
(1992) 04 RAJ CK 0021

In the Rajasthan High Court

Case No : Wealth-tax Reference Application No's. 21 to 25 of 1991

Commissioner of Wealth-tax

APPELLANT

Vs

K.C. Badar and Others

RESPONDENT

Date of Decision : 03-04-1992

Acts Referred:

Wealth Tax Rules, 1957 — Rule 2B(2)

Citation : (1992) 198 ITR 530

Hon'ble Judges : Magh Raj Calla, J; Inder Sen Israni, J

Bench : Division Bench

Advocate : Virendra Dangi, for the Appellant; N.M. Ranka, for the Respondent

Judgement

I.S. Israni, J.—In all the above-mentioned wealth-tax reference applications filed u/s 27(3) of the Wealth-tax Act, 1957 (for brevity "the Act"), common questions have been raised, and, therefore, they are decided by a common order.

2. In D. B. Civil Wealth-tax Reference Application No, 21 of 1991, it has been stated that the asscssee is a partner of M/s. K. D. Javeri, who exported goods outside India. The value of goods which has been shown in the export invoice was reduced by the assessee without proving that those goods were received back or were sold subsequently at a lesser price. The Wealth-tax Officer, invoking the provisions of Rule 2B(2) of the Wealth-tax Rules, made the addition in the closing stock for the year of assessment 1982-83 (annexure-1) on account of failure of the assessee to furnish the information in spite of opportunity given for this purpose. The assessee preferred an appeal whereupon the Commissioner of Wealth-tax (Appeals) deleted the addition made by the Wealth-tax Officer, vide annexure-2. The petitioner submitted a second appeal to the Tribunal, but the Tribunal also rejected the appeal, vide judgment dated June 7, 1989. D. B. Wealth-tax Reference Application No. 22 of 1991 is regarding the assessment year 1983-84 of the same firm in which also the order of the Wealth-tax Officer who made additions by invoking the provisions of Rule 2B(2) in the closing stock on account of the same reason mentioned above was deleted by the

Commissioner of Wealth-tax (Appeals) and a second appeal preferred by the petitioner was rejected by the Tribunal. D. B. Wealth-tax Reference Application No. 23 of 1991 is also regarding another partner of the same firm for the assessment year 1981-82 in which the Wealth-tax Officer, invoking the provisions of Rule 2B(2), made additions in the closing stock due to the same reason mentioned above. The appeal preferred by the non-petitioner was accepted by the Commissioner of Wealth-tax (Appeals) who deleted the additions made by the Wealth-tax Officer. The second appeal of the petitioner was rejected by the Tribunal. D. B. Wealth tax Reference Application No. 24 of 1991 is also regarding a partner of the same firm for the assessment year 1983-84. The Wealth-tax Officer on account of the same reasons mentioned above, invoking the provisions of Rule 2B(2), made additions in the closing account. The appeal of the non-petitioner against the said order was accepted by the Commissioner of Wealth-tax (Appeals) who deleted the addition made by the Wealth-tax Officer. The second appeal of the petitioner was rejected by the Tribunal. D. B. Wealth-tax Reference Application No. 25 of 1991 is regarding another partner of the same firm for the assessment year 1981-82, in which the Wealth-tax Officer, invoking the provisions of Rule 2B(2), made additions in the closing stock for the same reasons mentioned above. In the appeal filed by the non-petitioner, the Commissioner of Wealth-tax (Appeals) deleted the addition made by the Wealth-tax Officer. The second appeal preferred by the petitioner was rejected by the Tribunal.

3. In all these reference applications, the following two questions, said to be questions of law, have been referred :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition made by the Wealth-tax Officer invoking Rule 2B(2) of the Wealth-tax Rules ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in observing that the Wealth-tax Officer is not justified in not applying the ruling of the Income Tax Appellate Tribunal, in view of Section 17A(4) of the Wealth-tax Act and also in observing that the order of the Wealth-tax Officer can be modified without normal time limit irrespective of the assessment years involved ?"

4. It is submitted by Shri Virendra Dangi, learned counsel for the Revenue, that since the fair market value is more than 20% of the value declared by the assessee, the provisions of the Rule 2B(2) are clearly applicable in the case of the assessee. On this basis, an addition of Rs. 2,48,418 in D. B. Wealth-tax Reference Application No. 21 of 1991, has been worked out and, to this extent, the net value of the assets has increased.

5. It is submitted by Shri N. M. Ranka, learned counsel for the assessee, that a matter of the same nature was raised by the Revenue against the same firm, of which, the assessee is partner, which is reported in COMMISSIONER OF WEALTH-

TAX Vs. S. K. BADER AND OTHERS., A similar matter was also considered by this court in the matter of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., Learned counsel points out that the matter is squarely covered by these two decisions, even though some other decisions have also been given on this point by this High Court. It is submitted that it was held in the matter of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., that the burden was on the Revenue to prove that the valuation of the closing stock given in the balance-sheet was not the true value and that the market value of the closing stock exceeded the valuation disclosed by more than 20%. This burden has not been discharged and the Wealth-tax Officer applied Rule 2B(2) without any foundation. The SLP filed against the decision of S. K. Bader (supra) was dismissed.

6. We have gone through the order of the learned Wealth-tax Officer, the Deputy Commissioner of Income Tax (Appeals) as also of the learned Tribunal. It may be pointed out that this court, in the case of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., held that gross profit is only an indicator, but it could not be the sole basis for coming to the conclusion that the market value was more than 20% of the cost, where the gross profit as per trading account is more than 20%. The Revenue should discharge the onus of proving that the market value of assets of the firm exceeded by more than 20%. If the balance-sheet of the books of account of the firm, on which the assessee relies, are the only material available and the Wealth-tax Officer does not accept the valuation disclosed, then the burden lies on the Wealth-tax Officer to show that the market value exceeds by more than 20% of the valuation given in the balance-sheet. This burden has evidently not been discharged by the Wealth-tax Officer. The second question is a question of fact and it was rightly held to be so by the Appellate Tribunal.

7. As a result of the above discussion and on the basis of the reasoning in the case of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., it must be held that the Tribunal's view is justified. Consequently, the references are answered in the affirmative, against the Revenue and in favour of the assessee, by holding that the Tribunal's view in the order dated June 7, 1989 (annexure-3), is justified.

8. The references are answered accordingly.