Prithvi Singh Vs. Additional Commissioner of Wealth-tax

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Court : Rajasthan

Decided On : Jan-10-1984

Reported in : (1985)44CTR(Raj)168; [1986]157ITR193(Raj)

Judge : Dwarka Prasad and; K.S. Lodha, JJ.

Acts : Wealth Tax Act, 1957 - Sections 4(1) and 4(6)

Appeal No. : D.B. Wealth-tax Reference No. 40 of 1974

Appellant : Prithvi Singh

Respondent : Additional Commissioner of Wealth-tax

Advocate for Def. : J.P. Joshi, Adv.

Advocate for Pet/Ap. : H.M. Parekh, Adv.

Judgement :

Dwarka Prasad, J.

1. This is a reference made by the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur, by which the following question of law arising out of the order of the aforesaid Tribunal dated February 22, 1974, has been referred to this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the assets transferred by him to his wife and minor sons on November

4, 1964, are includible in his wealth in accordance with Section 4(1)(a) of the Wealth-tax Act in the wealth of the assessee who is an individual ?'

2. The facts and circumstances in which this reference arises may be briefly stated. The respondent, Prithvi Singh, who will hereinafter be referred to as 'the assessee', was the holder of an impartible estate known as the jagir of Bisalpur, situated in district Pali in the State of Rajasthan, The jagir was said to have been granted to the forefathers of the assessee more than 300 years ago and succession to the jagir was governed by the rule of primogeniture. Thus, the jagir was ancestral and passed by succession to the senior member in the main line of the original grantees. The jagir of Bisalpur was resumed in the year 1954 by the State of Rajasthan, under the provisions of the Rajasthan Land Reforms & Resumption of Jagirs Act, 1952. The assessee was given compensation in lieu of resumption of his jagir in the form of jagir bonds in the year 1963-64. The compensation bonds were sold by the assessee for a sum of Rs. 2,05,728.76. On November 4, 1964, the aforesaid amount was partitioned by the assessee in four equal shares between himself, his Wife and two minor sons so that each one of them got Rs. 51,432.19.

3. In respect of the assessment years 1966-67 and 1969-70, the assessee was assessed to wealth-tax by the Wealth-tax Officer, A Ward, Pali. In respect of the assessment year 1966-67, the assessee filed a return of net wealth of Rs. 90.750 and the Rs. 90,750 and the Wealth-tax Officer added to the returned amount, the amount of Rs. 1,54,296 which was transferred by the assesse to his wife and two sons under Section 4(6) of the Wealth-tax Act, 1957 (herein-after called 'the Act'). In respect of the assessment year 1969-70 also, thesame amount of Rs. 1,54,296 which was transferred by the assessee to his wife and two sons was added to the returned wealth by the Wealth-tax Officer.

4. The assessee filed an appeal and claimed that the amounts transferred to his wife and two minor sons as a result of the partition which had taken place on November 4, 1964, should not have been added to the net wealth of the assessee. However, the Appellate Assistant Commissioner of Income-tax, Jodhpur Range, Jodhpur, held that the jagir bonds received by the assessee in lieu of resumption

of jagir were in the nature of impartible property and the assessee could neither partition the same nor could he give away a part thereof by way of gift, but the transferred amounts should be considered to be the wealth of the assessee.

5. On a further appeal preferred by the assessee before the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter called 'the Tribunal'), it was held by the Accountant Member that there was no material on the record to support the claim of the assessee that the impartible estate in respect of which the assessee was assessed as an individual, really belonged to a Hindu undivided family, of which the assessee was the karta. It was also observed by the Accountant Member that the jagir property was an impartible estate and so was the compensation received in lieu thereof and that there was no scope for the assessee to partition his impartible estate by division of the jagir bonds or otherwise on November 4, 1964. It was pointed out that the Wealth-tax Act, 1957, was amended with effect from April 1, 1965, and for the purpose of wealth-tax assessments, the holder of an impartible estate shall be deemed to be an individual in respect of all the property comprised in the estate. However, the Judicial Member rested his decision only on the application of the provisions of Section 4(6) of the Act and it was held by him that although under the general Hindu law, the impartible estate was the Hindu undivided family property of the family of the assessee, the same will have to be treated as an individual property of the assessee by giving effect to the legal fiction enacted in Section 4(6) of the Act. It was pointed out by him that although Section 27(ii) of the Income-tax Act, 1961, related only to house property, Section 4(6) of the Wealth-tax Act related to all the properties comprised in the impartible estate, irrespective of the fact whether they were house properties or other properties.

6. Thereafter, the assessee filed an application under Section 27 of the Act before the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur, seeking a reference of the questions of law arising out of the order of the Tribunal dated February 22, 1974, to this court. As stated above, the Appellate Tribunal has referred the quesiton reproduced above to this court by its order dated September 27, 1974.

7. The law on the subject is well settled that the jagir though impartible was not an absolute property of the jagirdar but it belonged to his Hindu undivided family. It

has been held by this court in Thakur Gopal Singh v. CWT that the compensation payable under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, was also joint family property and was not the self-acquired or separate property of the ex-jagirdar. It was also held in the aforesaid case that the compensation awarded on the resumption of the jagir to the ex-jagirdar or the market price of the compensation on the date of valuation could be assessed for wealth-tax purposes only as that of a Hindu undivided family because the character of the compensation received in lieu of jagir could not be different from that of the jagir itself. After the resumption of the jagir, the jagirdar was paid compensation in the form of jagir bonds. The character of that property in the hands of the jagirdar would undoubtedly be impartible, as was the nature of the jagir, but it was open to the jagirdar and his heirs to renounce the character of impartibility. It was held in Chinnathayi v. Kulasekara Pandiya Naicker, AIR 1952 SC 29, that it was open to a member of a joint Hindu family owning an impartible estate to renounce his right of succession on behalf of himself and his heirs. Their Lordships of the Supreme Court held in the aforesaid case that any such relinquishment must operate for the benefit of all the members of the joint Hindu family and the surrender must be in favour of all the branches oi the family. It may also be observed that in order to establish that an impartible estate had ceased to be joint family property for purposes of succession, it was necessary to prove an intention, express or implied, on the part of the junior members of the family to give up their chance of succeeding to the estate. Thus there must be clear intention to renounce or surrender any interest in the impartible estate or to a relinquishment of the right of succession and an intention to impress upon the impartible estate, the character of separate property.

8. In the present case, on receiving the jagir bonds in lieu of compensation for the resumption of the jagir lands, the character of impartibility was lost, because the sale price of the jagir bonds was partitioned amongst the members of the joint Hindu family. The jagir bonds were undoubtedly joint family property and so was the amount received as a result of the sale thereof. But that amount was partitioned on November 4, 1964, by the assessee among himself, his wife and two minor sons. Thus the character of impartibility having been lost, the shares out of the amount received on sale of the jagir bonds which were transferred to the

wife and two minor sons became their separate property and could not be clubbed together along with the property of the assessee who was assessedas an individual. In Thakur Gopal Singh's case a Bench of this court observed as under in this context (at pp. 369 and 370) :

'In our opinion, by renouncing his rights in the impartible estate and by a similar relinquishment of the right of succession by other heirs who are likely to succeed, the impartible character of the estate is destroyed. We have held above that every member of the family has some interest in the estate and it cannot be said that the other members of the family have no existing interest in the estate though it was impartible and remained in the hands of the senior member of the family. After renouncing his interest in the estate and surrender of the right of succession, the property remained as that of the Hindu undivided family and it can certainly be divided among the members of the family and such a division will not constitute a transfer.'

9. Thus, in the present case, the relinquishment was for the benefit of all the members of the family. The only person who could be interested in retaining the impartible character of the estate was the former jagirdar, the assessee. But the assessee himself, acting as the karta of the joint Hindu family, had effected partition of the amount received on account of sale of the jagir bonds in equal shares among himself, his wife and two minor sons. Thus there is clear evidence that the character of impartibility ceased to exist, as the assessee himself relinquished the right by dividing the price obtained as a result of the sale of the jagir bonds by partition among the members of the joint family.

10. The case of the Revenue is that because of the provisions of Sub-section (6) of Section 4 of the Act, a legal fiction has been created and the impartible estate should be deemed to be the property of the assessee as an individual. Section 4(6), which came into force from April 1, 1965, runs as under :

'For the purposes of this Act, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.'

11. There is no doubt that on account of the legal fiction created by the provisions of Section 4(6) of the Act, the impartible estate, which according to Hindu law is a joint family property, would be treated as the separate property of the holder thereof for the purposes of assessment under the Wealth-tax Act. But such deeming provision could not be made applicable to the present case, inasmuch as much before the provisions of Section 4(6) were introduced, the sale proceeds of the jagir bonds had already been partitioned on November 4, 1964. The character of impartibility was lost and the assets transferred to the wife and sons of the assessee as a result of the aforesaid partition, not only ceased to be part of the impartible estatebut they also ceased to be even part of the Hindu undivided family property. The legal fiction created by the provisions of Section 4(6) could be made applicable only to such properties which still bore the character of impartible estate on April 1, 1965. But, in the present case, the sale proceeds of the jagir bonds had already ceased to bear the character of impartibility long before the provisions of Section 4(6) came into force and so the aforesaid legal fiction could not be attracted. Thus although the assessee was to be assessed as an individual, yet the assets transferred to his wife and minor sons on November 4, 1964, as a result of partition of the sale proceeds of the jagir bonds amongst the members of the joint family could not be included in the wealth of the assessee under Section 4(1)(a) of the Act. It may be pointed out that in the Income-tax Act, there was already a provision raising a legal fiction in respect of income arising out of house property in Section 4(1)(a) of the Indian Income-tax Act, 1922, and thereafter in Section 27(ii) of the Income-tax Act, 1961 ; but there was no similar provision in the Wealth-tax Act until March 31, 1965. As we have already observed above, at the time when the provisions of Section 4(6) were introduced in the Wealth-tax Act with effect from April 1, 1965, there was no impartible estate of the assessee in existence and, therefore, the question of deeming such an estate as a separate property of the holder of the impartible estate could not arise.

12. In this view of the matter, we would answer the question referred to us in the negative and against the Revenue.