(1999) 10 AHC CK 0134

In the Allahabad High Court

Case No : Wealth-tax Reference No. 148 of 1979

Commissioner of Wealth-tax APPELLANT

Vs

Ashok Kumar Goel RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:
Wealth Tax Act, 1957 — Section 25, 25(2), 35

Citation : (2000) 163 CTR 149 : (2000) 244 ITR 755

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Prakash Krishna, for the Appellant; None, for the Respondent

Final Decision : Disposed Of

Judgement

1. By this reference u/s 27(1) of the Wealth-tax Act, 1957, the Income Tax Appellate Tribunal, Delhi Bench "A", Delhi, has referred the following question for the opinion of this court :

"Whether, the Tribunal was in law justified in setting aside the order u/s 25(2) passed by the Commissioner of Wealth-tax on the ground that it lacked jurisdiction at the time of issue of the notices u/s 25(2) ?"

2. The aforesaid question is stated to arise out of the Tribunal''s order dated October 14, 1977, passed in W. T. A. No. 66 (Delhi) of 1976-77 pertaining to the assessment year 1973-74.

3. We have heard Sri Prakash Krishna, learned counsel for the Commissioner. No one appeared on behalf of the assessee.

4. The respondent''s assessment to wealth-tax was made by order dated March 16, 1974, in which a liability amounting to Rs. 2,62,054 was allowed as deduction in computing the net wealth of the assessee. The Commissioner of Income Tax on noticing that the said liability was not allowable by virtue of Section 2(m)(ii) of the Wealth-tax Act, 1957, issued a notice u/s 25(2) of the

Wealth-tax Act proposing to revise the assessment. The said notice was dated December 6, 1975. However, prior to the issuance of the said notice, the Wealth-tax Officer himself had passed the order u/s 35 of the Act rectifying the assessment and disallowing the said liability. The assessee appealed to the Appellate Assistant Commissioner of Wealth-tax against the Assessing Officer''s order u/s 35 of the Act and the said appellate authority by order dated January 21, 1976, set aside the order of rectification on the ground that there was no mistake apparent from the record and the question was a debatable one. The Commissioner issued another notice u/s 25(2) on January 7, 1976, and yet another notice on January 24, 1976. In pursuance of the last notice issued written submission was filed and the Commissioner passed the order on March 8, 1976, setting aside the assessment and directed the Assessing Officer to make fresh assessment after giving the assessee an opportunity of hearing.

5. Against the aforesaid order of the Commissioner, the assessee preferred an appeal to the Income Tax Appellate Tribunal which set aside the order of the Commissioner on the ground that when the Commissioner issued the notice u/s 25, the assessment order had already been rectified by the Assessing Officer and, therefore, it could not be said to be erroneous and prejudicial to the interest of the Revenue.

6. From the order of the Commissioner we find that there is specific mention therein that a notice dated January 24, 1976, was given to provide an opportunity of hearing to the assessee. This was the notice given after the Appellate Assistant Commissioner had already set aside the rectification order by his order dated January 21, 1976. Therefore, on January 24, 1976, the order u/s 35 had ceased to exist and the assessment order could be said to be erroneous as thought by the Commissioner. In this application u/s 27, the Commissioner had proposed the questions as below :

"(i) Whether the Tribunal''s decision setting aside the Commissioner of Wealth-tax order u/s 25(2) could be said to be based on relevant material on record ?

(ii) Whether the order of the Commissioner of Wealth-tax u/s 25(2) could be held to be without jurisdiction on the ground that there was no order prejudicial to the Revenue at the time of issue of the notice u/s 25(2) dated January 24, 1976, discussed in the aforesaid order ?

(iii) Whether the Tribunal was in law justified in setting aside the order u/s 25(2) passed by the Commissioner of Wealth-tax on the ground that it lacked jurisdiction ?"

7. But the Tribunal has not projected this aspect of the controversy in the question that has been referred by it. The notice u/s 25 is not a jurisdictional notice. It is only intended to provide an opportunity of hearing to the assessee if the order proposed to be passed would be prejudicial to the assessee. For this view, we find support from the judgment of the Supreme Court in Commissioner of Income Tax, West Bengal II Vs. Electro House, . The Tribunal having failed to

consider the effect of the notice dated January 24, 1976, and also the fact that the order u/s 25 was passed after the Appellate Assistant Commissioner had already set aside the order u/s 35, its finding that the Commissioner lacks jurisdiction to revise the order u/s 25 is legally erroneous.

8. We, therefore, answer the question as reproduced above in the negative, i.e., against the respondent and in favour of the Commissioner.

9. An authenticated copy of the judgment be transmitted to the Tribunal according to law and the Tribunal shall proceed to dispose of the assessee''s appeal afresh.

