(1995) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Wealth-tax Case No. 32 of 1990

Commissioner of Income Tax — APPELLANT

Vs

Maddi Seetha Devi — RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:
Wealth Tax Act, 1957 — Section 16, 16A, 18A, 23, 24

Citation : (1995) 2 ALT 251 : (1995) 125 CTR 304 : (1995) 214 ITR 297

Hon'ble Judges : S.S. Mohammed Quadri, J;S. Parvatha Rao, J

Bench : Division Bench

Advocate : Habeeb Ansari, for the Appellant; M.J. Swamy, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—In this application filed u/s 27(3) of the Wealth-tax Act, 1957 (for short, "the Act"), the Revenue seeks a direction to the Income Tax Appellate Tribunal to refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that there was no mistake apparent from the record capable of rectification u/s 35 of the Wealth-tax Act ?"

2. The question arises in the following circumstances : The original assessment of the assessee for the year 1983-84 was completed by determining the value of the shares under rule 1D of the Wealth-tax Rules. The value of the shares determined was at the rate of Rs. 693.75 per share. The order of assessment was passed on December 21, 1987. Purporting to exercise jurisdiction u/s 35 of the Wealth-tax Act, the Wealth-tax Officer corrected the value of shares from Rs. 693.75 to Rs. 754.92, by order dated February 29, 1988. Before the said order was passed, the Wealth-tax Officer issued a notice to the assessee u/s 35 of the Wealth-tax Act. In response to the notice, the assessee took the plea that in the earlier assessment year, the Wealth-tax Officer had held that the correct value of the share was Rs. 693.75 and, therefore, there was no mistake apparent from

the record to be corrected u/s 35 of the Act. However, overruling the objection raised by the assessee, the Wealth-tax Officer passed the order referred to above. On appeal to the Commissioner of Wealth-tax (Appeals), the said order of the Wealth-tax Officer was confirmed. On further appeal to the Tribunal, it was held that there was no mistake apparent from the record to justify the exercise of jurisdiction u/s 35 of the Wealth-tax Act. The Tribunal thus allowed the appeal on January 4, 1990, and also rejected the application of the Revenue to refer the abovesaid question. Hence, the present application.

3. Sri Habeeb Ansari, learned standing counsel, appearing for the Revenue, strenuously contends that there is a question of law in this case and, therefore, the Tribunal ought to have referred the same for opinion of this court. Shri D. Manmohan, learned counsel appearing for the assessee, however, resists this submission and argues that on the day when the order was passed by the Wealth-tax Officer, the Tribunal''s judgment, which was binding on the Wealth-tax Officer, was in existence, which justified the original assessment and, therefore, there was no basis to invoke section 35 of the Act.

4. The short question that arises for consideration is whether there was any mistake apparent from the record in so far as the original order of assessment for the year 1983-84 is concerned.

5. Now we may read section 35 of the Act, in so far as it is relevant for our purpose, which runs as follows :

"35. Rectification of mistakes. - (1) With a view to rectifying any mistake apparent from the record -

(a) the Assessing Officer may amend any order of assessment or of refund or any other order passed by him;

(aa) a wealth-tax authority may amend any intimation sent by it under sub-section (i) of section 16 or enhance or reduce the amount of refund granted by it under that sub-section;

(aaa) the Valuation Officer may amend any order passed by him u/s 16A;

(b) the Deputy Director or Deputy Commissioner or Director or Commissioner or Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him u/s 18A;

(c) the Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him u/s 23;

(d) the Commissioner may amend any order passed by him u/s 25;

(e) the Appellate Tribunal may amend any order passed by it u/s 24.. . ."

6. From a plain reading of the above provision, it is evident that the various authorities named therein, are empowered to amend the orders specified therein with a view to rectifying any mistake apparent from the record. It is only to

rectify a mistake apparent from the record of the nature of a clerical or arithmetical mistake that power u/s 35 can be invoked; mistakes of other nature cannot be corrected under this section. Under the guise of this power a review or reconsideration of the facts determined earlier or change of decision on a debatable question of law is not permissible.

7. In T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, , the Supreme Court at Page 53 laid down as follows :

". . . . A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions."

8. Here under the original order of assessment, the value of shares in Messrs. Maddi Lakshmaiah and Co. (P.) Ltd., Chilakaluripet, was fixed at Rs. 693.75. In the case of the same assessee for the earlier assessment year, the Tribunal also fixed the value at the same rate. That order of the Tribunal which was binding on the Revenue when the power u/s 35 of the Act was invoked was, however, reversed by this court in Commissioner of Income Tax Vs. M. Lakshmaiah and Another, . It is urged that the order passed in exercise of the power u/s 35 of the Act can be supported from that judgment which shows that there was a mistake apparent from the record. That judgment came after about ten days of the rectification order passed by the Wealth-tax Officer. Inasmuch as the judgment of the High Court in Commissioner of Income Tax Vs. M. Lakshmaiah and Another, , was not delivered by the date of the exercise of the jurisdiction u/s 35 of the Act, in our view, the Tribunal is right in holding that the correction of mistake cannot be justified and supported by a subsequent judgment.

9. In support of our view, we can usefully refer to the judgment of our High Court in CIT v. K. Venkateswar Rao [1988] 169 ITR 330. In that case, the assessee paid a part of advance tax of Rs. 3,794 for the assessment year 1973-74 on March 27, 1973. While completing the original assessment, the Income Tax Officer treated that payment as advance tax payment and allowed interest u/s 214 of the Income Tax Act; 1961. Later, the Income Tax Officer realised that the said payment of advance tax was made after the prescribed due date. However, the Income Tax Officer passed the order u/s 154 of the Income Tax Act, 1961 (which is analogous to section 35 of the Wealth-tax Act), rectifying the mistake and withdrawing the interest allowed u/s 214 of the Income Tax Act, 1961. The Tribunal held that the exercise of jurisdiction by the Income Tax Officer u/s 154 of the Act was improper. On a reference to the High Court, the Revenue contended that as the High Court had held in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, that payment of advance tax by the assessee subsequent to the due date could not be treated as advance tax so as to be entitled to claim interest u/s 214, the order of rectification passed by the Income Tax Officer withdrawing interest was valid. Rejecting that contention our High Court held that the decision of this court in Kangundi Industrial Works (P.) Ltd. Vs. Income Tax Officer, A-Ward, was rendered on March 6, 1979, but the

jurisdiction u/s 154 was exercised by the Income Tax Officer on August 30, 1977, long before the said judgment of the High Court, so the proceedings initiated by the Income Tax Officer for rectification of mistake were not with reference to the judgment of the High Court and on the date when the Income Tax Officer exercised his jurisdiction u/s 154, the matter was not free from argument or debate, therefore, it could not be said that there was a mistake apparent from the record.

10. For the above reasons, we are satisfied that the decision of the Tribunal is correct. The Tribunal has not committed any error warranting our direction u/s 27(3) of the Wealth-tax Act, 1957. The question sought to be referred is not a referable question of law. The wealth-tax case is, therefore, dismissed but in the circumstances of the case there shall be no order as to costs.