessments would not be in existence on the valuation dates. The Tribunal, therefore, cancelled the assessment orders for the three assessment years before it and sent the matter back to the Wealth Tax Officer to decide afresh the question as to who the assessee is and what assets formed part of his net wealth. At the instance of the Revenue, the Tribunal referred the following question for the opinion of the High Court of Andhra Pradesh :

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in cancelling the Wealth Tax assessments for the years 1958-59, 1959-60 and 1960- 61?"

The said question has been answered by the High Court by the impugned judgment dated August 26, 1982 in favour of the Revenue and against the assessee. The High Court has held that having regard to the language of sub-section (1) of Section 20, no distinction can be made between a case where the partition is alleged to have taken place before the commencement of the Act and where the partition is said to have taken place after the commencement of the Act. The idea behind Section 20 of the Act is that unless the joint family properties are divided into definite portions and allotted to each individual member, it cannot be said that a particular member can be assessed with respect to particular properties. If it is contended that a mere division in status is sufficient for the purpose of putting an end to the Hindu undivided family, even for the purpose of the Act, the resultant situation would be that, while the Hindu undivided family cannot be assessed on the ground that no Hindu undivided family is in existence, the members also cannot be assessed, because until the properties are divided into definite portions, it cannot be said which member is entitled to which property. The High Court has agreed with the decision of the Gujarat High Court in *Goswami Brijratanlalji Maharaj* v. *Commissioner of Wealth Tax,* (1971) 79 ITR 373, and has differed from the decision of the Calcutta High Court in *Shri Srilal Bagri* v. *Commissioner of Wealth Tax,* (1970) 77 ITR 901. In view of the difference of opinion between the High Courts on the question, the High Court has granted certificate of fitness for appeal to this Court. Hence this appeal.

A Section 20 of the Act provides as under :

"20(1). Where, at the time of making an assessment, it is brought to the notice of the Wealth-tax Officer that a partition has taken place among the members of a Hindu undivided family, and the Wealth-tax Officer, after inquiry, is satisfied that the joint family B property has been partitioned as a whole among the various members or groups of members in definite portions, he shall record an order to that effect and shall make assessments on the net wealth of the undivided family as such for the assessment year or years, including the relevant to the previous year in which the C partition has taken place, if the partition has taken place on the last day of the previous year and each member or groups of members shall be liable jointly and severally for the tax assessed on the net wealth of the joint family as such.

(2) Where the Wealth-tax Officer is not so satisfied, he may, by D order, declare that such family shall be deemed for the purpose of this Act to continue to be a Hindu undivided family liable to be assessed as such."

The said provision is similar to that contained in Section 25A of the E Income Tax Act, 1922 and Section 171 of the Income Tax Act, 1961. These provisions in the tax laws make as departure from the personal law governing partition in a joint Hindu family. Under the Hindu law a mere declaration of an intention to severe the joint status of the members of the Hindu undivided family is sufficient to constitute partition and the moment such a declaration is made, the joint family comes to an end and, thereafter the F members of undivided family become separated in status and they hold that joint family property as tenants under common ownership with definite shares in that property. But for the purpose of assessment of Income Tax and Wealth Tax the legislature has imposed the requirement that for a partition in a Hindu undivided family, it is necessary that the Joint family G property should be partitioned among the various members or group of members in definite portions.

The rational for the introduction of Section 25-A in the Indian Income Tax Act, 1922 has been thus explained by Venkatarama Aiyar J, in *Lakhmichand Baijnath* v. *Commissioner of Income Tax, West Bengal,* H [1959] Supp. 1 SCR 415; 35 ITR 416 :

A

> "That Section was, it should be noted, introduced by the Indian Income Tax (Amendment) Act, 1928 (3 of 1928), for removing a defect which the working of the Act as enacted in 1922 had disclosed. Under the provisions of the Act as they stood prior to the amendment, when the assessee was an undivided family, no assessment could be made thereon if at the time of the assessment it had become divided, because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint. Nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under s. 14(1) of the Act. The result of these provisions was that a joint family which had become divided at the time of the assessment escaped tax altogether. To remove this defect, s. 25A enacted that until an order is made under that section, the family should be deemed to continue as an undivided family." (pp. 421-422)

B

C

D

The object underlying Section 20 of the Act is also to avoid a situation whether neither the Hindu undivided family nor the individual members can be taxed in respect of the property of the joint family. With that end in view Section 20 prescribes that if at the time of making an assessment it is claimed that a partition has taken place among the members of a Hindu undivided family, the Wealth Tax Officer, after making an inquiry, must satisfy himself that joint family property has been partitioned as a whole among the various members or groups of members in definite portions and if he is so satisfied he has to record an order to that effect and make assessment on that basis. The question that needs to be considered is whether the provisions of Section 20 are confined in their application to cases where the severance in Hindu undivided family is claimed to have taken place after the coming into force of the Act and the provision has no application to cases where the severance in the joint family is claimed to have taken place prior to coming into force of the Act.

E

F

G

The Calcutta High Court in *Shri Srilal Bagri* v. *Commissioner of Wealth Tax* (supra) has taken the view that Section 20 does not empower assessment of a Hindu undivided family which has ceased to be a Hindu undivided family according to the relevant Hindu law prior to the relevant valuation date and that where the family had never been assessed under the Act as Hindu undivided family and a preliminary decree for partition

H

A had been passed prior to valuation date Section 20 does not authorise assessment of the members of the family as a Hindu undivided family after the preliminary decree. In taking the view the Calcutta High Court has proceeded on the basis that Section 20 is in *pari materia* with Section 25A of the Income Tax Act, 1922 and is only a machinery section. The High Court has also held that in view of the position of Hindu law that after the B unequivocal expression of intention to separate the individual member of the erstwhile Hindu undivided family will have no interest in the coparcenary property of the Hindu undivided family of which he was a member and sub-section (ii) of Section 5(1) of the Act would be no bar for assessment in respect of the properties in the hands of the erstwhile members of the C Hindu undivided family even though the properties have not yet been divided amongst the members in definite portions. The High Court has further held that sub-section (2) of Section 20 would not be attracted where no prior assessment had been made of the assessee as a Hindu undivided family under the Act because in that event there is no question of this D family being continued to be liable to be assessed as such under sub-section (2) of Section 20.

In *Goswami Brijratanlalji Maharaj* v. *Commissioner of Wealth Tax* (supra) after taking note of the reasons given by the Calcutta High Court in the *Shri Srilal Bagri* v. *Commissioner of Wealth Tax* (supra), the learned E Judges of the Gujarat High Court have pointed out that the words "not previously assessed" occurring in Section 25-A of Indian Income Tax Act, 1922 have been omitted from Section 20 of the Act and the legislature has merely used the words "where at the time of making the assessment". The learned Judges have observed :

F

"Therefore, at any time when a Wealth-tax Officer is making the assessment, a contention is raised or is sought to be raised before him that a partition has taken place amongst the members of the Hindu undivided family, he has to enter upon an inquiry and satisfy himself whether there has been a partition by metes and bounds. G It he is not so satisfied about the joint family properties having been partitioned by metes and bounds amongst the various members, he has to declare under sub-section (2) of Section 20 that such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family liable to be assessed as such. Once H that declaration under Section 20(2) is made, it becomes clear that

even for the purposes of Section 5(1)(ii) of the Act, the interest of any individual member of the joint family in coparcenary property of any Hindu undivided family of which he is a member can be safely excluded. The words for the purposes of this Act occurring in Section 20(2) would include within their ambit section 5(1)(ii) as well and so long as the satisfaction about the properties of the joint family having been partitioned by metes and bounds is not reached by the Wealth-tax Officer, he has to declare that such family for the purposes of the Act shall continue to be a Hindu undivided family liable to be assessed as such. Once such a declaration is made, even though there may be notional partition, and even though for the purposes of Hindu law there is disruption of the joint family, for the purposes of the Wealth-Tax Act the family is deemed to continue to be a Hindu undivided family liable to be assessed as such. Therefore, the undivided share or interest of an individual members of such Hindu undivided family will continue to be assessed as part of the property of the Hindu undivided family and will not be includible in the next wealth of that individual member." (pp. 387, 388)

"In our opinion, the question that has to be considered by the Wealth-tax Officer is not whether there has been a disruption in status according to notions of Hindu law but whether there has been a partition by metes and bounds and whether there has been a physical partition of properties of the Hindu undivided family amongst different members; and it is only after that test of physical partition by metes and bounds is satisfied that the necessary consequences for the purposes of assessment under the Wealth-tax Act will follow." (p. 389)

We are in agreement with these observations and we are unable to agree with the interpretation placed by the Calcutta High Court in *Srilal Bagri* (supra on the provisions of Section 20 of the Act. In the impugned judgment the learned Judges, in our opinion, have rightly observed that no distinction can be made between the case where partition is alleged to have taken place before the commencement of the Act and whether the partition is said to have taken place after the commencement of the Act because the idea behind Section 20 of the Act as well as Section 171 of the Income Tax Act, 1961 is that for a given assessment year either the Hindu undivided

A family must be assessed or its members must be assessed individually and unless the joint family properties are divided in definite portions and allotted to each individual member, it cannot be said that a particular member can be assessed with respect to particular properties or income, as the case may be, and a mere division in status does not indicate which member is entitled to which of the properties. The learned Judges have B also mentioned that in the present case returns were filed by the Hindu undivided family in the status of a Hindu undivided family and the only difference between the assessee and the department was whether it comprised of three members or four members, i.e., whether Smt. Raja Syamala must also be treated as a member of the Hindu undivided family or not C and that it was only before the Tribunal it was contended for the first time that there was a division in status between the parties long prior to the coming into force of the Act.

We are of the view that approach of the Gujarat High Court in *Goswami Brijratanlalji Maharaj* v. *Commissioner of Wealth Tax* (supra) and D that of the learned Judges in the impugned judgment in the matter of interpretation of Section 20 of the Act is correct and we are in agreement with the same.

In that view of the matter, we do not find any merit in these appeals E and same are accordingly dismissed. But in the circumstances there will be no order as to costs.

V.S.S. Appeals dismissed.