(1986) 03 DEL CK 0018

In the Delhi High Court

Case No : Wealth-tax Reference No. 24 of 1976

Commissioner of Wealth Tax APPELLANT

Vs

A.N. Sarvaria RESPONDENT

Date of Decision : 12-03-1986

Acts Referred:

Citation : (1986) 52 CTR 296 : (1986) 161 ITR 694

Hon'ble Judges : Yogeshwar Dayal, J;Mahinder Narain, J

Bench : Division Bench

Judgement

Yogeshwar Dayal, J.—The following question has been referred to this court for its opinion u/s 27(1) of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in cancelling the order of the Commissioner of Wealth-tax passed u/s 25(2) of the Wealth-tax Act, 1957, which directed the Wealth-tax Officer to consider initiation of proceedings u/s 18(1)(a) of the Act in the fresh assessment proceedings ?"

2. The question arises in the following circumstances :

The assessment year involved in 1967-68 for which the Wealth-tax Officer completed the assessment by her order dated December 23, 1971, on the assessed who is taxed in the status of an individual. His valuation date was March 31,1967. Though the return was filed late, the Wealth-tax Officer did not initiate penalty proceedings as contemplated by the provisions of section 18(1)(a) read with section 18(2) of the Wealth-tax Act.

3. The Commissioner of Wealth-tax in suo motu revision u/s 25(2) of the Wealth-tax Act set aside the assessment order and directed for framing of fresh assessment by duly considering the penal provisions referred to earlier.

4. The assessed went up in appeal before the Tribunal and the Delhi Tribunal while relying upon the decision in the case of Shri J.K.D''Costa, New Delhi v. ITO,

Private Salary Circle-VI reported in Taxation, April 1973 issue, section VI, page 100, and also relying upon another decision of Delhi Bench of the Tribunal in the case of Shri Satya Narain Shiv Shankar, Delhi and Shri R. L. Puri, c/o. M/s. Prakash Bros. & Co. Karol Bagh, New Delhi, set aside the order of the Commissioner of Wealth-tax on the ground that the Commissioner of Wealth-tax while hearing a revision u/s 25(2) of the Act had no jurisdiction to quash the assessment order as erroneous merely because the Wealth-tax Officer failed to initiate proceeding for levying penalties.

5. The decision of the Tribunal in the case of Shri J.K.D''Costa, New Delhi (Taxation April 1973, issue, section VI, page 100) has since been approved by a Division Bench of this court in the case of Addl. CIT v. J.K.D''Costa [1981] 133 ITR 7 and SLP against that decision of the Delhi High Court has also been dismissed by the Supreme Court in Controller of Estate Duty Vs. Prakashchand, . This decision of the Delhi High Court in the case of Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D''costa, was followed by the Delhi High Court in the case of The Additional Commissioner of Income Tax, New Delhi Vs. Achal Kumar Jain, . On a similar question, a matter came up before Chadha and Goel JJ. in the case of P.C. Puri Vs. Commissioner of Income Tax, Delhi-II, and on a difference of opinion between the learned judges, the matter was referred to a third judge, A. B. Rohatgi J., sitting as third judge with Chadha J., and approved the decision in the case of Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D''costa, and The Additional Commissioner of Income Tax, New Delhi Vs. Achal Kumar Jain, . The learned judge dissented from the contrary view of the Madhya Pradesh High Court in the cases of Addl. Commissioner of Income Tax Vs. Indian Pharmaceuticals, , Addl. Commissioner of Income Tax Vs. Kantilal Jain, , Addl. Commissioner of Wealth Tax Vs. Nathoolal Balaram, and Commissioner of Income Tax Vs. Narpat Singh Malkhan Singh, .

6. We are in respectful agreement with the earlier views expressed by our own High Court and following the said view, we would answer the question in the light of the decision given by this court in the case of Addl Commissioner of Income Tax, Delhi-I Vs. J.K. D''costa, and hold that the Commissioner of Wealth-tax had no power u/s 25(2) of the Wealth-tax Act to hold that the order of assessment passed by the Wealth tax Officer is erroneous merely because the Wealth-tax Officer failed to initiate penalty proceedings u/s 18(1)(a) read with section 18(2) of the Wealth-tax Act. The question is accordingly answered against the Revenue and in favor of the assessed.

7. Since nobody has appeared to contest the reference on behalf of the assessed, parties are left to bear their own costs of the present proceedings.

