(1996) 01 RAJ CK 0021

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 135 of 1995

Commissioner of Wealth-tax APPELLANT

Vs

Bhanwar Lal Gupta RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Citation : (1997) 228 ITR 650

Hon'ble Judges : P.C. Jain, J;B.R. Arora, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

B.R. Arora, J.—The Revenue, by this application u/s 27(3) of the Wealth-tax Act, 1957, has prayed that the Tribunal may be directed to state the case and refer the following question of law for the opinion of the High Court :

"Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal is legally justified in remanding the case to the Wealth-tax Officer for valuation of property as per Schedule III whereas such Schedule is effective from April 1, 1989, so applicable for the assessment year 1989-90 and onwards ?"

2. The controversy and the dispute in this petition relates to the valuation of the share of the assessee in an immovable property, namely, "Jindal General Manufacturing Company, Delhi" which is situated at C-92, Wazirpur Industrial Area, Delhi. The assessee was assessed for his share in this property at Rs. 16,19,000 in each year of assessment by the Wealth-tax Officer on the basis of the report of the approved valuer. The District Valuation Officer valued the suit property at a higher value. According to the Commissioner of Wealth-tax, the valuation arrived at by the Wealth-tax Officer was erroneous and prejudicial to the interests of the Revenue because the District Valuation Officer has valued the suit property at substantially a higher figure. The Commissioner of Wealth-tax, therefore, exercising his power u/s 25(2) of the Act, set aside the assessment

and directed the Wealth-tax Officer to make assessment afresh according to law taking into consideration the report of the District Valuation Officer and after affording proper opportunity of hearing to the assessee-appellant. The assessee and the other co-owners preferred appeals before the Tribunal and the Tribunal partly allowed the appeal and directed the Assessing Officer that while making fresh assessment in compliance with the order of the Commissioner of Wealth-tax, the Wealth-tax Officer shall value the share of the assessee in the said joint property as per the amended rules contained in Schedule III to the Act after giving proper opportunity of being heard to them. Thereafter, the Revenue moved an application u/s 27(1) of the Act for referring the above question of law for the opinion of the High Court. The said application was dismissed by the Tribunal and the Tribunal declined to refer the question for the opinion of the High Court.

3. The controversy involved in the present case, therefore, is: whether the amended provisions relating to the valuation, which came into operation on April 1, 1989, will apply in the present case ?

4. The provisions relating to valuation of the property, contained in Schedule III to the Act, are procedural in nature and the procedural law is applicable to the pending cases also. The provisions are in the character of rules of evidence and, therefore, the market value has to be determined in accordance with the provisions which are in operation at the time when the assessment is made. The controversy stands concluded by the judgment of the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, wherein it has been held that (headnote) :

"Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979, when the rule came into force. The procedural law, generally speaking, is applicable to pending cases".

5. As the controversy stands concluded by the judgment of the Supreme Court in the aforesaid case, as such no referable question of law arises in the matter and the Tribunal was right in refusing to refer the question for the opinion of this court. In this view of the matter, since the controversy in the present case stands decided by the judgment of the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, we do not find any merit in this application u/s 27(3) of the Wealth-tax Act.

6. In the result, the application u/s 27(3) of the Wealth-tax Act has no merit and the same is hereby dismissed.