IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.8.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

T.C.(A) Nos.600 to 603 of 2008

Smt.Meena V.R.Thondaiman ... Appellant

vs.

The Wealth Tax Officer,
Ward (2), Dindigul. ... Respondent

Tax Case (Appeals) against the order of the Income Tax Appellate Tribunal, Chennai Bench "D", Chennai in W.T.A.Nos.110 to 113/Mds/2003 dated 23.2.2007.

For appellant : Mr.T.N.Seetharaman

For Respondents : Mr.M.Swaminathan

COMMON JUDGMENT
(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

These appeals arise out of a common order passed by the Income Tax Appellate Tribunal, in a batch of four Wealth Tax Appeals in W.T.A.Nos.110 to 113 of 2003 relating to assessment years 1987-88 to 1990-91 respectively.

2. Heard Mr.T.N.Seetharaman, learned counsel appearing for the appellant and Mr.M.Swaminathan, learned Standing Counsel for the Department.

3. One R.Vijayaragunatha Thondaiman, who was the kartha of a Hindu Undivided Family, comprising of himself, his wife and his minor son, died in 1984. The assessing officer initiated Wealth Tax Proceedings against the Hindu Undivided Family and issued notice under section 17 for the assessment years 1987-88 to 1990-91. Since no returns were filed, the assessing officer completed assessment under section 16(5) of the Wealth Tax Act.

4. The appellant filed statutory appeals under section 23(1)(a) of the Wealth Tax Act before the Commissioner of Wealth Tax (Appeals)-II. Two questions primarily arose before the appellate Commissioner for consideration. The first related to the question as to whether the status of a Hindu Undivided Family continued after the death of the kartha. The second question related to the valuation of the property.

5. By a common order passed on 18.11.2002, the Commissioner (Appeals) allowed all the four appeals holding that the property had devolved on the wife and minor son of the deceased kartha as per the provisions of Hindu Succession Act, 1956 and that there was justification for initiation of proceedings as if the Hindu Undivided Family continued. As a consequence of the appellate commissioner's finding fault with the very initiation of the assessment proceedings on the Hindu Undivided Family, the appellate commissioner did not go into the second question relating to valuation.

6. Aggrieved by the orders passed by the appellate Commissioner, the

Revenue filed further appeals before the Tribunal in W.T.A.Nos.110 to 113 of 2003. The Tribunal, by a common order, dated 23.2.2007, allowed the appeals of the Revenue holding that section 171(1) of the Income Tax Act and not section 6 of the Hindu Succession Act, 1956 would govern the status of the Hindu Undivided Family. However, while allowing the appeals, the Tribunal failed to take note of the fact that the aspect of the valuation still remained unanswered. Therefore, the assessee has come up with the above appeals.

7. At the time of admission of the appeals, this court had framed the following questions of law:-

> *"1. Whether the Appellate Tribunal is right in law in holding that the share of the deceased which devolved on his heirs is to be included in the net wealth of the HUF till partition under section 171 is effected?*
>
> *2. Whether the Appellate Tribunal is right in merely reversing the order of the Commissioner (Appeal), when the Commissioner (Appeal) has decided the case only on jurisdiction and not on merits without giving appropriate directions in regard to alternate pleas by the appellant?"*

8. Question No.1:- The first question is as to whether, upon the death of kartha of the Hindu Undivided Family, the continuance of the status of the Hindu Undivided Family would depend upon the operation of the provisions of the Hindu Succession Act, 1956 or the operation of the provisions of the Income Tax Act, 1961. It is fairly conceded by the learned counsel for the appellant that this issue is already covered by a decision of the Supreme

Court in favour of Revenue, in ADDITIONAL COMMISSIONER OF INCOME TAX v MAHARANI RAJ LAXMI DEVI ((1997) 224 ITR 582 (SC)). In the said case, the facts of which are identical to that of the case on hand, the Maharaja of Balrampur (in the case on hand, it is the erstwhile Maharaja of Pudhukottai) was assessed in the status of a Hindu Undivided Family. He died leaving behind him surviving his widow and minor son as in the case on hand. A return of income was filed, by excluding 1/6 share belonging to the minor under section 6 of the Hindu Succession Act, 1956. The Income Tax Officer held that in the absence of an order under section 171 of the Income Tax Act, 1961, accepting a claim for partition, the Hindu Undivided Family continued. The High Court, on a reference, upheld the view of the Tribunal that the case would not be governed by section 171, and the Revenue took the matter on appeal. The Supreme Court, by way of Reference under section 256(1) of the Act, held that though for the purpose of the Hindu Undivided Family, section 6 of the Hindu Succession Act, 1956 would govern the rights of the parties, insofar as the Income Tax Law was concerned, the matter had to be governed by section 171 of the Income Tax Act, 1961.

9. Actually, there is no real conflict between Section 6 of the Hindu Succession Act, 1956 and Section 171(1) of the Income Tax Act, 1961. Section 6 of the Hindu Succession Act states the obvious, by prescribing that the interest of a male Hindu in a mitakshara coparcenary property will devolve by survivorship upon the surviving members of the coparcenary. Section 171(1) stipulates that if a Hindu family is assessed as undivided, it

shall be treated as continuing to be a Hindu undivided family for the purpose of Income Tax Act, except in cases where a finding of partition has been given.

10. While Section 6 of the Hindu Succession Act deals with a coparcenary, Section 171(1) of the Income Tax Act deals with the Hindu undivided family. The Supreme Court pointed out in ***Rohit Chouhan v. Surinder Singh [(2013) 9 SCC 419]*** that coparcenary is a narrower body than the joint Hindu family. A coparcenar has no definite share in the coparcenary property, but he has an undivided interest in it and it enlarges by deaths and diminishes by births in the family. It is not static. Therefore, if a property devolves upon a single person, upon the death of another member of the coparcenary, the survivor takes it absolutely as per Section 6. But, the moment a child is born to him, the property again becomes that of the coparcenary. Section 171 deals with one aspect of this rule. Therefore, the first question of law is answered against the appellant.

11. <u>Question No.2:</u>- Insofar as question No.2 is concerned, it is obvious from the order of the appellate Commissioner that he did not go into the question of valuation for the simple reason that he set aside the assessment on the question of status of the Hindu Undivided Family. But, the Tribunal ought to have, upon the reversal of the said finding, remanded the matter to the Commissioner of Appeals. Since the Tribunal failed to do so, the second question of law has to be answered in favour of the assessee. Accordingly, it is answered in favour of the assessee. The matter shall go

V.RAMASUBRAMANIAN, J,
AND
T.MATHIVANAN, J.

Ssk/kpl

back to the Commissioner of Wealth Tax on the question of valuation. The Tax Case Appeals are disposed of. No costs.

(V.R.S.,J.) (T.M.,J.)
19.8.2015.

Index: Yes/No.
Internet: Yes/No.

ssk/kpl

To

1. Income Tax Appellate Tribunal,
   Chennai Bench "D", Chennai.
2. The Wealth Tax Officer,
   Ward (2), Dindigul.

T.C.(A) Nos.600 to 603 of 2008.