

(1996) 01 RAJ CK 0043

In the Rajasthan High Court

Case No : DB WT Ref. No. 137 of 1995, 16th January, 1996

COMMISSIONER OF WEALTH TAX

APPELLANT

Vs

CHHAGAN LAL GUPTA.

RESPONDENT

Date of Decision : 16-01-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1), 27(3)

Citation : (1996) 134 CTR 419

Hon'ble Judges : B. R. Arora, J

Bench : Division Bench

Judgement

B. R. ARORA, J. :

The Revenue, by this application made under s. 27(3) of the WT Act, has prayed that the Tribunal, Jaipur Bench, Jaipur, 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 Tribunal was legally justified in remanding the case to the WTO for valuation of property as per, Schedule III of the Act whereas the said Schedule became effective from 1st April, 1989 and the assessment had already been completed much before this date ?"

2. The assessee and Bhanwar Lal Gupta, Vidhyasagar Gupta and Sunder Lal Gupta are the co-owners of the factory called "Jindal General Manufacturing Company" situated at C-92, Wazirpur Industrial Area, Delhi. The assessee filed the return under the WT Act for various years. The WTO accepted the total value of the suit property at Rs. 36,54,000 in each of the years under consideration on the basis of the report of the DVO. Dissatisfied with the order passed by the Assessing Officer, assessing the assessee on a higher value, the assessee preferred an appeal before the CWT(A). The appeal filed by the assessee was decided by the Dy. CWT(A) by a common order and the appeal filed by the assessee was partly allowed. The assessee, aggrieved with the order passed by

the Dy. CWT(A), filed an appeal before the Tribunal, Jaipur Bench, Jaipur and the Tribunal, by its order dt. 12th Sept., 1994 allowed the appeal filed by the assessee and remanded the case to the assessing authority to reassess the assessee and determine the value of the property as per the amended rules contained in Schedule III of the Act. The Revenue thereafter moved an application under s. 27(1) of the Act to refer the above question of law for the opinion of the High Court. The Tribunal, by its order dt. 5th July, 1995 dismissed the application under s. 27(1) of the Act filed by the Revenue by a common order and refused to refer the question mentioned in the application 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.

3. It is contended by the learned counsel for the Revenue that when the assessment had already been completed before 1st April, 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 of the Act came into force w.e.f. 1st April, 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 1st April, 1989 and not on the proceedings which have been completed before this date.

4. We have considered the submissions made by the learned counsel for the Revenue.

5. The appeal filed by the assessee was allowed by the Tribunal and the case was remanded to the assessing authority and the assessee was permitted to raise the additional grounds. The Tribunal, while remanding the case, directed the WTO to value the present share of the assessee in the joint family's property as per the amended rules contained in Schedule III of the Act after giving proper opportunity of hearing to them. Schedule III of the Act, 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.

6. It may not be out of place to mention here that in the case of the assessee and the other 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 CWT(A), exercising the powers under s. 25(2) of the Act, set aside the order of the assessment and remanded the case to the AO to reassess the assessee taking into consideration the report of the DVO. The matter with respect to these assessments is also pending before the AO 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 III (Part A) of the Act, the valuation has to be made on the basis of the amended law.

7. After the remand, the matter is pending before the assessing authority for adjudication and the valuation of the property has to be made in accordance with Schedule III of the Act. 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 "r. 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 1st April, 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".

8. 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 application under s. 27(3) of the WT Act, therefore, deserves to be dismissed.

9. In the result, we do not find any merit in this application and the same is hereby dismissed.