(1984) 03 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1468 of 1980

Arun S. Meher APPELLANT

Vs

M.A. Twigg, Commissioner of Wealth Tax RESPONDENT

Date of Decision : 12-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 16A, 16A(6), 24, 25, 25(2)

Citation : (1984) 43 CTR 19 : (1985) 153 ITR 131 : (1984) 19 TAXMAN 431

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

Pratap, J.—This petition under article 226 of the Constitution relates to proceedings under the W.T. Act, 1957 (hereinafter "the Act").

2. Return of wealth for the assessment year 1977-78 was filed by the petitioner on November 29, 1977, and the return of wealth for the assessment year 1978-79 was filed on October 24, 1978.

3. For the assessment year 1977-78, assessment order was passed by the WTO on April 28, 1979, and of the assessment year 1978-79, the assessment order was passed on September, 1979. In the assessment order dated September 19, 1979, for the year 1978-79, it was categorically stated as follows :

"After discussion, the value declared is subject to rectification. It is agreed by the assessee''s representative that if no reference to the Valuation Officer u/s 16A of the W.T. Act, 1957, the value of the property is determined at a figure different from what is declared, the assessment will be rectified accordingly."

4. It was subject to the above that the net wealth was determined and the assessment order passed.

5. The WTO made three references to the Valuation Officer. Two of these references were after making the assessment orders and one on the very day on

which the assessment order was made. After hearing the assessee, the Valuation Officer made his report. Subsequently, the Commissioner issued to the assessee a notice under s. 25 of the Act and after hearing him made the impugned order under s. 25(2) concluding as follows :

"..... I, therefore, set aside both the assessments with a direction to the Wealth-tax Officer to revise the same taking into account the provisions of section 16A(6) of the Wealth-tax Act and to complete the assessments in conformity with the estimate of the Valuation Officer in respect of the immovable properties referred to in the foregoing part of this order."

6. It is the legality and validity of this order that is challenged in this petition.

7. Mr. V. J. Pandit, the learned counsel for the petitioner, sought to advance contentions on the merits of the impugned order. Mr. R. J. Joshi, the learned counsel for the respondents, however, raised a preliminary objection, viz., that since the impugned order was an appealable order under s. 26 of the Act, this court should not interfere under article 226. That an appeal lay against the impugned order was not disputed by Mr. Pandit, the learned counsel for the petitioner. Now, when there is statutory appeal provided to the aggrieved party, this court would ordinarily not interfere under article 226 of the Constitution, unless exceptional circumstances are made out. Here, no such exceptional circumstances are made out. On this short ground itself, therefore, I am not inclined to interfere.

8. Mr. Pandit contended that the appeal which would now be filed would be barred by limitation. Ex facie that it is so. The period of appeal under s. 26(1) of the Act is sixty days from the date on which the order is communicated to the assessee. However, under sub-s. (3) of s. 24 of the Act (which provision, by virtue of sub-s. (3) of s. 26, would apply to appeal under s. 26(1) of the Act), the Appellate Tribunal is empowered to admit an appeal if it is satisfied that there was sufficient cause for not presenting the same within that period. Here, the petitioner instead of filing an appeal before the Appellate Tribunal filed this petition under article 226 of the Constitution. This step the petitioner took obviously under legal advice and the legal advice must, on the facts and in the circumstances, be presumed to have been given bona fide. In all the circumstances, this is a fit case where the Appellate Tribunal may condone the delay in the interest of justice, provided, however, the petitioner acts diligently in filing the appeal. In that behalf, I put the petitioner to terms, viz., he should file the appeal latest by July 31, 1984.

9. As I am upholding the preliminary objection, it is needless to go into merits of the contentions sought to be advanced before this court by Mr. Pandit. It would be open to the assessee to raise in the likely appeal under s. 26 of the Act all such contentions as he may be advised against the impugned order under s. 25(2) of the Act.

10. In this view of the matter, this petition is dismissed not on merits but in view

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of the alternative remedy available to the petitioner.

11. Rule stands discharged but, in the circumstances, with no order as to costs.

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