(2009) 02 BOM CK 0074

In the Bombay High Court

Case No : W.T. Ref. No''s. 28 and 42 of 1998

Commissioner of Wealth Tax APPELLANT

Vs

A.M. Bhiwandiwalla RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Income Tax Act, 1961 — Section 125A, 127, 127(1)
Wealth Tax Act, 1957 — Section 8, 8AA

Citation : (2009) 222 CTR 634 : (2009) 316 ITR 98 : (2009) 182 TAXMAN 198

Hon'ble Judges : R.S. Mohite, J;F.I. Rebello, J

Bench : Division Bench

Advocate : P.S. Sahadevan, for the Appellant;

Judgement

F.I. Rebello, J.—In both the references the questions are Identical. WT Ref. No. 28 of 1998 pertains to asst. yrs. 1976-77, 1978-79, 1981-82 and 1982-83 and WT Ref. No. 42 of 1998 refers to the asst. yrs. 1979-80 and 1980-81.

2. The Tribunal has referred the following questions at the instance of the Revenue:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the IAC, Assessment Range-VII(A) had no jurisdiction over wealth-tax cases of the assessee even though the case of the assessee was validly transferred to the IAC, Assessment Range-VII(A) by the CIT, Bombay City-VII, Bombay, by a notification u/s 127 of the IT Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that u/s 8 of the WT Act, the officer having jurisdiction under the IT Act had to perform the functions under the WT Act also, particularly when the transfer of Income Tax case u/s 127 of the IT Act, 1961 was held to be valid and consequently the combined operation of Section 127 of IT Act and Section 8 of the WT Act gave proper jurisdiction to the IAC, Assessment Range-VII (A)?

3. Whether on the facts and in the circumstances of the case, the Tribunal was

justified in ignoring the fact that the transfer of Income Tax case was not made u/s 125A of IT Act and consequently there was no requirement of issuing a separate notification u/s 8AA of the WT Act?

4. Whether on the facts and in the circumstances of the case, Tribunal was justified in setting aside the assessments and rejecting the Departmental appeals?

Though the questions were referred, ultimately they will have to be answered in the context as to whether the WTO had jurisdiction.

3. A few facts may be stated. The assessee was being assessed to wealth-tax by the WTO, C-IV Ward. Consequently (Subsequently), the CIT transferred the cases to the IAC, Assessment Range-VII (A) by issuing order u/s 127(1) of the IT Act, 1961. Accordingly, the said IAC completed the assessment in respect of the assessee for the impugned years also. The contention of the assessee was that the IAC had no jurisdiction to pass the assessment order under the WT Act as the wealth-tax cases were not transferred to him. IAC did not agree with the contention of the assessee and completed the assessment. In appeal, the CWT (A) agreed with the contention of the assessee and set aside the orders of the IAC.

3.1 On further appeal, the Tribunal held that if the CIT had transferred Income Tax cases from the IAC, C-IV Ward to IAC by a notification, it did not automatically mean that the said notification covered the cases under the WT Act as well. For wealth-tax purposes, a separate notification u/s 8AA of the Act was required. In coming to this conclusion, the Tribunal had followed its earlier order in which the Tribunal had relied on the decision of the Madras High Court in the case of Commissioner of Wealth Tax Vs. B. Nathmal Vaid, . The Tribunal also held that since the IAC had no jurisdiction, there was no point in discussing the appeals of the Department and the assessee. The Tribunal, to hold that the WTO had no jurisdiction, was principally guided by the judgment of the Madras High Court in CWT v. B.B. Nathmal Vaid (supra).

4. We shall first consider the relevant provisions of the WT Act as it then stood. Gainful reference may be made to Section 8 which reads as follows:

8. Wealth-tax Officer--Every ITO having jurisdiction or exercising powers as such under the IT Act in respect of any individual, HUF or company shall perform the functions of a WTO under this Act in respect of such individual, HUF or company:

Provided that where two or more ITOs have jurisdiction or exercise powers under the IT Act in respect of any individual, HUF or company, they shall have concurrent jurisdiction and shall perform their functions in respect of such individual, HUF or company, as the case may be, in accordance with such general or special orders in writing as the CIT or the IAC authorised by the CIT in this behalf may make for the purpose of facilitating the performance of such functions.

Explanation: For the purposes of this section the ITO or the ITOs having jurisdiction in relation to a person who is not an assessee within the meaning of the IT Act, shall be the ITO or ITOs in respect of the area in which that person resides.

A perusal, therefore, of this section would clearly indicate that the ITO exercising jurisdiction or power under the IT Act will be the WTO, for the purpose of the WT Act would be the WTO.

5. Section 127 of the IT Act confers powers on the authorities specified therein to transfer cases from one AO to another AO. We may gainfully reproduce Section 127(1) which reads as under:

127(1)--The Director General or Chief CIT or CIT may after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more AOs subordinate to him (whether with or without concurrent jurisdiction) to any other AO or AOs (whether with or without concurrent jurisdiction) also subordinate to him.

Thus by operation of law once notification is issued u/s 127(1) then the officer in respect of whom power has been conferred will be the AO who can exercise the jurisdiction. If this is read in the context of Section 8 of the WT Act which we have earlier referred to then it would be clear that the jurisdiction is co-extensive. In other words the ITO now notified would exercise the jurisdiction in the matter of wealth-tax also as WTO, though ordinarily the ITO of another area would not have jurisdiction. However, once notification is issued u/s 127 for the purpose of Section 8 of the WT Act such officer would be the WTO.

6. Our attention was invited to the judgment of the Madras High Court in B. Nathmal Void (supra) where a learned Bench of the Madras High Court, has taken the view that unless separate notification is issued u/s 8AA then even in spite of the notification u/s 127 the WTO would not be vested with the jurisdiction in the absence of such notification. In our opinion it would not be possible to agree with the view taken by the learned Bench of the Madras High Court. Section 8AA is specific purpose and independent of Section 127 of the IT Act. On notification being issued u/s 127 the officer in whom jurisdiction is conferred would act both as AO under the IT Act as also WT Act. In the absence of notification u/s 127 it is still open to the authorities exercising powers u/s 8AA of the WT Act, to independently issue a notification. That does not mean that even after notification u/s 127 of the IT Act is issued a separate notification is required u/s 8AA. Section 8AA is a specific power which can be examined (exercised) in the absence of a notification u/s 127 of the IT Act.

7. Therefore, in the instant case once a notification is issued u/s 127 the officer for the WT Act would be the same officer who would exercise the jurisdiction under the IT Act. In our opinion, therefore, the Tribunal clearly committed an error of jurisdiction in holding that a separate notification u/s 8AA was required.

8. In the light of the above, reference may be answered as under:

(A) Insofar as question No. 1 is concerned, the question is answered in the negative against the assessee and in favour of the Revenue.

(B) Question No. 2 is answered in the negative in favour of the Revenue and against the assessee.

(C) Question No. 3, in view of the answer to question Nos. 1 and 2 this question really need not be answered.

(D) Insofar as question No. 4 is concerned, once we hold that the WTO has jurisdiction, the question has to be answered in the negative in favour of the Revenue.

Having held that the WTO had jurisdiction, the order is set aside and the matter is remanded back to the Tribunal for deciding the questions on merits.

