

Kerala Financial Corporation Vs. Wealth-tax Officer

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Court : Kerala

Decided On : Mar-24-1970

Reported in : [1971]82ITR477(Ker)

Judge : T.C. Raghavan, Actg. C.J.,; K.K. Mathew and; P. Narayana Pillai, JJ.

Acts : [Wealth Tax Act, 1957](#) - Sections 3

Appeal No. : O.P. No. 2966 of 1968

Appellant : Kerala Financial Corporation

Respondent : Wealth-tax Officer

Advocate for Def. : P.K. Krishnankutty Menon, Adv.

Advocate for Pet/Ap. : K. Chandrasekharan and; T. Chandrasekhara Menon, Adv.

Judgement :

Raghavan, Actg. C.J.

1. The only question for decision in this writ petition is whether the petitioner, the Kerala Financial Corporation, is an 'individual' coming under Section 3 of the Wealth-tax Act for purposes of assessment to wealth-tax. The actual prayer in the petition is to quash exhibit P-5, a letter dated 13th June, 1968, to the corporation calling upon them to file a return on the basis of the added Clause (Ha) to Section 2(h) of the Act. Though the notice was on this basis, since there was no notification as contemplated by Clause (iia), the revenue has taken the stand in their counter-affidavit that the petitioner is an 'individual' and is liable to tax as such. Therefore, we need consider only that question--whether the petitioner is an 'individual'.

2. One or two old decisions of the Bombay High Court, one decision of the Madras High Court and the decision of the Federal Court of Pakistan in Punjab Province Federation of Pakistan, [1957] 32 I.T.R, 198 (Pak.). which has approved a decision of Bombay High Court, have been brought to our notice. The decision of the Pakistan Federal Court has held that after the amendment of the relevant section of the Income-tax Act in 1939, the word 'individual' can only mean natural person. But we do not think it necessary to consider these decisions, because there are more recent decisions of the Supreme Court, of our own High Court and of some of the other High Courts in India, more relevant to the question before us.

3. The argument of the counsel of the petitioner is that the legislature would not have passed an enactment to tax a corporation formed with the funds of the State itself at

a higher rate than a company incorporated under the Companies Act and Clause (iia) of Section 2(h) of the Wealth-tax Act was passed only to tax such corporations which were otherwise not taxable, at a lesser rate along with companies if and when the Central Government passes a general or special order in that behalf. In other words, the argument is that such corporations are not taxable and become taxable at a lower rate along with companies only if the Central Government passes an order as contemplated by Section 2(h)(iia) bringing them within the definition of 'company'. On the other hand, the contention of the revenue is that a corporation coming within Clause (iia) is an 'individual' under Section 3 of the Act and Clause (iia) was enacted for the purpose of giving such a corporation the same relief of a lesser rate of tax as a company had if the Central Government thought it fit to do so by a general or special order.

4. We shall now consider the relevant decisions cited before us. The decisions, barring a Full Bench ruling of this court, are under the Indian Income-tax Act of 1922. In *Commissioner of Income-tax v. Smt. Sodra Devi*, [1957] 32 I.T.R. 615 ; [1958] S.C.R. 1 (S.C.) the Supreme Court has observed that the word 'individual' includes a corporation created by a statute, e.g., a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. In the same decision the Supreme Court has pointed out that the term 'individual' should be given a meaning consistent with the context in which it is used. The Supreme Court has observed that, when Section 16(3) of the Income-tax Act talks of an 'individual', it is only an 'individual' capable of having a wife or minor child or both, i.e., a male human being and not even a female, much less any other entity.

5. On the basis of this latter observation of the Supreme Court, the counsel of the petitioner has contended that, in view of Section 4(1)(a) (i) and (ii), the term 'individual' in Section 3 has to be construed only as a human being, because Clauses (i) and (ii) of Section 4(1)(a) speak of an individual capable of having a spouse or a minor child. This contention does not appear to be correct, because, though 'individual' in these clauses is certainly a human being capable of having a spouse or a minor child, in - Section 3 the term is used in a wider amplitude, the expression used therein being 'every individual, Hindu undivided family and company.'

6. The next decision is again a decision of the Supreme Court, the decision in *Jogendra Nath Naskar v. Commissioner of Income-tax*, [1969] 74 I.T.R. 33 (S.C.). The Supreme Court has observed in this decision that there is no reason why the word 'individual' in Section 3 of the Income-tax Act of 1922 should be restricted to human beings alone and not to juristic entities. The Supreme Court has also observed that a Hindu deity falls within the word 'individual' and can be treated as a unit of assessment under that section.

7. The objection against these decisions by the counsel of the petitioner is that both these decisions relate to the Indian Income-tax Act and not to the Wealth-tax Act with which we are concerned in this case. The next case brought to our notice will meet this objection as well, that is, the Full Bench decision of our High Court in *Mammad Keyi v. Wealth-tax Officer, Calicut*, [1966] 60 I.T.R. 737 (Ker.) [F.B.], where the majority of the judges (Velu Pillai J.--dissenting) have held that the term 'individual' in Section 3 of the Wealth-tax Act includes a Mappilla Marumakkathayam tarwad. It may be noted that the majority of the Full Bench have followed the decision of the Supreme Court in *Banarsi Dass v. Wealth-tax, Officer, Special Circle, Meerut*, [1965] 56 I.T.R. 224 ; [1965] 2 S.C.R. 355 (S.C.) which interpreted the word 'individual' in

entry 86 of List I of the Seventh Schedule of the Constitution, which reads :

'Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies' as to include a group of individuals like a Hindu undivided family.

8. Two or three other decisions have also been brought to our notice ; of course, they do not relate to financial corporations, but relate to road transport corporations similar to financial corporations, constituted under similar statutes. The first decision is Andhra Pradesh State Road Transport Corporation v. Income-tax Officer, Hyderabad, [1963] 47 I.T.R. 101 (A.P.) a decision of the Andhra Pradesh High Court. The Andhra Pradesh High Court has held that the State Road Transport Corporation constituted under the Road Transport Corporations Act is an 'individual' within the meaning of Section 3 of the Indian Income-tax Act and as such is taxable. This decision was taken in appeal before the Supreme Court, and the Supreme Court, after hearing similar other road transport corporations as intervenes, has upheld the decision of the Andhra Pradesh High Court. The decision of the Supreme Court is reported in Andhra Pradesh State Road Transport Corporation v. Income-tax Officer, B-I B-Ward, Hyderabad, [1964] 52 I.T.R. 524 ; 34 Comp. Cas. 473; [1964] 7 S.C.R. 17 (S.C.). The Supreme Court has held that a corporation constituted under the Road Transport Corporation Act, though statutory, has a personality of its own distinct from that of the State or other shareholders. Another similar decision of the Punjab High Court is Pepsu Road Transport Corporation v. Income-tax Officer, [1964] 51 I.T.R. 441 (Punj.) wherein the Punjab High Court has held that the Pepsu Road Transport Corporation is not a department of the State or an agent of the State, but a separate legal entity, and its income is liable to income-tax as the income of an individual.

9. In the face of the aforesaid decisions, there cannot be any doubt that the term 'individual' in sections of the Wealth-tax Act must include a corporation similar to the petitioner constituted under a Central, Provincial or State Act.

10. The writ petition has thus no force, and the same is dismissed, however, without costs.