
(1976) 10 AHC CK 0043

In the Allahabad High Court

Case No : Wealth-tax Reference No. 663 of 1973

Commissioner of Wealth-tax

APPELLANT

Vs

Dr. Gaur Hari Singhania

RESPONDENT

Date of Decision : 06-10-1976

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1D

Citation : (1978) 111 ITR 107

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : Deokinandan and Ashok Gupta, for the Appellant; V.B. Upadhya, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following two questions for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was competent to entertain and decide the question with regard to the vires of Rule 1D of the Wealth-tax Rules, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the view taken by the Tribunal that Rule 1D of the Wealth-tax Rules, 1957, instead of serving the purpose of the Act, puts a severe curb on it, particularly on the provisions contained in Sections 7(1) and 24(6) of the Wealth-tax Act, 1957 and hence it is ultra vires of those sections, is correct in law ?"

2. The assessee owned shares in certain companies and these shares were not quoted in the stock exchange. For the purpose of assessment to Wealth-tax, he adopted certain method of valuation of these shares. This method was not accepted by the Wealth-tax Officer who valued those shares in accordance with Rule 1D of the Wealth-tax Rules. This rule was inserted by the Wealth-tax (Amendment) Rules, 1967. The application of this rule was upheld by the

Appellate Assistant Commissioner against whose decision the assessee filed appeals."

3. Before the Tribunal the validity of Rule 1D was challenged. The Tribunal held that Rule 1D was ultra vires the provisions of Section 7(1) read with Section 24(6) of the Wealth-tax Act. It consequently directed that the method adopted by the assesses for valuing these shares be accepted.

4. On the first question referred to us, the learned standing counsel for the department has urged that the Tribunal was not competent to entertain and decide the question with regard to the vires of Rule 1D. He further urged that there is no conflict between Rule 1D and Sections 7(1) read with Section 24(6).

5. The question whether provisions of a statute can be declared as ultra vires by a Tribunal created by or under a statute, is no longer res integra in view of the following pronouncement by the Supreme Court in K.S. Venkataraman and Co. Vs. State of Madras,

"As the Tribunal is a creature of a statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it."

6. This principle was reiterated by the Supreme Court in Commissioner of Income Tax, Madhya Pradesh etc. Vs. Straw Products Ltd., Bhopal, and C.T. Senthilnathan Chettiar Vs. State of Madras, .

7. The learned counsel for the assessee has, however, submitted that what has been held by the Tribunal as invalid is not any section of the Act, but only a rule which is in direct conflict with the provisions contained in Section 7(1) of the Act. He has further submitted that rules can be framed under an Act only to carry out the purposes of the Act and that it is open to a Tribunal constituted under that Act to examine whether any of the rules framed thereunder are in conformity with the provisions contained in the Act or inconsistent therewith or beyond the scope thereof. It was also submitted by him that it is open to such Tribunal to ignore any rule which is inconsistent with the provisions of the Act and to follow the provisions of the Act in preference to such rules. He has placed reliance on the following observations in NORTH BRITISH AND MERCANTILE INSURANCE CO. Vs. RE., :

"Where there is a conflict between rules framed under a statute and the enactment of the statute itself, the enactment must be treated as the governing consideration and the rules as subordinate to it even though the rules may have statutory authority."

8. But in the present case the Tribunal has not simply ignored the rules and preferred to follow the provisions contained in Section 7(1) of the Act, but the Tribunal has positively declared that Rule 1D is ultra vires Section 7(1) read with

Section 24(6).

9. Even in regard to the competence of a Tribunal constituted under an Act, to declare as ultra vires any rule or notification thereunder, the Supreme Court has in *Kanpur Vanaspati Stores, Kanpur Vs. The Commissioner of Sales Tax, U.P., Lucknow*, observed thus:

"Further it is now well settled by the decision, of this court that no one can challenge the validity of a provision of an Act or rule made thereunder or even a notification issued either under the Act or under the rules made, before the authorities constituted under the Act." This decision, in our opinion, negatives completely the contention advanced by the learned counsel for the assessee. Following the reasoning of the Supreme Court in *K.S. Venkataraman and Co. Vs. State of Madras*, ; the Orissa High Court held in *Tata Iron and Steel Co, Ltd, v. State of Orissa* [1970] 25 STC 171 (Ori), that the High Court while deciding a reference in its advisory jurisdiction cannot declare as ultra vires a rule framed under the Act. It is obvious that what the High Court cannot do, the Tribunal also cannot do.

10. It was urged by the learned counsel for the assessee that the High Court of Madras had declared Rule 24 of the Appellate Tribunal Rules, 1946, as ultra vires in exercise of its jurisdiction u/s 66(2) of the Income Tax Act in *S. Chenniappa Mudaliar Vs. Commissioner of Income Tax*, and that declaration of law by the Madras High Court was affirmed by the Supreme Court. [See *Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar*, .

11. We have examined the decision of the Supreme Court. It affirmed the decision of the High Court on the ground that there was repugnancy between the substantive provisions of the Income Tax Act and the Rules framed thereunder by the Tribunal. The question whether the vires of a rule or a section of an Act can be considered either by the Tribunal or even by the High Court while exercising its advisory jurisdiction does not appear to have been canvassed either before the High Court or the Supreme Court. The Supreme Court in *Tika Ram and Sons Ltd. etc. Vs. The Commissioner of Sales Tax U.P., Lucknow*, held that where a provision is declared ultra vires by the High Court and no objection is taken by the parties, then, parties are precluded from agitating that question any further. Before the Supreme Court, reliance was placed on behalf of the assessee on *K.S. Venkataraman and Co. Vs. State of Madras*, , but the Supreme Court observed at page 317 :

"In other words, it must be taken that the appellants had voluntarily submitted to the jurisdiction of the revisional authority and of the High Court on the matter in issue and having submitted to the jurisdiction and having taken the chance of judgment in its favour, it is not right that the appellants should take exception to the jurisdiction of the High Court when the judgment has gone against it. We cannot, therefore, permit the appellants to canvass in this court for the first time the question whether it was competent for the High Court to decide the question

of law referred to it u/s 11 of the Act." A like view was taken by the Supreme Court in Commissioner of Saks Tax v. Ganga Sugar Corporation [1970] 25 STC 155 (SC) . It appears to us that the decision of the Supreme Court in Commissioner of Income Tax, Madras Vs. S. Chenniappa Mudaliar, proceeded on the ground of acquiescence before the High Court.

12. For the reasons stated above we answer question No. 1 referred to us in the negative, in favour of the Commissioner and against the assessee. In view of our answer to question No. 1, we do not consider it necessary to answer question No. 2. Our answer to question No. 1 is as follows :

"In the facts and circumstances of the case, the Income Tax Appellate: Tribunal was not competent to entertain and decide the question of vires of Rule 1D of the Weath-tax Rules."

13. The department shall be entitled to its costs which we assess at. Rs. 200.