(2009) 07 AHC CK 0085

In the Allahabad High Court

Commissioner of Wealth Tax and Another APPELLANT

Vs

Smt. Chandan RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Citation : (2009) 319 ITR 327

Hon'ble Judges : S.K. Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present wealth-tax appeal filed u/s 27A of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") has been admitted on the sole substantial question of law framed in the memo of appeal:

Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in holding the appeal filed by the Department against the order of learned Commissioner of Wealth-tax (Appeals) passed on October 30, 1992, as infructuous without considering the merits, facts and material available on records, as while passing the fresh assessment order on January 30, 1992, the Assessing Officer had brought to tax further amounts of compensation, additional compensation and solatium, etc., on the basis of these received as a result of the decision dated May 31, 1986, of the Additional District Judge, which were not assessed in the original assessment order, appeal in respect of which was decided by the learned Income Tax Appellate Tribunal on January 31, 1994 ?

2. As the point and the parties in these three appeals are one and the same and have arisen out of common judgment and order dated May 21, 1999, passed by the Tribunal, as such they are being disposed of by a common order.

3. Background facts in a nutshell essentially are as follows:

4. All these appeals are directed against the common order dated May 21, 1999,

passed by the Tribunal for the assessment years 1985-86 to 1987-88. The assessment order was passed by the Assessing Authority on March 30, 1988, wherein the value of right to receive compensation was determined. The said order was set aside by the first appellate authority by order dated July 21, 1989, and it was remanded to the Assessing Officer. The order dated July 21, 1989, passed by the first appellate authority was challenged before the Tribunal and the Tribunal, vide order dated January 31, 1994, did not approve the order of the first appellate authority and set aside the same. At this stage, it will be useful to reproduce the relevant extract of the order dated January 31, 1994, passed by the Tribunal, which is as follows:

We have heard both the parties carefully and have also gone through the relevant record. In our view, the learned, Commissioner of Income Tax (Appeals) erred in directing the Assessing Officer to make the award dated May, 1986, of the ADJ as the basis for determining the value of right to receive additional compensation for the purposes of assessee/s wealth. The direction of the learned Commissioner of Wealth-tax (Appeals) is contrary to the ratio of the hon''ble Supreme Court in the case of Chinoy''s case that the right to receive compensation can, however, be equal to the claim actually awarded by the civil court in view of the risk of hazards of litigation. In our view, therefore, the approach of the Assessing Officer is reasonable adopting the value of right to receive additional compensation at Rs. 17.50 per sq. yd. We accordingly uphold that there was no basis with the learned Commissioner of Wealth-tax (Appeals) to direct the Assessing Officer in taking into consideration the interest and solatium ultimately awarded for the purposes of computation of such right. We accordingly direct that the directions of the learned Commissioner of Wealth-tax (Appeals) to direct that the directions of the learned Commissioner of Wealth-tax (Appeals) be ignored and the value of right to receive additional compensation as computed by the Assessing Officer is upheld. However, we direct the Assessing Officer to allow deduction of Rs. 5,83,687 actually received by the assessee as compensation till March 31, 1985, as against Rs. 2,20,251 allowed by the Assessing Officer. This disposes of the assessee''s first two grounds of appeal.

5. It appears that before the passing of the order dated January 31, 1994, by the Tribunal, fresh assessment orders dated February 26, 1992, were passed by the assessing authority pursuant to the order dated July 21, 1989. The same was challenged in Appeal Nos. 817 to 819 of 1999 by the assessee and the said appeals were partly allowed by the Commissioner of Wealth-tax (Appeals) by order dated October 30, 1992. Against the said order dated October 30, 1992 Appeal Nos. 12, 13 and 14/Del. of 1993 were filed for the assessment years 1985-86 to 1987-88 before the Tribunal and the said appeals have been dismissed by the Tribunal by order dated May 21, 2001, as having become infructuous. Hence, the present appeals u/s 27A of the Wealth-tax Act by the Revenue.

6. We have heard learned Counsel for the parties and perused the record.

7. The perusal of the record shows that the original assessment order dated March 30, 1988, was set aside by the first appellate authority, vide order dated July 21, 1989, which did not find favour with the Tribunal. Consequently the order dated July 21, 1989, was set aside by the Tribunal by order dated January 31, 1994, and the said order dated January 31, 1994, was not further challenged and it attained finality. Thus, any proceedings in pursuance of the order dated July 21, 1989, passed by the first appellate authority were misconceived and could not have been given effect to. Therefore, Appeals Nos. 12, 13 and 14/Del. of 1993 for the assessment years 1985-86 to 1987-88 filed before the Tribunal against the order dated October 30, 1992, passed by the Commissioner of Wealth-tax (Appeals) was rightly dismissed by the Tribunal as infructuous. The impugned order passed by the Tribunal does suffer from any illegality or infirmity. Reasons mentioned by the Tribunal are good enough to justify the order and no fault is found with the approach adopted by the Tribunal.

8. In view of the aforesaid discussions these appeals are accordingly dismissed.

