(1996) 09 SC CK 0199

Supreme Court of India

Case No: Civil Appeal No. 11276 of 1995 with 6395 to 6401, 6408 to 6410, 6412, 7416 to 7417 and 11256 of 1995

COMMISSIONER OF INCOME TAX,		APPELLANT
	Vs	
N. RAMANATHA REDDIAR (HUF), ETC. ETC.		RESPONDENT

Date of Decision: Sept. 26, 1996

Acts Referred:

- Wealth Tax Act, 1957 - Section 20

Citation: (1997) 139 CTR 480 : (1997) 90 TAXMAN 227

Hon'ble Judges: B. P. JEEVAN REDDY, S. C. SEN JJ.

Bench: Division Bench

Advocate:

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

BY THE COURT :

A common question arises in these appeals, viz., whether it is permissible for the IT Department to make assessment on the respondents herein in the status of HUFs once the Kerala Joint Hindu Family System Abolition Act, 1975 (Act) has been brought into force. The said act was enacted to abolish the joint family system among the Hindus in the State of Kerala. It has been brought into force on and w.e.f. 1st Dec., 1976. Several Division Benches of the Kerala High Court have consistently taken the view that after the commencement of the Act, it is not permissible or open to the IT Department to continue to make assessment in the status of HUF. May be that prior to the commencement of the said act they were being so assessed, but once the joint family system has been statutorily abolished by a competent legislature, it is held, it is not open to make an assessment on such non-existing

assessee any longer.

2. We may refer to the first of the judgments in this behalf which was rendered on 18th Aug., 1981 by the Division Bench of the Kerala High Court (which has been reported in Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar, . The matter arose under the WT Act. It was held that after the commencement of the aforesaid Act, an assessment made on HUF is not valid. The Division Bench referred to the various provisions of the act and held that "it is not a case of the family disrupting by partition. It is a case of statutory extinction of joint families". It has been further observed that by virtue of the provisions of the said Act, the members of HUF holding coparcenery property as on 1st Dec., 1976, shall be deemed to be holding such coparcenery property as tenants-in-common as if a partition had taken place among all the members of that HUF. It is held that since no HUF is in existence, there can be no question of addressing any adult member of the Joint Hindu family in order to serve a notice intended for the family and that no proceedings can be validly taken for assessment of such family. The Bench then considered the co-relation between s. 20 of the WT act and the provisions of the aforesaid Kerala Act. It is observed that s. 20 could not have and did not contemplate a situation like the one arising from the said act and that in any event s. 20 was not available and cannot be applied to continue to treat the HUF as existing for the purpose of assessment. This judgment has been followed by other Division Benches in P.G. Narayanaswamy Vs. Commissioner of Income Tax, , J. Dinesh Kumar Vs. Commissioner of Income Tax, and Dy. Commr. of Agrl. IT vs. R. S. Chidambaram (1994) 209 ITR 531 and by a learned Single Judge in Sreepadam Vs. Commissioner of Wealth Tax and Others, . It is true that a learned Single Judge of Kerala High Court has taken a contrary view in Sankaranarayanan Bhattathiripad, Viroopakshan Bhattathiripad, Raman Bhattathiripad and Valia Aryan Bhattathiripad Vs. Income Tax Officer, , a judgment rendered on 14th March, 1984. The learned Judge held that there is no repugnancy or inconsistency between s. 20 of the WT act and the provisions of the Kerala Act. The learned Judge likened the effect of the Kerala act as bringing about a disruption in status and held that a mere disruption in status of an HUF does not disable the WTO from making an assessment on the HUF until and unless a finding is recorded as contemplated by s. 20 of the WT Act.

3. May be that two views are possible on the question. But, since a consistent view has been taken by the Kerala High Court (except for one dissonant voice) commencing from the year 1981, we are not inclined to take a different view at this distance of time. We do not think it would be advisable to upset the consistent line of authority laid down by the High Court, particularly because the act in question is a State enactment and not an all-India enactment.

Accordingly, these appeals are dismissed. No costs.