(1998) 01 AHC CK 0087

In the Allahabad High Court

Case No : WT Ref No. 301 of 1982 20 January 1998 A.Y. 1968-69 to 1974-75

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

CHHAIL BEHARI LAL — RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

Citation : (1998) 148 CTR 299

Hon'ble Judges : M. C. Agarwal, J;B. K. Sharma, J

Bench : Full Bench

Advocate : Rajesh Kumar Agarwal, for the Revenue and None, for the Assessee, for the Appellant;

Final Decision : Dismissed

Judgement

By the Court

At the instance of the Commissioner of Wealth Tax, Agra, the Tribunal (Delhi `D'' Bench, Delhi), has referred the following questions for the opinion of this court u/s 27(1) of the Wealth Tax Act, 1957 :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that rule 1BB is mandatory and not directory ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that rule 1BB framed by the Central Board of Direct Taxes under power available to it u/s 46 which was enacted with effect from 1-4-1979 has retrospective operation ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee who had declared the value of this property in the wealth-tax at a certain figure can claim reduction thereon by application of rule 1BB without filing a revised return and without claiming that there was a mistake in returning the market value in the returns filed ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that before making a reference to the Valuation Officer u/s 7(3) the Wealth Tax Officer has to form his opinion by taking into account the provisions of rule 1BB whether the value declared by the assessee does not represent the market value ?

(v) Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the Valuation Officer, estimating the market value of the property u/s 16A(5), will have to estimate the value in accordance with the provisions of rule 1BB ?"

2. We have heard Sri Rajesh Kumar Agarwal, learned counsel for the Commissioner of Wealth Tax. No one appeared on behalf of the assessee respondent in spite of service of notice.

3. The proceedings relate to assessment years 1968-69 to 1974-75. The Commissioner of Wealth Tax had sought a reference of only two questions as below :

"(i) Whether the Hon''ble Tribunal was correct in law in its finding that in determining the value of the immovable properties the reversionary value of the land cannot be separately added ?

(ii) Whether the Hon''ble Tribunal was correct in law in its finding that rule 1BB of the Wealth Tax Rules, 1957, have not been made effective from 1-4-1979 was to apply even in respect of pending assessment for orders prior to assessment year 1979-80 "?

4. u/s 27 of the Wealth Tax Act the Tribunal has no suo motu power of referring a question of law for the opinion of this court. It is only such questions as the assessee or the Commissioner of Wealth Tax by making an application require it to refer to the High Court. The Tribunal has referred five questions observing that in the orders dated 31-8-1981 out of which reference arises, it had relied on an order dated 17-2-1981 made by the Special Bench of the Tribunal in the case of Shri Biju Patnaik v. WTO (1981) 12 TTJ (Del)25 in Wealth Tax Act Nos. 614 to 624 (Del) of 1979 and the questions that have been referred by the Special Bench of the Tribunal in the case of Biju Patnaik are being referred to the High Court for opinion. The Tribunal had no jurisdiction to refer the questions simply because they had been referred to the High Court in some other case. Out of the five questions referred by the Tribunal only question No. 2 corresponds to question No. 2 as required by the Commissioner of Wealth Tax. Therefore, we will answer only question No. 2 out of the five questions and we decline to answer questions 1, 3, 4 and 5 because the Commissioner of Wealth Tax had not required the Tribunal to refer them for the opinion of this court.

5. As regards the controversy raised in question No. 2, the same stands settled by the Hon''ble Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, in which it has been held that rule 1BB is procedural in nature and partakes of the character of a rule of evidence and is,

therefore, applicable to all pending proceedings. Rule 1BB was enacted with effect from 1-4-1979 and admittedly proceedings for the assessment years in question were pending at that time. The said rule was applicable to the assessment proceedings for the purposes of determining the fair market value of the immovable properties at the relevant valuation dates. We, therefore, answer question No. 2 in the affirmative in favour of the assessee and against the Commissioner of Wealth Tax.

