(1989) 10 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 135 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

A.A. Patel RESPONDENT

Date of Decision : 03-10-1989

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 16A(6), 25, 25(2), 27(3)

Citation : (1989) 80 CTR 187 : (1990) 181 ITR 543

Hon'ble Judges : V.D. Gyani, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : V.S. Samvatsar, for the Appellant; Nazir Singh, for the Respondent

Judgement

V.D. Gyani, J.—This is an application u/s 27(3) of the Wealth-tax Act, 1957, calling for the statement of the case from the Appellate Tribunal, Indore Bench, Indore.

2. The order in this case will also govern the disposal of other connected Miscellaneous Cases Nos. 131, 132, 133, 134, 146, 147, 148, 149 and 150 of 1988, as they involve a common question of law arising between the same parties, the only difference being that they relate to different assessment years.

3. Facts leading to the presentation of this application, stated in brief, are that the assessments for the assessment years 1964-65 to 1973-74 were completed by the Wealth-tax Officer on March 27, 1979. The valuation in question relates to a plot of land situated in Tukoganj, Indore, one of the assets held by the assessee. The Wealth-tax Officer has assessed this plot at Rs. 3 per square foot for the assessment years 1964-65 to 1969-70 and at Rs. 4 per square foot in the assessment years 1970-71 to 1973-74. This assessment was challenged by the assessee before the Appellate Assistant Commissioner who set aside all the assessments and remanded the case to the Wealth-tax Officer making the following observations :

"It appears that all the ten impugned assessments completed on March 27, 1979, were getting time-barred on March 31, 1979, and as such, the Wealth-tax Officer has completed the assessment without making the statutory reference to the Valuation Officer. I, therefore, set aside all these assessments and direct the Wealth-tax Officer to refer the matter of the valuation of the plot to the Valuation Officer and make the assessments afresh after giving proper opportunity to the appellant."

4. On remand, the Wealth-tax Officer made a reference to the Valuation Officer, who valued the property involved in the plot in question. The Wealth-tax Officer, however, while making subsequent assessment did not base the valuation on the report of the Valuation Officer, but determined the net wealth at various figures estimated by him and passed orders on March 28, 1985. Later, the Commissioner of Income Tax exercising powers u/s 25 of the Act, considered the orders passed by the Wealth-tax Officer on March 28, 1985, and held them as erroneous and prejudicial to the interests of the Revenue. The Commissioner held that once reference is made to the Valuation Officer, it was obligatory on the part of the Wealth-tax Officer to complete the assessments in conformity with the Valuation Officer''s report u/s 16A(6) of the Act. He accordingly set aside the order passed by the Wealth-tax Officer and directed him to make a fresh assessment in accordance with law after giving an opportunity of hearing to the assessee.

5. Aggrieved by this order, the assessee filed appeals before the Commissioner of Income Tax. A decision of this court in M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., held that the discretion and the decision by the Wealth-tax Officer in the matter following the Valuation Officer''s report is entirely his and cannot be dictated by the appellate authority. In that view of the matter, the Commissioner was not correct in concluding that the Wealth-tax Officer was duty bound to accept the Valuation Officer''s report The Income Tax Appellate Tribunal gave a clear finding that Section 16A of the Act was not applicable in this case and the Wealth-tax Officer was not bound to make assessment in "conformity with the report of the Valuation Officer. Thus, the Tribunal quashed the order passed by the Commissioner.

6. Aggrieved by the order, the Department filed a reference application u/s 27(1) of the Act seeking a reference on the following three questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in holding that a reference made to the Valuation Officer in compliance with the directions of the Appellate Assistant Commissioner cannot be a reference u/s 16A of the Wealth-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is legally correct in holding that the report from the Valuation Officer, although obtained on the basis of a reference made as a result of the Appellate Assistant Commissioner''s directions, is not binding on the Wealth-tax Officer u/s 16A(6) of the Wealth-tax Act ?

(3) Whether, on the facts and in the circumstances of the case, the Income Tax

Appellate Tribunal is correct in holding that the Commissioner was not correct in concluding that the Wealth-tax Officer was duty bound to accept the Valuation Officer''s report so far as the valuation of assets was concerned and by not doing so, the assessments made by the Wealth-tax Officer be treated as erroneous and prejudicial to the interests of the Revenue ?"

7. The short question that arises for consideration is whether the Wealth-tax Officer was bound to adopt and act upon the valuation as reported by the Valuation Officer ? It cannot be disputed that the Wealth-tax Officer is a quasi-judicial authority and his own discretion u/s 16A(1) cannot be directed or dictated to be exercised in a particular manner by the appellate authority.

8. Reading Section 16A(1) of the Act, it is for the Wealth-tax Officer to form the requisite opinion as required by Section 16A and the formation of such an opinion cannot be dictated by the appellate authority as has been held by this court in M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., .

9. A reading of the judgment will further show that this court has held that the Appellate Assistant Commissioner had no jurisdiction to refer the matter to the Valuation Officer.

10. A Full Bench of this c6urt in Commissioner of Income Tax Vs. K.L. Rajput, has held that when the Appellate Assistant Commissioner had considered the point of valuation and had issued necessary directions for fresh assessment and the Wealth-tax Officer completes the assessment on such directions, the order stands merged with the Appellate Assistant Commissioner''s order and the Commissioner has no jurisdiction u/s 25(2) of the Act to revise that order.

11. Shri Samvatsar, learned counsel for the applicant, pointed out that the assessee has at no stage challenged the Commissioner''s order. This again is a fallacious reasoning as has been pointed out by the Supreme Court in Raja Jagdambika Pratap Narain Singh Vs. Central Board of Direct Taxes and Others, . If the order is without jurisdiction and void ab initio, the same does not become legal or final merely because it was not challenged in appeal and the directions made by the Commissioner in the light of M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., was without any jurisdiction and void. The question of jurisdiction can be raised at any stage and at any point of time as again pointed out by the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, .

12. In the result, this reference application u/s 27(3) of the Act deserves to be rejected as it does not raise any question of law to be decided by this court on reference. The questions raised are fully covered by M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., . Reference rejected.

