(2002) 11 MAD CK 0180

In the Madras High Court

Case No : Tax Case No. 106 of 1998

Commissioner of Wealth Tax APPELLANT

Vs

K.G. Balakrishnan RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 183 CTR 550

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitharaman, for the Appellant; P.P.S. Janardhanaraja, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Tribunal has stated a case u/s 27(1) of the WT Act, 1957, (hereinafter referred to as ''the Act'') and referred the following questions of law for our consideration :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the AO to value the properties considering the valuation fixed for the earlier years pursuant to the order of the Tribunal ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and had valid material in holding that the AO has gone beyond the remand order ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in treating the earlier orders of the Tribunal and the order of the CWT(A) were set aside and the entire matter was restored to the file of the AO for fresh adjudication ?

2. The assessment year involved is 1983-84. The short facts that are necessary for the disposal of the tax case are that the assessee is an HUF. The Karta is a partner in the firm styled as M/s K. Govindaswamy Naidu & Sons and the issue that arises in all the three questions is as regards the valuation of the properties

belonging to the assessee, viz., Shri Shanmugha Mills, Pulliampatti, Shri Shanmugha Ginning Factory, Annur, 86 Arts College Road, Coimbatore and No. 2, Arts College Road, Coimbatore. It is seen from the statement of the case that the assessment under the provisions of the Act was originally made on 18th March, 1988, by the AO and there was an appeal against the order of assessment to the CWT(A) and the CWT(A) by his order dt. 10th Jan., 1989, has directed the AO to determine the interest of the ''assessee in the properties of M/s K. Govindaswami Naidu & Sons on the basis of guidelines given by the Tribunal in the order passed for the asst. yr. 1981-82 in the case of the assessee and four others. The WTO on the basis of the direction of the CWT(A) referred the matter of valuation u/s 16A of the Act to the DVO and on the basis of the report of the DVO, he has determined the value of the properties of M/s Govindaswami Naidu & Sons. The assessee challenged the order of the AO. The CWT(A) partly allowed the appeal preferred by the assessee and against the order passed by the CWT(A), the assessee preferred the appeal before the Tribunal. The Tribunal following its earlier order rendered in the case of the assessee and other co-owners for the earlier years in WTA Nos. 1087 and 1104 (Mds) 1992 dt. 2nd Feb., 1996; directed the AO to value the properties considering the valuation fixed for the earlier years pursuant to the order of the Tribunal. The order of the Tribunal is the subject-matter of this Tax Cases reference.

3. Heard Mrs. Pushya Sitharaman, learned senior standing counsel for the Revenue and Mr. P.P.S. Janardhana Raja, learned counsel appearing for the assessee. The only submission of the learned senior standing counsel for the Revenue is that it is not correct in directing the AO to value the properties in accordance with the value determined by the Tribunal for the earlier assessment years and according to the learned senior standing counsel for the Revenue, the value of the property would change every year and therefore, it is not open to the Tribunal to give a direction to the AO that the value of the properties in question should be fixed on the same basis fixed for the earlier assessment years. Mr. P.P.S. Janardhana Raja, learned counsel for the assessee submitted that the order of the Tribunal does not give the impression that the Tribunal has directed the AO to adopt the same value but directed the AO to value the properties considering the valuation fixed for the earlier years.

4. We have carefully considered the submission of the learned senior standing counsel for the Revenue and the learned counsel for the assessee. We are of the opinion that the Tribunal has not directed the AO to adopt the same value fixed for the earlier assessment years with reference to the properties in question, but merely directed the AO to value the properties considering the valuation fixed for the earlier assessment years pursuant to the order of the Tribunal. We are, therefore, of the view that the Tribunal has merely directed the AO to take into consideration the earlier order passed by it in fixing the value for the same properties, and there can be no doubt that the AO has to determine the value of the properties in accordance with law. With the clarification so given to the order of the Tribunal, we answer the first question of law as under :

First question is answered in the affirmative and against the Revenue, but subject to the clarification which we have given earlier.

Second question : This question does not arise out of the order of the Tribunal and it is not answered.

Third question : This question is not happily framed and it is not answered. However, in the circumstances, there will be no order as to costs.

