(1993) 10 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 4445 of 1982, October 27, 1993.

BALKRISHNA HARIVALLABHDAS (HUF) — APPELLANT

Vs

WEALTH-TAX OFFICER AND ANOTHER. — RESPONDENT

Date of Decision : 27-10-1993

Acts Referred:
Wealth Tax Act, 1957 — Section 16(3), 16A, 16A(5), 2(m)(ii), 25(2)

Citation : (1995) 118 CTR 78 : (1995) 211 ITR 246

Hon'ble Judges : B. C. Patel, J

Bench : Division Bench

Judgement

B. C. PATEL J. - The petitioner by filing this petition has prayed to quash the reference made by the Wealth-tax Officer to the District Valuation Officer.

The petitioner, a Hindu undivided family, is an assessee under the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"). Respondent No. 1 is the Wealth-tax Officer and respondent No. 2 is the district Valuation Officer, under the provisions of the Act. Respondent No. 2, the Valuation Officer, is responsible for valuing immovable properties at the instance of the Wealth-tax Officer. The petitioner had immovable property of land with a building thereon. The Wealth-tax Officer, somewhere in 1974, took up the assessment of the immovable property of the petitioner for the assessment years 1966-67 to 1973-74 under the Act and referred the matter for valuation of the property to the district Valuation Officer. After following the procedure laid down under the Act, the District Valuation Officer passed an order u/s 16A(5), fixing the market value of the property, vide annexure "C". The Wealth-tax Officer passed an assessment order u/s 16(3) of the Act adopting the fair market value fixed by the District Valuation Officer for each of the years, vide annexures "E-1" to "E-7", all dated February 28, 1977. The Commissioner of Wealth-tax passed an order u/s 25(2) of the Act, as on examining the records of the proceedings under the Act for the assessment year 1966-67, it was noticed that there was an increase in the value of the building due to additional construction to the tune of Rs. 1,70,322 and purchase of furniture and fixtures worth Rs. 1,24,411. This increase in the value of assets has been attributed to the increase in the amount of loan in the account of Harivallabhdas Kalidas (Hindu undivided family) to which account an amount of Rs. 48,622 has been paid by way of interest. As per the order, it appears that the Wealth-tax Officer while computing the net wealth, allowed exemption in respect of both these assets. The amount of debt has been utilised for acquiring these assets and, therefore, it should have been disallowed as observed by the Commissioner. The Commissioner, therefore, was of the view that the order dated February 28, 1977, passed by the Wealth-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. A notice was therefore issued, and after hearing, the commissioner of Wealth-tax set aside the order of assessment and directed the Wealth-tax Officer to review the assessment in accordance with law. The orders passed ?by the commissioner of Wealth-tax are annexed to the petition at annexures "H-1" to "H-7". Against these orders, the petitioner preferred appeals to the Tribunal. However, by a composite order at annexure "J", the Tribunal rejected the appeals on May 30, 1988. The Tribunal observed that :

"The resultant effect of the Commissioners order is that in view of the basis obtaining as above, an enquiry into the investment in non-taxable assessment is called for. It is open to the Wealth-tax Officer after hearing the assessee, who would be given all opportunity to present his case to come to the conclusion one way or the other on the above fact of investment. The assessee, therefore, cannot be said to have been aggrieved at all."

It appears that thereafter the Wealth-tax Officer made a fresh reference to the District Valuation Officer and the district Valuation Officer addressed a letter to the petitioner at annexure "Q" on July 15, 1982, informing that the Wealth-tax Officer has clarified that the assessment has been set aside by the commissioner of Wealth-tax and that the matter of valuation is thus open for consideration. The fresh reference as well as further action in consequence thereof are challenged in the petition.

The learned advocate for the petitioner submitted that u/s 16A of the Act, for the purpose of making an assessment, the Assessing Officer may refer the valuation of any asset to a Valuation Officer. It is further submitted that on receipt of the order passed by the Valuation Officer under sub-section (3) or sub-section (5) of section 16A, the Assessing Officer, so far as the valuation of the asset of the property is concerned, has to proceed in conformity with the estimate of the Valuation Officer. The learned advocate submitted that in the instant case, the Commissioner of Wealth-tax has not set aside the valuation made by the Valuation Officer. Therefore, there is no question of a fresh reference or reopening the assessment, but on the contrary, as per mandate of the Legislature, the Assessing Officer had to complete the assessment as the estimate of the Valuation Officer and no further. In other words, the Assessing Officer is bound by the report submitted by the Valuation Officer. If the order passed by the commissioner of Wealth-tax, is perused, it becomes very clear that notice was issued to the assessee directing the Wealth-tax Officer to recompute the net wealth as mentioned in the order. There is a reference to the increase in the value of the building due to additional construction to the tune of Rs. 1,70,322 and purchase of furniture and fixtures worth Rs. 1,24,411, and nothing more. After considering the provisions, the commissioner of Wealth-tax set aside the order of assessment and directed the Wealth-tax Officer to reassess in accordance with law. It is required to be noted that the report of the Valuation Officer is untouched and rightly, the question was of increase in the Wealth for the year 1966-67 as noticed and the same is referred to in the order. The Wealth-tax Officer, while computing the net wealth, granted exemption in respect of ? both these assets. According to the order passed by the commissioner of Wealth-tax, as the amount has been utilised for acquiring exempted assets and such a debt is covered u/s 2(m)(ii) of the Act, the same should have been disallowed. Therefore, the limited question was whether this item should be allowed or disallowed and nothing more.

According to the learned advocate for the petitioner, even if the order of the Tribunal is read, it is very clear that the submissions with regard to investment in non-taxable items has been rejected and the inquiry was meant for a limited purpose and that too for the investment in non-taxable assets only. Learned counsel submitted that in the order there is nothing which permits making of a fresh reference to the district Valuation Office by the Wealth-tax Officer. The order u/s 16A(5) of the Wealth-tax Act which has been passed by the Wealth-tax Officer has become final and on that basis the order of assessment for various years have been passed by the Assessing Officer. Two items which were allowed by the Wealth-tax Officer while computing are disallowed by these orders. Therefore, what the Wealth-tax Officer is now required to do it to make the assessment keeping in mind the finding about these two items only and nothing further. In view of this, it is clear that the fresh reference made by the Wealth-tax Officer to the District Valuation Officer and in consequence the letter issued by the District Valuation Officer at annexure "Q", dated July 15, 1982, informing the petitioner that the case is referred for revaluation by the Wealth-tax Officer and such other notices are required to be quashed and set aside. As a consequence of this, further proceeding in so far as they relate to the fresh reference to the Valuation Officer are quashed and set aside. In the result, the petition is allowed with no order as to costs.

