
(2002) 07 RAJ CK 0066

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 7 of 1983

Commissioner of Wealth-tax

APPELLANT

Vs

Kedar Nath

RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 17(1), 5(1)

Citation : (2003) 259 ITR 563

Hon'ble Judges : Y.R. Meena, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : R.B. Mathur, for the Appellant; Anant Kasliwal, for the Respondent

Judgement

1. On an application u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act of 1957"), the Tribunal has referred the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the finding of the Commissioner of Wealth-tax (Appeals) that the assessee is entitled to deduction u/s 5(1)(iv) of the Wealth-tax Act, 1957, from the interest of the assessee in the immovable property held by the firm ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment of the assessee for the year under consideration is not validly reopened u/s 17(1)(b) of the Wealth-tax Act, 1957 ?"

2. The assessment order relates to the year of 1974-75. The original assessment was framed on November 3, 1974. In the original assessment exemption u/s 5(1) (xxxii) of the Act of 1957 was allowed to the assessee, i.e., 1/3rd interest of the assets of the assessee-firm which includes land and building belonging to the firm. Thereafter, notice for reopening the assessment was issued and after considering the submissions, an assessment order was passed u/s 16(3) read with Section 17(1)(b) of the Act of 1957 and in the reassessment while allowing

deduction u/s 5(1)(xxxii) of the Act of 1957, the value of land and building belonging to the firm was excluded from the assets of the firm. In appeal, the Commissioner of Wealth-tax (Appeals) has confirmed the view taken by the Wealth-tax Officer regarding validity of the reassessment following the decision of the Delhi High Court rendered in the case of Nawabganj Sugar Mills Co. Ltd. and others Vs. Commissioner of Income Tax, Delhi, . But on the merits instead of allowing deduction u/s 5(1)(xxxii) of the Act of 1957, the Commissioner of Wealth-tax (Appeals) allowed deduction u/s 5(1)(iv) of the Act of 1957. In appeal before Tribunal, the Tribunal has not upheld the validity of reopening of the assessment holding that mere change of opinion does not confer any right to reopen assessment u/s 17(1)(b) of the Act of 1957 but on the merits the Tribunal upheld the view taken by the Commissioner of Wealth-tax (Appeals).

3. Mr. Mathur, learned counsel for the Revenue, submits that if reopening is not valid u/s 17(1)(b) of the Act of 1957, there is no question of any deduction being allowed u/s 5(1)(iv) in appeal. When the original deduction was allowed u/s 5(1)(xxxii) of the Act of 1957 that cannot be changed into deduction u/s 5(1)(iv) of the Act of 1957, when the reassessment is not valid. He further submits that in reopening, the Wealth-tax Officer has wrongly mentioned Section 17(1)(b) of the Act of 1957. The reopening was u/s 17(1)(a) of the Act of 1957. Mere mentioning of wrong section does not vitiate reopening proceedings or the order. For that, he placed reliance on the decision rendered in the case of Lok Nath and Company, The Mall, Shimla Vs. Commissioner of Wealth Tax, Patiala, He further submits that if the finding of fact arrived at by the earlier officer is wrong while the original assessment was made, the subsequent Assessing Officer can reopen that assessment order u/s 17(1)(b) of the Act of 1957 and that constitutes "information". He relied on the decision of the Gujarat High Court in the case of COMMISSIONER OF WEALTH-TAX, GUJARAT-III Vs. SMT. ARUNDHATI BALKRISHNA TRUST.,

4. Mr. Kasliwal, learned counsel for the assessee, submits that if the substantial material was there at the time of the original assessment, the Assessing Officer on relook cannot change his opinion regarding any relief under the Act on the basis of the same material, that does not amount to "information" within the meaning of Section 147(b) of the Income Tax Act, 1961, therefore, he cannot reopen the assessment u/s 147(b) of the Act. He placed reliance on the decision of the apex court in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi,

5. On the merits, Mr. Mathur submits that deduction u/s 5(1)(iv) of the Act of 1957 is available for the owner of the house. The land and building belongs to the firm and not to the assessee, therefore, on the merits also, the assessee is not entitled for any deduction u/s 5(1)(iv) of the Act of 1957. Mr. Kasliwal submits that the firm and partner are one and same thing, therefore, the property belonging to the firm also belongs to the partner, and, the partner is entitled for deduction u/s 5(1)(iv) of the Act of 1957.

6. In *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, the issue before their Lordships was whether on the same material or on audit report the Assessing Officer can reopen the assessment u/s 147(1)(b) of the Act. At page No. 1003, their Lordships observed as under :

"The Income Tax Act does not contemplate such power in any internal audit organisation of the Income Tax Department ; it recognises it in those authorities only which are specifically authorised to exercise adjudicatory functions. Nor does Section 16 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, envisage such a power for the attainment of the objectives incorporated therein. Neither statute supports the conclusion that an audit party can pronounce on the law, and that such pronouncement amounts to "information" within the meaning of Section 147(b) of the Income Tax Act, 1961."

7. On relook of the same material or on audit report, the Income Tax Officer is not justified to reopen the assessment as that does not constitute "information" within the meaning of Section 147(b) of the Act. Section 17(1)(b) of the Wealth-tax Act, 1957, is corresponding to Section 147(b) of the Income Tax Act, therefore, in the same way if the Assessing Officer has allowed any claim, subsequently on the same material, he cannot reopen the assessment on the basis of mistake or change of opinion, as that does not constitute "information" within the meaning of Section 17(1)(b). Therefore, we agree with the view taken by the Tribunal that the reopening is bad.

8. As we are of the opinion that the reopening is bad and the Assessing Officer was not justified in reopening the assessment u/s 17(1)(b) of the Act of 1957, without reopening the assessment, there is no question of change in the relief and the Wealth-tax Officer cannot change the relief without reopening of the assessment even if that relief was wrongly allowed but when the Wealth-tax Officer has no power to reopen the assessment, he cannot change the relief. Therefore, whatever relief has been allowed wrongly or rightly, i.e., u/s 5(1) (xxxii), that remains.

9. On the merits also, the assessee is not entitled for deduction u/s 5(1)(iv), as assessee is not the owner of the house and building, therefore, the Commissioner of Income Tax (Appeals) as well as the Tribunal had committed error in allowing the relief u/s 5(1)(iv). Specially the Tribunal, which has held that the reopening is bad, but even then relief u/s 5(1)(iv) has been allowed which was not allowed in the original assessment.

10. In the result, we answer question No. 1 in the negative, i.e., in favour of the Revenue and against the assessee and question No. 2 in the affirmative, i.e., in favour of the assessee and against the Revenue.

11. The reference so made stands disposed of accordingly.