(2001) 08 DEL CK 0043

In the Delhi High Court

Case No : Wealth-tax Reference No''s. 66 to 73 of 1979

Commissioner of Wealth Tax APPELLANT

Vs

Hari Shankar Rastogi RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Citation : (2001) 170 CTR 290 : (2002) 254 ITR 80 : (2001) 119 TAXMAN 699

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : R.D. Jolly and Prem Lata Bansal, for the Appellant; None, for the Respondent

Judgement

Arijit Pasayat, C.J.—These eight reference applications involve identical questions and, Therefore, we dispose of the same with this common judgment.

2. Accepting the prayer for reference u/s 27(1) of the Wealth-tax Act, 1957 (in short "the Act"), the Income Tax Appellate Tribunal, Delhi Bench-C (in short "the Tribunal"), has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the deletion of the sum of Rs. 84,000 included by the Wealth-tax Officer in the net wealth of the assessed for the assessment years 1967-68 to 1974-75 ?"

3. The dispute relates to the assessment years 1967-68 to 1974-75.

4. The factual position is almost undisputed and is as follows :

The assessed is the son of Jogdhian, who died on May 4, 1965. Jogdhian owned a plot of land measuring 315 sq. yds. which was acquired by the Government and possession was taken on August 3, 1963. The Land Acquisition Collector awarded compensation at Rs. 110 per sq. yd. On a reference made by the Collector to the District and Sessions Judge, compensation was enhanced to Rs. 175 per sq. yd. The assessed, as a legal representative of his late father, filed an appeal before this court claiming compensation of Rs. 800 per sq. yd. Taking that to be the value, the Wealth-tax Officer valued the plot and made addition of Rs. 84,000 in respect of the assessed''s 1/3rd share to the wealth of the assessed for each of the concerned assessment years. The appeals were filed before the Appellate Assistant Commissioner ("the AAC" in short). Taking note of the award of the Land Acquisition Collector, the Appellate Assistant Commissioner noted that the Installment of compensation received in August, 1963, was credited in the pass book of Jogdhian. In the estate duty proceedings also no additional value was included so far as the plot in question is concerned and only the compensation received was taken into consideration. Further, the Appellate Assistant Commissioner held that it was wrong on the part of the Wealth-tax Officer to include any value of the plot which could not have belonged to the assessed. He further held that a sum to the extent of 1/3rd share in the amount of compensation receivable, could be taxed under the appropriate head. Accordingly, he deleted the addition made. The matter was carried in appeal before the Tribunal by the Revenue. It was pointed out to the Tribunal by the assessed that the plot never came into the possession of the assessed. Taking note of the rival submissions, the Tribunal held that the plot in question having been acquired by the Government and possession thereof having been taken on August 3, 1963, and Jogdhian, the actual owner of the property, having died on May 4, 1965, the assessed acquired only the right of appeal to get higher compensation. The same was held to be non-taxable. The Tribunal held that the compensation already awarded has been assessed in the hands of the assessed and there was no question of the value of the plot to the extent of the 1/3rd share being assessed in the hands of the assessed in the years under reference merely on the basis of appeal filed by him claiming enhanced compensation. The Tribunal further observed that the additional compensation as and when received would be assessable in the hands of the recipient. On being moved for reference, the question as set out has been referred for the opinion of this court.

5. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed in spite of notice.

6. The two issues involved are essentially as follows : (i) whether the right to compensation was an asset, and (ii) whether-the Tribunal was correct in holding that as and when compensation is received the same would be assessable in the hands of the recipient. So far as the first issue is concerned, a similar question came up for examination of the apex court in Commissioner of Wealth-tax, Kolkata Vs. Smt. Anjamli Khan, . It was observed in the said case that the right to receive compensation does not cease to be an asset includible in the net wealth for the purpose of wealth-tax merely because the compensation rolls contemplated by the concerned Act had not been published or the amount of compensation determined. By the mere fact that the quantification of compensation or its payment is deferred, the right to receive compensation does not cease to be an asset includible for the purpose of wealth-tax. Therefore, the Tribunal was not justified in holding that the right pf appeal in the relevant set of

facts would not constitute an asset includible in the wealth of the assessed. The view expressed in the aforenoted case was again followed by the apex court in Commissioner of Wealth-tax, Calcutta Vs. U.C. Mehatab, . It was held that the value of the assessed''s right to receive compensation, can only be the present value, i.e., the value as on the valuation date of the amount, that may be determined and paid as compensation in future. It cannot be equal to the amount of compensation payable under the Acquisition Act. The present value of the future compensation has, Therefore, to be determined on a consideration of all relevant aspects that may be put forward before the competent authority.

7. The first limb of the question relating to the right of appeal is answered in the affirmative, in favor of the Revenue and against the assessed. So far as the second limb is concerned, we find that the Tribunal has rightly observed that as and when further compensation is received, it would be assessable in the hands of the recipient. There has to be determination of the question as to what was the compensation received and when received it is to be assessed in the hands of the recipient. Our answer to the residual limb of the question is that the compensation as and when received would be taken to be the taxable figure and would be subject to taxation in accordance with law. The question referred is accordingly answered.

