



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WTA 10/2006

% **Date of Decision : 3rd February, 2012.**

+ WTA 10/2006

DIRECTOR OF INCOME TAX Petitioner
Through: Mr.Deepak Chopra and Mr.
Harpreet Singh Ajmani,
Advocates.

versus

APARNA ASHRAM Respondent
Through: Mr.Manu K.Giri, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

These appeals under the Wealth Tax Act, 1957 ('Act', for short) relate to assessment years 1988-89 and 1989-90. By order dated 26.02.2007 the following substantial question of law were admitted for



consideration:

“(i) Whether the provisions of Section 21AA of the Wealth Tax Act, 1957 or Section 21A of the Act are applicable to the facts and circumstances of the case?

(ii) In the event it is held that Section 21AA of the Wealth Tax Act, 1957 is applicable to the facts of the case, whether the Income Tax Appellate Tribunal was justified in holding that the Assessee was not liable to wealth tax?”

2. The third substantial question of law for our consideration is:

“Whether or not the respondent/assessee is liable to pay wealth tax on its net wealth or is it to be examined in view of Section 21AA of the Act?”

3. Section 21AA of the Act was amended w.e.f. 01.04.1989 and after

its amendment, the said provision was as under:-

21AA. Assessment when assets are held by certain associations of persons.—

(1) Where assets chargeable to tax under this Act are held by an association of persons, other than a company or co-operative society, or society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India, and the individual shares of the members of the said association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from such association in the like manner and to the same extent as it



would be leviable upon and recoverable from an individual who is a citizen of India and resident in India for the purposes of this Act,

(2) Where any business or profession carried on by an association of persons referred to in sub-section (1) has been discontinued or where such association of persons is dissolved, the Assessing Officer shall make an assessment of the net wealth of the association of persons as if no such discontinuance or dissolution had taken place and all the provisions of this Act, including the provisions relating to the levy of penalty or any other sum chargeable under any provisions of this Act, so far as may be, shall apply to such assessment.

(3) Without prejudice to the generality of the provisions of sub-section (2), if the Assessing Officer or the Deputy Commissioner (Appeals) or Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such association of persons as is referred to in sub-section (1) is satisfied that the association of persons was guilty of any of the acts specified in section 18 or section 18A, he may impose or direct the imposition of a penalty in accordance with the provisions of the said sections.

(4) Every person who was at the time of such discontinuance or dissolution of member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable,



and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(5) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (4) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be apply accordingly.

Explanation.--Omitted by Finance Act, 1992, wef 1-4-1993.

(The amendment to the subsection 1 inserted w.e.f. 01.04.1989 has been underlined for the sake of convenience.)

4. For the assessment year 1988-89, the insertions made in Section 21AA w.e.f. 01.04.1989 will not be applicable, whereas for the next assessment year i.e. 1989-90, the insertions were made w.e.f. 01.04.1989 will be applicable.

5. The contention raised by the learned counsel for the Revenue is that a society is an association of persons and to this extent, he is right. The term 'association of persons' includes a society or an association, whether



it is registered or not. The Black's Law Dictionary defines the term 'society' as an association or company of persons (generally unincorporated) united together by mutual consent, in order to deliberate, determine and act jointly for some common purpose. Way back in 1963 in *Swami Satichitanand and Ors. versus Additional Income Tax Officer* (1964) 53 ITR 533 (Ker), it was held that tax imposed on a society, though it has been styled as an 'association of persons' is still a tax on the society and not on its members.

6. However, this is not the end of the matter. In view of the stipulation in of Section 21AA of the Act, we have to examine whether the individual shares of the members of the association of persons in the income or assets or both, on the date of its formation or at any time thereafter were indeterminate or unknown. In case, the shares were indeterminate or unknown, the association of persons shall be liable to pay wealth tax. The purpose and object behind Section 21AA stands explained in CBDT Circular No.508 dated 29.06.1989. The first three paragraphs of the said circular read as under:-

“21.1 Under the WT Act, 1957 individuals, and



HUFs are taxable entities but an association of person is not charged to wealth-tax on its net wealth. Where an individual or a HUF is a member of an association of person, the value of the interest of such member in the association of persons is determined in accordance with the provisions of the rule and is includible in the net wealth of the member.

21.2 Instances had come to the notice of the Government where certain assesseees had resorted to the creation of a large number of association of persons without specifically defining the shares of the members therein with a view to avoiding proper tax liability. Under the existing provisions, only the value of the interest of the member in the association which is ascertainable is includible in his net wealth. Accordingly, to the extent the value of the interest of the member in the association cannot be ascertained or is unknown, no wealth-tax is payable by such member in respect thereof.

21.3 In order to counter such attempts at tax avoidance through the medium of multiple associations of persons without defining the shares of the members, the Finance Act has inserted a new s.21AA in the WT Act to provide for assessment in the case of association of persons which do not define the shares of the members in the assets thereof. Sub-s (1) of new s.21AA provides that where assets chargeable to wealth-tax are held by an association of persons (other than a company or a co-operative society) and the individual shares of the members of the said association in income or the assets of the association on the date of its formation or at any



time thereafter, are indeterminate or unknown, wealth-tax will be levied upon and recovered from such association in the like manner and to the same extent as it is leviable upon and recoverable from an individual who is a citizen of India and is resident in India at the rates specified in Part I of Schedule I or at rate of 3 per cent, whichever course is more beneficial to the revenue.”

7. The next question which arises for our consideration is whether the individual shares of the members of the respondent society or income and assets of the respondent/assessee were indeterminate or unknown on the date of its formation or any time thereafter. The Assessing Officer, in the present case, has not examined and dealt with the said aspect in the assessment order. However, both the assessment orders record that there was mis-appropriation of the trust's funds. The Assessing Officer did not specifically invoke Sections 21A or 21AA of the Act. It is also apparent that the departmental representative who argued the matter had neither referred to the Sections 21A/21AA nor did he rely upon the same at the time of arguments.

8 The first Appellate Authority, i.e. Commissioner of Wealth Tax (Appeals), in its order dated 10.02.2005, again did not specifically invoke



or refer to any provisions of the Act. He dealt with other aspects with regard to mis-management of the affairs of the trust/society's funds and its activities.

9. The Income Tax Appellate Tribunal ('tribunal', for short), in the impugned order dated 13.01.2006, has referred the Section 21AA and has, inter alia held as under:-

“In the light of the above it is clear that members do not have a share in the income or assets of the association either on the date of its formation or at any time thereafter. In view of the above the society is not chargeable with Wealth Tax. We may also point out that the charge of Wealth Tax u/s 3 of the Wealth Tax Act is only of individuals/HUFs and company. S.21AA only ropes in an AOP for being assessed under the Wealth Tax Act but subject to the rider that it's members should have the income or assets or both of the association on the date of its formation or at any time thereafter. Since the second condition is not satisfied the assessee cannot be considered as falling within the ambit of S.21AA of the Act. The assessment made for A.Y.1988-89 is therefore cancelled.”

10. While doing so, the Tribunal has relied upon the decision of the Andhra Pradesh High Court in the case of **Commissioner of Wealth Tax versus George Club** (1991) 191 ITR 368. In this decision, the Andhra



Pradesh High Court has, inter alia, held as under:-

“The club is registered under the Societies Registration Act, 1860.

We shall assume, for the sake of argument, that a club is an association of persons within the meaning of section 21AA(1). The further question, however, is whether it can be said that “the individual shares of the members of the said association in the income or assets or both of the members of the said association in the income or assets or both of the said association on the date of its formation or at any time thereafter are indeterminate or unknown” within the meaning of the said section. In short, the question is whether it can be said that, in the case of a club registered under the Societies Registration Act, the members can be said to be holding shares either in the income or in the assets or in both of the club. We do not think so. No individual member holds a share in the case of such a club. Neither does he have a share in the income, or in the assets. Section 14 of the Societies Registration Act says that, upon the dissolution of a society registered under the said Act, if any assets remain after satisfying all its debts and liabilities, the same shall not be paid to or distributed among the members of the society or any of them, but shall be given to some other society. In this view of the matter, it is difficult to say that a member of a club has a share either in the income or assets of the club.

We may also refer in this behalf to the decision of



this court in Deccan Wine and General v. CIT (1977) 106 ITR 111, where this court set out the distinguishing features of an association of persons vis-à-vis a body of individuals. It was held that, for constituting an association of persons, the association must be engaged in an income producing activity. It is difficult to say that a club is engaged in an income-producing activity. In this behalf, the Tribunal referred to the Board's Circular No.320 dated January 11,1982 [See(1982) 134 ITR (St) 166], no doubt issued under section 167A of the 1961 Act, clarifying that members of such clubs do not have any share in the income or assets of such association. Since there is no definition of association of persons under the 1957 Act, we must understand the said expression in the same sense in which it is used in the 1961 Act. If so, the principle of the Board's circular applies with equal force in the case of an association of persons under this Act."

11. In accordance with the above view taken by Andhra Pradesh High Court, it can be said that the assets of society, registered under the Societies Registration Act, 1860, belong to the society/association itself and the members of the society/association do not have any right in the income or assets of the association. Shares of the members in the income or assets is not, therefore, indeterminate or unknown because they are nil or zero. Thus, in case of a society registered under the Societies



Registration Act, 1860, wealth tax is not payable under Section 21AA as an association of person.

12. The Karnataka High Court in *Commissioner of Wealth Tax versus Chikmagalur Club* (2007) 290 ITR 522 has, however, taken a contrary view. In this case, it has been held that the members of an association are the owners of the assets and the individual shares of the members in the income, in the assets or in both of the association on the date of formation or any time thereafter, being nil or zero are indeterminable or unknown.

Findings recorded by the Karnataka High Court reads as under:-

“In reference proceedings, namely, T. R. C. No. 120 of 1998 (old T. R. C. Nos. 120-123 of 1998), we are primarily concerned with the assessment years, namely, 1981-82, 1982-83 and 1983-84. In fact, for the assessment year 1980-81, the first appellate authority has given relief to the assessee by cancelling the assessment order passed by the Wealth-tax Officer under section 16(3) of the Wealth-tax Act, treating the status of the assessee as an “individual”. However, he has confirmed the orders of assessment passed for the assessment years 1981-82 to 1983-84, keeping in view the amendment effected to the Wealth-tax Act by the Finance Act, 1981, by which amendment section 21AA is inserted with effect from April 1, 1981, which is applicable for and from the assessment year 1981-82. Now that the scope of



section 21AA of the Act has been explained by the apex court in Ellis Bridge Gymkhana's case [1998] 229 ITR 1 we need not dilate much on the scope and interpretation of the said section. It would be suffice to notice that assessment as an association of persons can be made only, when the individual shares of the members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown can be subjected to wealth-tax. In the present case, the assessee is a club registered under the provisions of the Karnataka Societies Registration Act and had declared "nil" wealth and had claimed that it is not susceptible to the provisions of the Wealth-tax Act, since it is only an association of persons providing recreation facilities to its members. This claim, in our view, is rightly rejected by both the assessing authority as well as by the first appellate authority on the ground that the assessee is an association of persons and the members are the owners of the assets and the individual shares of the members as the owners of the assets and the individual shares of the members in the income or assets or both of the association on the date of formation or any time thereafter are indeterminate or unknown and accordingly, has subjected the assessee to wealth-tax. The findings and the conclusion reached both by the assessing authority and the first appellate authority are in consonance with the observations made by the apex court in the case of Ellis Bridge Gymkhana case [1998] 229 ITR 1, though the said decision was not available, when they passed their orders of



assessments and its confirmation by the first appellate authority in the appeals filed by the assessee. In our opinion, the contrary view expressed by the Tribunal cannot be accepted for the assessment years 1981-82 to 1983-84. Accordingly, we answer the question of law referred to us for our opinion that the assessee is not exigible to wealth-tax for the assessment year 1980-81 and is exigible for Wealth-tax Act for and from the assessment years 1981-82 to 1983-84.”

13. Karnataka High Court has referred to the decision of the Supreme Court in the case of *CWT Vs. Ellis Bridge Gymkhana* (1998) 229 ITR 1 (SC). In the said case, the Supreme Court examined whether an association of persons was liable for payment of wealth tax as an individual, under the charging Section 3 of the Act. The Supreme Court noticed that Section 3 of the Act refers to an individual, a Hindu Undivided Family and a company and not to an association of persons. (We may, however, note that w.e.f. 01.04.1960 levy of wealth tax on companies was suspended and was partially revived in a limited way by way of Section 40 of Finance Act, 1983). The Supreme Court noticed definition of the term person in the Income Tax Act, 1922 and Section 2 (31) of the Income Tax Act, 1961, Gift Act, 1958 etc., and referred to the



circular of the CBDT dated 29.06.1989. Thereafter, the Supreme Court in

Ellis Bridge Gymkhana (supra) has observed as under:-

“33. It will appear from this notification that the Central Board of Direct Taxes clearly recognised that the charge of wealth tax was on individuals and Hindu Undivided Families and not on any other body of individuals or association of persons. Section 21AA has been introduced to prevent evasion of tax. In a normal case, in assessment of an individual, his wealth from every source will be added up and computed in accordance with provisions of the Wealth Tax Act to arrive at the net wealth which has to be taxed. So, if an individual has any interest in a firm or any other noncorporate body, then his interest in those bodies or associations will be added up in his wealth. It is only where such addition is not possible because the snares of the individual in a body holding property is unknown or indeterminate, resort will be taken to Section 21AA and association of individuals will be taxed as association of persons.

34. In the instant case, we are concerned with Assessment Years 1970-71 to 1977-78. Section 21AA was not in force during the relevant assessment period. There was no way that a club could be assessed as an association of persons in these assessment years. It is not even the case of the Revenue that individual member's interest in the club was indeterminate or unknown.”

14. The Supreme Court in **Ellis Bridge Gymkhana** (supra) has made



reference to Section 21AA introduced w.e.f. 01.04.1981 by Finance Act, 1981 and held that the said provision were inserted to bring to tax the net wealth of the association of persons where the individual shares of the members were unknown or indeterminate. The Supreme Court held:-

“Moreover, the Wealth Tax Assessment of an individual will involve computation of "net wealth". All the assets belonging to an individual will have to be included. If an individual is a partner of a firm or member of an association of persons, the value of his share in these entities will have to be included in his individual assessment. We have already examined the scheme of the Wealth Tax Act and also the object behind the insertion of Section 21AA. All these will go to show, the legislature deliberately excluded a firm or an association of persons from the charge of wealth tax and the word "individual" in the charging section cannot be stretched to include entities which had been deliberately left out of the charge.”

15. It is not clear from the judgment whether the club in question was an association/society registered under the Societies Registration Act, 1860 or any other enactment. The Supreme Court had referred to a judgment of the Kerala High Court in *Commission of Wealth Tax versus*



Mullam Club (1991) 191 ITR 370 (Ker.) which in turn refers to several decisions of the High Court of Bombay, Calcutta and Gujarat and one decision of the Madras High Court in the case of *Coimbatore Club versus Wealth Tax Officer* (1985) 153 ITR 172. We have examined the decision of Madras High Court. This was a case of club, which was not registered under any law. It appears that the club in question before the Kerala High Court was also unregistered. The Supreme Court approved the view taken by the High Court of Bombay, Kerala, Calcutta and Gujarat and did not accept the view taken by the Madras High Court. They rejected the contentions that the term ‘individual’, in Section 3 of the Act, would include an association of persons. Keeping in view the aforesaid position, we would prefer to accept the view taken by the Andhra Pradesh High Court in the case of *George Club* (supra).

16. For the assessment year 1989-90, there another reason why the respondent/assessee must succeed. We have quoted above the relevant portion of circular No. 508 dated 29.06.1981. The circular was issued prior to the to the amendment dated 01.04.1989 wherein the words ‘or



society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India' were added after the words 'company or cooperative society' were inserted. The effect thereof was that a company or a cooperative society or a society registered under the Registration Act went outside the preview and ambit of Section 21AA. This is clear when we refer to paragraph 21.3 of the circular no. 508 dated 29.06.1981 in which it has observed that Section 21AA did not apply to a company or a cooperative society. To this category/list, another addition was made in the form of a society under the Societies Registration Act, 1860. Thus a society registered under the Societies Registration Act, 1860 stood excluded by insertion made w. e. f. 01.04.1989

17. Learned counsel for the revenue had drawn our attention to circular no. 550 dated 01.01.1990, wherein in paragraphs 31.1 and 31.2 it has been observed as under:-

“31.1 Under the existing provisions of s. 21AA of the WT Act, in the case of an association of persons including a society registered under the Societies Registration Act, 1860, wealth-tax is payable either at the normal rates or at the rate



of three per cent, whichever is more beneficial to the Revenue. Under s. 167B of the IT Act, a society registered under the Societies Registration Act, 1860, has been excluded from the purview of that section which provides for taxation of association of persons at the maximum marginal rate. As a measure of rationalization, the Finance Act has excluded societies registered under the Societies Registration Act, 1860, from the purview of S. 21AA of the WT Act, 1957.”

31.2 This amendment will come into force w.e.f. 1st April, 1989, and will, accordingly, apply in relation to the asst. yr. 1989-90 and subsequent years.

18. It is not possible to accept the said interpretation. In fact, this circular is contrary to the earlier circular No.508 dated 29.06.1981. When we examine a somewhat similar provision i.e. Section 167B of the Income Tax Act, 1961, it becomes clear that the intention of the legislature was not to include within its ambit a society registered under the Societies Registration Act, 1860, but to exclude it. Further, the interpretation placed by the Revenue cannot be accepted as it would lead to further anomalies. As noticed above by the Finance Act, 1983, wealth tax was partly re-imposed on some companies w.e.f. 01.04.1983. In case the plea of the Revenue is accepted, they would be a conflict between Section



21AA and then Section 40 of the Finance Act, 1984, which reintroduced wealth tax on companies in a limited manner. If the interpretation of the Revenue is accepted, all companies/societies were always liable to pay wealth tax since 1981, where the member's share in the income or assets, or both, was indeterminate or unknown. Revenue has never contended or made any such submission before the Supreme Court in *Ellis Bridge Gymkhana* (supra). The following observations by the Supreme Court in *Ellis Bridge Gymkhana* (supra) support the view/ ratio expressed by the Andhra Pradesh High Court in *George Club* (supra):

“17. It will be seen that assessment as an association of persons can be made only when the individual shares of members of the association in the income or assets or both of the association on the date of its formation or any time thereafter are indeterminate or unknown. It is only in such an eventuality that an assessment can be made on an association of persons, otherwise not. Sub-section (2) of Section 21AA deals with cases of such associations as mentioned in Sub-section (1). That means only association of persons in which individual shares of the members were unknown or indeterminate can be subjected to wealth tax. Sub-section (3) also deals with association of persons referred to in Sub-section (1). Sub-sections (4) and (5) deal with some consequences which will follow the members of an association of persons spoken



of in Sub-section (1) in the case of discontinuance or dissolution.

18. It is not the case of the Revenue before us that the members of the club were unknown or that their interest in the assets of the club was indeterminate. In fact, no argument was advanced on this aspect of the matter in any of the cases that have come for hearing along with this case. In fact, a list of members of the club should be readily available. In any event, there is no finding of fact that particulars of members were unknown or their interest in the assets of the club were indeterminate.”

19. Learned counsel for the Revenue had submitted that a society registered under the Societies Registration Act, 1860, is an individual and it is a separate juristic entity. He has relied upon the ***CIT Vs. Salem District Urban Bank Ltd.*** (1940) 8 ITR 269 (Mad.). Thus a registered society is an individual and its net wealth was always taxable.

20. This judgment was relied upon by the Madras High Court in the case of ***George Club*** (supra) was not affirmed and stands overruled by the Supreme Court in the case of ***Ellis Bridge Gymkhana*** (supra). It is noticed that in the case of Bombay High Court in ***Orient Club versus Commissioner of Wealth Tax*** (1982) 136 ITR 697, approved by the



Supreme Court in *Ellis Bridge Gymkhana* (supra), the club in question was registered under the Societies Registration Act. The view of the Bombay High Court was upheld and accepted by the Supreme Court. The submission is contrary to the ratio in *Ellis Bridge Gymkhana* (supra).

21. In view of the aforesaid position the question of law are answered in affirmative and against the Revenue. No order as to costs.

SANJIV KHANNA, J

R.V.EASWAR, J

FEBRUARY 03, 2012
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