

**(1967) 11 MP CK 0010**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Civil Case No. 327 of 1964

SINGHAI NATHURAM

SHRINANDANLAL

APPELLANT

Vs

COMMISSIONER OF

WEALTH-TAX, M.P.

RESPONDENT

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**Date of Decision:** Nov. 29, 1967

**Acts Referred:**

- Constitution of India, 1950 - Article 14

**Citation:** (1968) 69 ITR 484

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**Judgement**

Under section 27(1) of the Wealth-tax Act, 1957 (XXVII of 1957), the Income Tax Appellate Tribunal, Bombay, has, at the Instance of the assessee, referred to this court for its opinion the following question of law :

"Whether the Wealth-tax Act in so far as it levies tax on Hindu undivided family, is ultra vires the powers of Parliament and is it discriminatory in imposing a higher burden of tax on members of the Hindu undivided family and consequently void and unenforceable ?"

The question referred is a composite one.

When the case was stated, the Tribunal presumably acted on the dictum laid down by the Judicial Committee of the Privy Council in *Raleigh Investment Co. Ltd. v. Governor-General in Council*, namely, the Act contained effective machinery for the review of the assessment on the grounds of law, including the question whether a provision of the Act was ultra vires. Their Lordships of the Supreme Court have, however, departed from that view in *K.S. Venkataraman & Co. (P.) Ltd. v. State of Madras*. The law is that a tribunal, which is a creature of a statute, cannot question the vires of the provisions under which it functions. We, therefore, hold the reference to be incompetent. Nevertheless, we would like to state our answer to the question referred, as the parties may like to pursue the matter further.

With regard to the first aspect, the legislative competency of the Parliament to enact the measure is now unassailable, in view of the recent pronouncement of their Lordships of the Supreme Court in *Banarsi Dass v. Wealth-tax Officer, Special Circle, Meerut*. Their Lordships have held that the expression "individual" in entry 86 of list 1 of the Seventh Schedule to the Constitution, is comprehensive enough to include the body of individuals known as the Hindu undivided family and that section 3 of the Wealth-tax Act, in so far as it levies a charge of wealth-tax in respect of the net wealth of the Hindu undivided family, is *intra vires* the Parliament because it was competent to legislate on the subject. We would, accordingly, answer the question.

On the second aspect, learned counsel appearing for the assessee contends that the charging section suffers from the vice of discrimination as it discriminates between the group of persons constituting themselves a Hindu undivided family by imposing on them a higher burden of tax by treating them as a unit of taxation and other groups of persons inviting a lower incidence of tax, and for this submission reliance is placed on a decision in a Kerala High Court in *Khan Bahadur C.K. Mammed Keyi v. Wealth-tax Officer, Calicut*. We are unable to accept the contention.

It is now well-settled that although a taxation law cannot claim immunity from the equality clause of the Constitution, nevertheless, the legislature is competent to "classify" persons or properties into different categories and tax them differently (see *Raja Jagannath Baksh Singh v. State of Uttar Pradesh*). It follows, as necessary corollary, that if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates are prescribed for different categories of persons or subjects.

There is a rational classification of wealthy assessee into three distinct categories : "individuals, Hindu undivided family and company", and they are taxed differently because they are differently circumstanced. The joint Hindu family is a peculiarity of Hindu society and it cannot be put in the framework of any of the well-known juridical concepts, namely, individual, person or corporation. A Hindu Undivided family is not like a corporation and it cannot, therefore, be said that it has a legal entity quite distinct and apart from that of those who constitute it. A true concept of a Hindu undivided family was set out by Lord Westbury in *Appoviers* case in the following words which have become classical :

"According to the true notion of an undivided family in Hindu law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share."

The essence of a coparcenary under the Mitakshara School of Hindu law is unity of ownership. As the Privy Council stated in *Katama Nachiar v. Raja of Shivagunga*, there is "community of interest and unity of possession between all the members of the family". (See *Mullas Hindu Law*, 13th edition, page 244). Their traditional characteristics make the members of a Hindu undivided family incomparable with

others. They constitute a class by themselves. The expression "Hindu undivided family" is a familiar one.

Under the Indian Income Tax Act, the Hindu undivided family is assessed to Income Tax and super-tax as a distinct entity or a unit of assessment. The rigour of the law taxing an undivided family just as an individual is mitigated by special provisions granting a higher ceiling of deduction on account of insurance premia and by a larger initial margin of income exempt from Income Tax. The Wealth-tax Act follows the same pattern and the rigours of a higher burden of wealth-tax is mitigated by a larger initial margin of wealth being made exempt from the payment of tax. When different classes of different taxpayers are subjected to different systems of tax in connection with a single type of tax, it cannot be said that the tax manifests a difference in treatment.

The charge that a Hindu undivided family has been picked out for hostile discrimination does not appear to be correct. Other groups of individuals are taxed as "individuals" and the incidence of taxation on them is heavier than that imposed on a Hindu undivided family. The contention that inequality lies on account of difference in the rate of tax prescribed for "individual" and "Hindu undivided family" in Part I of Schedule to section 3 of the Act, is equally unfounded. The individuals "suffer more tax than a Hindu undivided family". It is noteworthy that "individuals" are exempt only for the first lakh, while a Hindu undivided family is more favourably treated because of the exemption up to two lakhs of rupees.

We are aware that a contrary view has been taken by the Kerala High Court in C.K. Mammad Keyi v. Wealth-tax Officer. Suffice it to say that the decision has been set aside by their Lordships of the Supreme Court in First Additional Wealth-tax Officer, Kozhikode v. Mammad Keyi and on remand a Full Bench of the Kerala High Court in Mammad Keyi v. Wealth-tax Officer has held that the Act is not hit by article 14 of the Constitution.

We are of the view that there is no similarity between a Hindu undivided family and other groups of individuals, and it was competent for the Parliament to impose a capital levy on members of Hindu undivided family taken as a unit of taxation and, therefore, the Wealth-tax Act, 1957 (XXVII of 1957), does not offend against article 14 of the Constitution. We would accordingly answer the question.

We accordingly answer the two aspects of the question referred in the manner stated above. The Commissioner shall have costs of this reference. The counsels fee is fixed at Rs. 100.

Question answered accordingly.