(1998) 05 GUJ CK 0007

In the Gujarat High Court

Case No : WT Ref. No. 35 of 1983

Commissioner of Wealth Tax APPELLANT

Vs

Hrudayesh B. Patel RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:
Wealth Tax Act, 1957 — Section 16(3), 25(2), 27(1), 7(1)

Citation : (1999) 236 ITR 669 : (1999) 102 TAXMAN 461

Hon'ble Judges : R.K. Abichandani, J;Kundan Singh, J

Bench : Division Bench

Judgement

R.K. Abichandani, J.—The Tribunal has referred for the opinion of this Court the following questions under s. 27(1) of the WT Act, 1957 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in modifying the direction given by the CWT to the WTO to reframe the assessment by directing the WTO to apply r. 1BB when the Tribunal has held that the order was legal and was not liable to be set aside ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the WTO should value the property by applying the provisions of r. 1BB of the WT Rules which came into force on 1st April, 1979 ?"

2. The reference relates to the asst. yrs. 1976-77 to 1978-79. Original assessments were completed by WTO on 3rd December, 1979, under s. 16(3) of the WT Act. The CWT found that the assessee owned a flat in Block No. 6-C of Sea Face Housing Society, Bombay. The WTO determined the value of the said property for all the years at Rs. 1,32,500. The CWT found that during survey operation the adjoining plots bearing C-12 and B-12 were sold for Rs. 2 lakhs each in December, 1974, and January, 1975. The CWT, therefore, found that the order of the assessment as made by the WTO for each of the years was erroneous and prejudicial to the interest of the Revenue. He, therefore, set aside

the order for each of these years after hearing the assessee and directed the WTO to refer the case to the valuation cell and reframe the assessment on the basis of the report of the valuation cell after giving an opportunity of hearing to the assessee. In an appeal filed by the assessee, while upholding the jurisdiction of the CWT to revise assessment under s. 25(2) of the Act, the Tribunal accepted the assessee''s contention that the property being self-occupied, valuation thereof should be made in accordance with r. 1BB of the WT Rules. The Tribunal, therefore, directed the WTO to apply r. 1BB and then decide whether a reference to valuation officer was called for. The Tribunal held that r. 1BB being procedural and mandatory, applied to all pending proceedings before all the authorities. It was held that, since the matter had already been remitted to the WTO, the WTO should apply r. 1BB for all the years in question.

3. The contention of the Revenue that r. 1BB cannot be invoked does not now survive in view of the decision of the Hon''ble Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, in which while construing the provisions of r. 1BB of the said Rules, the Supreme Court held that the said rule 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, 1979, when the rule came into force. The Supreme Court affirmed the ratio of the decision of this Court in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, in which it was held that the benefit of r. 1BB must relate back to the date on which s. 7(1) was made subject to rules. Similar view was taken by this Court in Commissioner of Wealth-tax Vs. Niranjan Narottam, .

4. In this view of the matter, we hold that the Tribunal did not commit any error in holding that the provisions of r. 1BB of the WT Rules should be applied to the assessee''s case in respect of these years and WTO should reframe the assessment on that basis. Both the questions are, therefore, answered in the affirmative against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.