(1994) 11 KL CK 0027

In the High Court Of Kerala

Case No : Income-tax Reference No. 27 of 1985

Commissioner of Wealth-tax APPELLANT

Vs

Dr. David Joseph RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Wealth Tax Act, 1957 — Section 7
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (1995) 2 ILR (Ker) 223 : (1995) 214 ITR 19

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.K. Usha, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; G. Sivarajan, for the Respondent

Judgement

K.K. Usha, J.—The question referred u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the Revenue is as follows :

"Whether the Tribunal was right in law in holding Rule 1BB of the Wealth-tax Rules, 1957, retrospective in operation and that it will apply to all pending proceedings ?"

The matter arises out of the wealth-tax assessment for the assessment year 1975-76. The late N. George Joseph created a trust by a deed dated May 22, 1972. The assessee is the executor of the trust. The Valuation Officer valued the building belonging to the trust by adopting the land and building method. The Wealth-tax Officer adopted the above value while rejecting the valuation made by the assessee observing that the assessee was not able to prove as to how he had valued the building. On appeal by the assessee, the Appellate Assistant Commissioner upheld the valuation made by the Wealth-tax Officer holding that the proper method of valuation was the land and building method. Aggrieved by the above, the assessee went in further appeal before the Tribunal which directed the Wealth-tax Officer to compute the value of the residential property by applying the provisions contained under Rule 1BB of the Wealth-tax Rules, 1957.

2. Rule 1BB was introduced by the Wealth-tax (Amendment) Rules, 1979, with effect from April 1, 1979. The relevant portion of the rule reads as follows :--

"1BB. Valuation of house.--(1) For the purposes of Sub-section (1) of Section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely :--

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8 ; and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction 100/9 :

Provided that in relation to a house which is built on leasehold land, this sub-rule shall have effect as if for the fraction 100/8 in Clause (a) or, as the case may be, the fraction 100/9 in Clause (b), the fractions 100/9 and 100/10, respectively, had been substituted."

Under Sub-rule (2) "gross maintainable rent", "house" and "net maintainable rent" are defined. Sub-rule (5) allows the Wealth-tax Officer not to apply the provisions regarding valuation contained in Rule 1BB with the previous approval of the Inspecting Assistant Commissioner under certain specified situations.

3. It was contended on behalf of the Revenue that since Rule 1BB was incorporated in the statute only with effect from April 1, 1979, the procedure prescribed therein cannot have any application to the assessment for the year 1976-77, which was pending. Even though various High Courts have taken the view that Rule 1BB would be applicable to pending assessment proceedings, according to the Revenue, those decisions are no longer good law in view of the decision of the Supreme Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, . In the above decision, the Supreme Court has held that the provisions contained under Rule 1D are mandatory and that those provisions are to be followed in valuing each and every case of unquoted equity shares of a company (other than an investment company or a managing agency company). Therefore, the provisions contained under Rule 1BB also should be treated as mandatory in nature and, according to the Revenue, it cannot be understood as a procedural provision which can be made applicable to pending assessment proceedings. On the other hand, the assessee would contend that Rule 1BB is only procedural in nature and it has to be applied to pending proceedings. In support of the above contention reliance was placed on the decisions of the High Courts of Karnataka, Madhya Pradesh, Calcutta, Gujarat, Delhi and Rajasthan in Commissioner of Wealth Tax, Karnataka, Bangalore Vs. Vidyavathi Kapur, , Commissioner of Wealth-tax Vs. Lachmandas Bhatia, , Smt. Manjushree Biswas Vs. Commissioner of Wealth Tax, , Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, , Commissioner of Wealth Tax Vs. O.P. Tandon and others, and R.R. Todiwalla Vs. Commissioner of Income Tax, , respectively. In Commissioner of Wealth-tax Vs. Hira Lal Mehra, the High Court of Punjab and Haryana took the view that Rule 1BB is procedural in nature

but would not apply to pending proceedings. We are not impressed by the argument of the Revenue that Rule 1BB is substantive law as it is a mandatory provision and even a procedural provision can be mandatory. It is not the rule that only substantive law can be mandatory. Section 3 of the Wealth-tax Act is the charging section and the machinery for computing the net wealth is provided u/s 7. The manner in which the market value of the asset has to be computed shall be in accordance with the rules issued u/s 46(2).

4. The dispute whether Rule 1BB is procedural in nature and, therefore, applicable to pending proceedings is now settled by the decision of the apex court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, . While upholding the decisions of the High Courts of Karnataka, Madhya Pradesh, Calcutta, Gujarat and Delhi, the Supreme Court held as follows (at page 895) :

The reference, it appears, is to the decision in CWT v. Man Bahadur Singh [1994] 208 ITR 658.

"On a consideration of the matter, we are persuaded to the view that Rule 1BB is essentially a rule of evidence to the choice of one of the well accepted methods of valuation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate valuations resulting from application of different methods of valuation respecting properties of a similar nature and character. The view taken by the High Courts, in our opinion, cannot be said to be erroneous."

In the light of the above, we answer the question referred in the affirmative, in favour of the assessee and against the Revenue.

5. Communicate a copy of this judgment under the seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench, for information.