(1992) 12 RAJ CK 0050

In the Rajasthan High Court

Case No : .W.T. Reference No. 11 of 1983

Commissioner of Wealth Tax	APPELLANT
Vs	
Balu Ram Raghunath Kalla	RESPONDENT

Date of Decision : 08-12-1992

Acts Referred:
Wealth Tax Act, 1957 — Section 27

Citation : (1993) 69 TAXMAN 540

Hon'ble Judges : K.C. Agarwal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; J.K. Singhi, for the Respondent

Judgement

1. This Reference u/s 27 of the Wealth-tax Act, 1957 ("the Act") has been made by the Tribunal, Jaipur Bench, Jaipur, out of the order dated 24-6-1981 in respect of the assessment years 1972-73 to 1976,-77. The following question of law has been referred:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in dismissing the departmental appeal on the ground that it could not be shown on behalf of the revenue that the consolidated appellate order in the case of Surendra Pratap Jaiswal relied upon by the learned AAC has not been accepted by the revenue?

The brief facts of the case are that the assessee was a partner in Madira Kraya Vikraya Sangh, Kota and Hemraj Baluram. The excise department forfeited the security and guarantee amount of these concerns and also recovered short fall on account of the contract entered into with the department. The share of the assessee in the security, guarantee and short fall for the different years was as under:

Rs.

1972-73

4,46,119

1973-74

4,54,219

1974-75

4,54,219

1975-76

4,46,119

1976-77

4,54,813

The assessee claimed the aforesaid liability which was refused by the WTO on the ground that the matter has been challenged by the department before the Tribunal and the assessee has also challenged his liability in the High Court. The appeal before the AAC was allowed following the decision given by him in Surendra Pratap Jaiswal''s appeal Nos. 1033, 1032, 1031 of 1977-78 dated 3-11-1979. The Tribunal held that it could not be shown on behalf of the appellant-revenue that the consolidated appellate order in the case of Surendra Pratap Jaiswal relied upon by the learned AAC has not been accepted by the revenue. In these circumstances, it could not be inferred that the impugned order is erroneous and, therefore, the appeals before the Tribunal were also dismissed.

2. We have heard the arguments of both the learned counsels. Whenever an assessment is made of one of the partners of the firm in respect of any particular assessment year, then normally the WTO has to follow the same method for other partners as well unless some distinguishing features are pointed out. In the present matter the question of liability of the firm on the basis of agreement entered into with the Government of Rajasthan for lifting the particular quantity of country liquor was challenged by the revenue before the Tribunal. While deciding the appeal of the revenue it was held that though the liability was a trading liability it was not in existence and the decree was given in favour of the firm by the District and Civil Judge, Kota. The assessee had preferred a reference in the High Court, bearing No. 53 of 1983, in which the matter has been sent back to the Tribunal.

3. In view of this judgment, we are of the opinion that the Tribunal was not justified in dismissing the departmental appeals only on the ground that the decision given in the case of Surendra Pratap Jaiswal by the AAC was not challenged by the revenue. There maybe number of reasons for not challenging the judgment and it maybe negligence, carelessness, connivance, mistake or the like on the part of the authorities in not taking timely action or it may be that after examining the case the department was of the view that the matter should

not further be challenged. Since no reason has been given even before the Tribunal, it could not be said that the department was estopped from challenging the order and more particularly when the dispute was pending in the High Court. Accordingly, the reference is answered in favour of the revenue and against the assessee and it is held that the Tribunal was not justified in dismissing the department''s appeals. The Tribunal shall hear the matter afresh and shall pass the orders in accordance with law. No order as to costs.