(1996) 01 RAJ CK 0053

In the Rajasthan High Court

Case No : WT Reference No''s. 5 to 7 and 9 of 1996

Commissioner of Wealth Tax — APPELLANT

Vs

Chhagan Lal Gupta — RESPONDENT

Date of Decision : 15-01-1996

Acts Referred:
Wealth Tax Act, 1957 — Section 25(2), 27(1), 27(3)

Citation : (1996) 87 TAXMAN 140

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

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Final Decision : Dismissed

Judgement

B.R. Arora, J.—The revenue, by these four applications made u/s 27(3) of the Wealth-tax Act, 1957 (''the Act'') has prayed that the income tax Appellate Tribunal, Jaipur Bench, Jaipur, may be directed to state the case and refer the following identical question of law in all the four cases for the opinion of the High Court: Whether, on the facts and in the circumstances of the case, the ITAT was legally justified in remanding the case to WTO for valuation of the property as per Schedule in whereas such Schedule is effective from 1-4-1989 so applicable for assessment year 1989-90 and onwards?

The assessees Chhagan Lai Gupta, Bhanwar Lal Gupta, Vidhyasagar Gupta and Sunder Lai Gupta are the co-owners of the factory called ''Jindal General Manufacturing Company'' situated at C-92, Wazirpur Industrial Area, Delhi. All the co-owners filed their separate returns under the Act for various years. The WTO accepted the total value of the suit property at Rs. 36,54,000 each of the years under consideration on the basis of the report of the Departmental approved Valuation Officer. Dissatisfied with the orders passed by the Assessing Officer assessing the assessees on higher value, the assessees preferred appeals before the Commissioner (Appeals). The five appeals filed by the assessees were decided by the Dy. Commissioner (Appeals) by a common order and the appeals filed by the assessees, were partly allowed. The assessees aggrieved with the order passed by the Dy. Commissioner (Appeals), filed the appeals before the income tax Appellate Tribunal, Jaipur Bench, Jaipur and the Tribunal, by its order dated 12-9-1994 allowed the appeals filed by the assessees and remanded the case to the assessing authority to reassess the assessees and determine the value of the property as per the amended Rules contained in Schedule III of the Act. The revenue thereafter moved applications u/s 27(1) to refer the above question of law in all the cases for the opinion of the High Court. The Tribunal, by its order dated 5-7-1995 dismissed all the applications u/s 27(1) filed by the revenue by a common order and refused to refer the question mentioned in the applications because the question of law, which is sought to be referred by the revenue already stands decided by the judgment of the Supreme Court and as such no referable question of law arises fit for reference to the High Court.

2. It is contended by the learned counsel for the Revenue that when the assessment had already been completed before 1-4-1989, the valuation of the property, as per Schedule III of the Act, could not have been made under Schedule III of the Act. The Schedule III came into force with effect from 1-4-1989 and, therefore, the Schedule III can be applied for the valuation purposes only with respect to the proceedings which were pending before the assessing authority on or after 1-4-1989 and not on the proceedings which have been completed before this date.

3. We have considered the submissions made by the learned counsel for the revenue. "

4. The appeals, filed by the assessees, were allowed by the Tribunal and the cases were remanded to the assessing authority and the assessees were permitted to raise the additional grounds. The Tribunal, while remanding the cases, directed the WTO to value the present share of the assessees in the joint family''s property as per the amended rules contained in Schedule III after giving proper opportunity of hearing to them. Schedule III, which relates to the determination of the value of the property, is a procedural law and applies to the pending proceedings. After the order of remand was passed by the Tribunal, the assessment proceedings are pending before the assessing authority.

5. It may not be out of place to mention here that in the cases of the assessees who are the co-owners for the assessment of the earlier years with respect to the same property, the value of the property was assessed at Rs. 16,19,000 or around by the WTO and the Commissioner (Appeals), exercising the powers u/s 25(2), set aside the order of the assessment and remanded the case to the Assessing Officer to reassess the assessees taking into consideration the report of the District Valuation Officer. The matter with respect to these assessments is, also, pending before the Assessing Officer which has to be decided under the amended law and, therefore, it cannot be said that the assessment proceedings have been completed. After the introduction of Schedule IIIA, the valuation has to be made on the basis of the amended law.

6. After the remand, the matters are pending before the assessing authority for adjudication and the valuation of the property has to be made in accordance with Schedule III. The amendment with regard to the procedure or of evidence are to be construed as retrospective and applies to all the pending matters on the dates when the amendment was made unless there is a specific indication that such was not the intention of the Legislature. The controversy in the present case stands concluded by the judgment of the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, It has been held by the Apex Court in this case that:

Rule IBB 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, 1989, when the rule came into force. The procedural law, generally speaking, is applicable to pending cases. No suitor can be said to have a vested right in procedure.

7. Since the controversy, stands concluded by the aforesaid judgment of the Supreme Court, no referable question of law arises in the matter and the learned Members of the Tribunal were justified in refusing to state the case and to refer the question for adjudication to this Court. The applications u/s 27(3), therefore, deserve to be dismissed. In the result, we do not find any merit in these applications and the same are here by dismissed.