

(1997) 02 MAD CK 0177

In the Madras High Court

Case No : Tax Cases No. 161, 162, 163, and 1016 of 1984 (References No"s. 110, 111 and 112 and 895 of 1984)

Commissioner of Wealth-tax

APPELLANT

Vs

K. Vivekananthan

RESPONDENT

Date of Decision : 05-02-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 27, 27(1), 35
Wealth Tax Rules, 1957 — Rule 1

Citation : (1999) 235 ITR 300

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Advocate : S.V. Subramanian for C.V. Rajan, for the Appellant; P.B. Sampathkumar, for the Respondent

Judgement

N.V. Balasubramanian, J.—A common question of law has been referred by the Tribunal, for our opinion, u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for the assessment years 1973-74 to 1976-77, which runs as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the agricultural lands at Kurichi should be treated as "business premises" within the meaning of rule 1(i), Para. B, Part 1 of the Schedule to the Wealth-tax Act, 1957, and, consequently, no additional wealth-tax should be levied for the assessment years 1973-74 to 1976-77 ?"

2. The assessee is an individual. The Wealth-tax Officer, after making the assessment, passed a rectification order u/s 35 of the Act for the assessment years 1973-74 to 1976-77 to levy additional wealth-tax on the agricultural lands on the ground that they are urban immovable properties and subject to additional wealth-tax under rule 1(i), Para-B, Part I of the Schedule to the Wealth-tax Act. The assessee preferred appeals before the Appellate Assistant Commissioner against the orders of the Assessing Officer. The Appellate Assistant

Commissioner, following the decision of the Punjab and Haryana High Court in Commissioner of Wealth-tax Vs. Hari Singh, , held that the agricultural lands should be regarded as "business premises" and, therefore, the levy of the additional wealth-tax was not justified. The Appellate Tribunal, on appeal by the Revenue, held that the agricultural lands should be treated as "business premises", and confirmed the order of the Commissioner (Appeals) that the levy of additional wealth-tax on the, agricultural lands was not justified. This order is the subject-matter of the reference before this court.

3. Mr. S. V. Subramaniam, learned senior counsel appearing for the Department, submitted that the finding of the Tribunal is not based on any material and the mere fact that the lands are agricultural lands, would not be sufficient to take the lands out of the purview of urban asset. He submitted that the assessee has not produced any material to show that the land was used throughout the previous year for the purpose of business carried on by the assessee and in the absence of any evidence to establish the fact of user, the Tribunal was not justified in holding that the agricultural lands should be treated as "business premises".

4. Mr. P. B. Sampathkumar, learned counsel for the assessee, has not disputed the position that both the Appellate Assistant Commissioner as well as the Appellate Tribunal came to the conclusion that the agricultural lands are business premises, without any material on record. Learned counsel was not able to point out any material on which reliance was placed by the Tribunal, to come to the conclusion that the agricultural lands should be regarded as business premises. However, his endeavour before this court was that the matter should be remitted to the Tribunal to consider the matter afresh and the assessee should be granted an opportunity to produce materials before the Tribunal that the agricultural lands were business premises within the meaning of the relevant provisions of the Act. According to him, Kurichi town is In industrial area and the lands situate in the town should be regarded as industrial premises. Learned counsel for the assessee submitted that there are two courses open to the court; one is to call for a supplementary statement of the case and another is to decline to answer the question referred at the instance of the Revenue and the matter may be remitted to the Tribunal so that the Tribunal can rehear the matter once again. The plea of learned counsel for the assessee is that since the Tribunal has failed to consider and decide the question that the lands were business premises, a further opportunity should be given to the assessee and this court may decline to answer the question and direct the Tribunal to rehear the appeal. He placed reliance on several decisions of the several High Courts and the Supreme Court. The case laws cited by him are, (i) Commissioner of Gift-tax Vs. H.H. Maharaja Gaj Singh, ; (ii) Commissioner of Income Tax Vs. Associated Garment Maker, ; (iii) Commissioner of Income Tax Vs. Seshasayee Bros. (Travancore) Pvt. Ltd., ; (iv) Commissioner of Income Tax Vs. Bansi Dhar and Sons, ; (v) COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., and (vi) Commissioner of Income Tax, West Bengal and Another Vs. George Henderson and Co. Ltd., . Learned counsel, therefore, contended that it is open to this court

to direct the Tribunal to rehear the appeal and consider the materials that may be produced by the assessee before the Tribunal during the further hearing of the appeal.

5. We have carefully considered the rival arguments advanced on behalf of the Revenue as well as the assessee. The expression, "business premises" is defined in rule 1(i), Para B, Part I of the Schedule to the Wealth-tax Act, 1957, which runs as under :

""business premises" means any building or land or part of such building or land, or any right in building or land or part thereof, owned by the assessee and used throughout the previous year for the purposes of his business or profession, and includes any building used for the purpose of residence of persons employed in the business or any building used for the welfare of such persons, as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, but does not include any premises in the nature of a guest-house."

6. It is not disputed by learned counsel for the assessee that the Appellate Tribunal has arrived at the finding that the agricultural lands belonging to the assessee were "business premises" without any material or evidence on record. The Tribunal has chosen to place reliance on a decision of the Punjab and Haryana High Court in the case of Commissioner of Wealth-tax Vs. Hari Singh, , to hold that the agricultural lands situate in an urban area should be treated as "business premises". The Appellate Tribunal, however, has failed to notice that under the definition of "business premises", the assessee should establish that some systematic entrepreneurial activities with the help of capital and labour and with an object of making profit were carried on on the land to render the agricultural land as business premises. It is relevant to notice that an exemption is granted from the levy of additional wealth-tax on business premises, and it is for the assessee to establish with relevant materials that a particular asset is a business premises to take it out of the levy of additional wealth-tax on the asset. There are different kinds of agricultural lands, and to classify the agricultural land as business premises, there must be some materials. It is possible to visualise several illustrations. Take for an example, a large extent of agricultural lands, and where the assessee carries on systematic activity of agricultural operations. Likewise, there may be a small extent of land in factory premises needed for the assessee's business purposes. Yet, another instance can be where there is an agricultural land, in which agricultural operations are carried on as a normal agriculturist, and the surplus of the agricultural produce is sold. In all three instances stated above, the fact that agricultural operations were carried on would show that there was an employment of capital and labour. In first two instances, there can be no difficulty in holding that the agricultural lands were owned and used for the business, but in the third instance, unless the assessee establishes that the land was used as business asset, the agricultural land, perse, cannot be treated as business premises. There may be instances of the lands lying fallow. It is not clear to which category the assessee's land belonged. No

doubt, it is true that the instances quoted above are merely illustrative and not exhaustive. But, even then, unless the assessee has established, which he failed to do in the instant case, that the lands were used throughout the previous year for the purpose of business or profession, it is not possible to treat the agricultural land as business premises. Hence, we are not able to accept the contention that from the mere fact that the lands were agricultural lands, they should not per se be treated as business premises. The relevant provision of the law, makes it clear that there must be materials to prove that the agricultural lands were used throughout the previous year for the purpose of business or profession as mentioned in the Act and it is not possible to hold that the agricultural lands, without anything more, can be regarded as business premises within the meaning of the relevant rules. The finding of the Appellate Tribunal that the agricultural lands are business premises is quite inconsistent with the relevant provisions of the law and, hence, it is not sustainable in law.

7. However, learned counsel for the assessee has submitted that this court should either call for a supplementary statement of the case or decline to answer the question referred to us and direct the Tribunal to rehear the matter afresh. In so far as his first request to call for a supplementary statement of case is concerned, it is well established that it is not open to this court to direct the Appellate Tribunal to send any fresh material, which was not considered by the Appellate Tribunal. Even if a supplementary statement of case is called for, since there were no materials produced by the assessee before the Tribunal at the time of hearing of the appeal, the position of the assessee would not become better by calling for a supplementary statement of the case. Hence, we decline the request of learned counsel for the assessee to call for a supplementary statement of the case. The alternative request of learned counsel for the, assessee is that this court should decline to answer the question referred to us and direct the Appellate Tribunal to rehear the appeal permitting the assessee to adduce fresh evidence before the Appellate Tribunal. This course of option suggested by the assessee is also not acceptable by this court. It is well-established that this court is exercising advisory jurisdiction and the jurisdiction of this court in rendering. answer to the question referred to it is limited. Several decisions were cited by learned counsel for the assessee which deal with the cases of rendering answers to academic questions or where directions were given by the courts to the Appellate Tribunal to consider an already existing materials or where the Appellate Tribunal has not considered the materials and decided the question raised by the party before the Tribunal. The decisions relied upon by learned counsel for the assessee do not establish the proposition that where the finding of the Appellate Tribunal is defective, the High Court should not answer the question and remit the matter to the Appellate Tribunal. The decision of the Supreme Court in *Commissioner of Income Tax, West Bengal and Another Vs. George Henderson and Co. Ltd.*, wherein the Supreme Court has held that the court is bound by the findings of fact is also not helpful to the assessee. Here, there is no finding that the assessee has carried on agricultural operations in

urban lands, nor is there a finding that the activity involved was systematic activity with the help of capital or labour and with a view to make profit. We are of the view that this court cannot permit the assessee who could have or should have given all the relevant materials before the Tribunal, to give such evidence after the case reached the reference stage. The burden is squarely on the assessee to establish that the agricultural lands are business premises and having failed to produce the necessary materials before the Appellate Tribunal, it is not open to the assessee to ask for a second chance to adduce new materials before the Tribunal in the reference stage. Hence, we are not inclined to accept the second course of action suggested by learned counsel for the assessee. Since the Appellate Tribunal has arrived at the finding that the lands of the assessee were business premises within the meaning of rule 1(i), Para B, Part I, of the Schedule to the Wealth-tax Act without any material, we hold that the finding of the Appellate Tribunal is not sustainable in law. Consequently, we answer the question referred to us in the negative and in favour of the Department. No costs.