
(1991) 08 RAJ CK 0015

In the Rajasthan High Court

Case No : Wealth-tax Reference Applications No"s. 36, 37, 41, 42, 43 and 44 of 1990, and 4 of 1991

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

L. K. KASLIWAL AND ANOTHER.

RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

Income Tax Act, 1961 — Section 68

Wealth Tax Act, 1957 — Section 16

Citation : (1992) 99 CTR 60 : (1992) 195 ITR 477 : (1992) 63 TAXMAN 121

Hon'ble Judges : M. B. Sharma, J

Bench : Division Bench

Judgement

M. B. SHARMA J., - This order will dispose of the above numbered wealth-tax reference applications. Wealth-tax Reference Application No. 36 of 1990 is for the assessment year 1968-69 by the Revenue in the case of L. K. Kasliwal, partner of M/s. Gem Palace, M. I. Road, Jaipur. For the same assessment year, Wealth-tax Reference Application No. 44 of 1990 is in respect of one Roshanlal, another partner of the said firm. Wealth-tax Reference Application No. 37 of 1990 is for the assessment year 1969-70 in respect of L. K. Kasliwal, one of the partners of M/s. Gem Palace, M. I. Road, Jaipur. Wealth-tax Reference Application No. 4 of 1991 is for the same assessment year in the case of Roshanlal Kasliwal for the same firm. Wealth-tax Reference Application No. 42 of 1990 is for the assessment year 1970-71 in the case Roshanlal Kasliwal. Wealth-tax Reference Application No. 43 of 1990 is for the assessment year 1971-72 and Wealth-tax Reference Application No. 41 of 1990 is for the assessment year 1972-73 in the case of Roshanlal Kasliwal, partner of the same firm. It will, therefore, be clear that all the above wealth-tax reference applications, though for different years and arising out of different orders made by the Income Tax Appellate Tribunal, Jaipur, are by one or the other of the partners of M/s. Gem Palace, M. I. Road, Jaipur. It will, therefore, be clear that each of the assessee was also a partner of M/s. Mani Ram and Sons. Besides the above named assessee, there was one

more partner, Smt. Ratan Prabha.

Original assessments in the case of the above-named assessee as well as Ratan Prabha were made u/s 16 of the Wealth-tax Act, 1957 (for short "the Act"). In the aforesaid assessments, the assessee declared version of the value of interest in the firm of M/s. Mani Ram and Sons, Jaipur, as the closing balance had come to be accepted. The Wealth-tax Officer, the assessing authority, noticing that the said firm owned a cinema known as Gem Cinema, Jaipur, the market value of which was substantially higher than the book value and further that the assessee had not offered her share as statutorily stipulated u/s 7 (a) of the Wealth-tax Act read with rules 2,2A and 2E(2) of the Wealth-tax Rules, 1957 (for short, "the Rules"), took recourse to the provisions of section 17 of the Wealth-tax Act and framed reassessments adding the difference in value in the share of the assessee on the basis of the Valuation Officers report who determined the market value of Gem Cinema. It appears that the Commissioner of Wealth-tax, in exercise of his powers u/s 25 of the Wealth-tax Act, has cancelled the original order of assessment and directed the assessing authority (Wealth-tax Officer) to make a fresh assessment.

For the assessment year 1968-69, the Wealth-tax Officer, on March 19, 1984, made a fresh assessment order and basing on the report of the departmental Valuation Officer, so far as the market value of Gem Palace, a picture house is concerned, included the assessee in his total wealth. It may also be stated that the Wealth-tax Officer, under his separate order for the assessment year 1969-70, also included the share of the assessee in Gem Palace and framed the assessment. Two appeals were filed bearing Appeals Nos. 4 of 1985 and 7 of 1985, in the office of the Commissioner of Income Tax (Appeals) and the Commissioner, under a common order dated April 9, 1987, disposed of both the appeals and partly allowed the appeals placing reliance on the earlier appellate orders in the case of Ratan Prabha and in the case of L. K. Kasliwal for the assessment year 1977-78. The Commissioner directed the Wealth-tax Officer to work out the value of the share of L. K. Kasliwal in Gem Cinema strictly in accordance with and on the basis of the order of the Commissioner of Income Tax (Appeals) in his own case for the assessment years, 1978-79, 1979-80 and to give resultant reliefs to him for the aforesaid assessment years. The Revenue filed two appeals to the Tribunal being Appeals Nos. TA 289 and 290/JP of 1987, for the assessment years 1968-69 and 1969-70. The assessee also filed cross-objections and the Tribunal, under its order dated December 31, 1987, set aside the order of the Appellate Assistant Commissioner and restored the matter to him for fresh orders in line with those in Smt. Ratan Prabhas case and other related cases. The Tribunal was of the opinion that it was obligatory on the part of the Appellate Assistant Commissioner to give an opportunity of being heard to the assessee as provided u/s 23 of the Wealth-tax Act. But, along with the two appeals of the Revenue, the Tribunal failed to decide the cross-objections filed by L. K. Kasliwal and the cross-objections were taken up by the Tribunal later and, under its order dated March 25, 1988, the Tribunal was of the opinion that, as

the appeals of the Revenue have been accepted and the case has been remitted to the Appellate Commissioner, the cross-objections should also be allowed and ordered that :

"Thus, consistent with the order passed in appeals setting aside the order of the Appellate Assistant Commissioner, these cross-objections are also allowed for statistical purpose and the Appellate Assistant Commissioner is directed to examine the issue raised by the assessee in accordance with law after taking into account our observations made above."

It may be stated that, in the cross-objections, the main ground which was raised on behalf of the assessee was that initiation of the proceedings u/s 17 of the Wealth-tax Act was bad in law. The Revenue filed an application for reference seeking that the following question may be referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in entertaining the assessee's objection against the initiation of proceedings u/s 17 of the Wealth-tax Act, 1957, and directing the Appellate Assistant Commissioner to examine the issue afresh ?"

The Tribunal, under its order dated April 11, 1989, took a view that it only restored the matter to the Appellate Assistant Commissioner to dispose of the grounds regarding the challenge before the Appellate Assistant Commissioner. In the words of the Tribunal :

"When the matter was only restored back mainly on the basis that the ground raised before the Appellate Assistant Commissioner has not been disposed of, that should be examined and disposed of as per law. When no definite finding was given no referable question of law does arise. Merely by restoring the matter back with the direction to dispose of the ground which was left by the Appellate Assistant Commissioner is only a question of fact and no interpretation of law is involved. Accordingly, we decline to refer the question as set out in para 1 for the opinion of the Honble Rajasthan High Court."

In each of the Wealth-tax Reference Application No. 44 of 1990, for the assessment year 1968-69, Wealth-tax Reference Application No. 4 of 1991, for the assessment year 1969-70 Wealth-tax Reference Application No. 42 of 1990, for the assessment year 1970-71, Wealth-tax Reference Application No. 43 of 1990, for the assessment year 1971-72, Wealth-tax Reference Application No. 41 of 1990, for the assessment year 1972-73, the assessee was Roshanlal Kasliwal and, in each of the aforesaid assessment years, after the original assessment was made, the Commissioner, under his powers under the Wealth-tax Act, cancelled the order and ordered the Wealth-tax Officer to make a fresh assessment order. The Wealth-tax Officer made fresh assessment order and, placing reliance on the departmental Valuation Officers report in the case of Ratan Prabha, came to the conclusion that there was under valuation so far as the market value of Gem Cinema is concerned and, consequently, he added the assessee's share to his total wealth and framed the assessment accordingly. It

appears that four appeals were filed against the four orders and each of the appeals was disposed of by the Appellate Assistant Commissioner under his order dated April 9, 1987. The said Commissioner partly allowed the appeals but, so far as initiation of action u/s 17 of the Wealth-tax Act is concerned, in respect of which grounds Nos. 1 and 2 as common ground in all the appeals were raised, simply referred to the raising of the grounds and said that the appellates objection regarding jurisdiction is without any basis. Having remanded the case, he directed the Wealth-tax Officer to work out the value of the assessee's interest in Gem Cinema in accordance with and on the basis of the order of the Commissioner of Income Tax (Appeals) in the assessee's own case for the assessment years 1977-78, 1978-79 and 1979-80, and to give relief to the assessee for the relevant years in question. The Revenue filed appeals before the Tribunal and the Tribunal disposed of all the appeals by its order dated December 31, 1987, and the Tribunal set aside the order of the Appellate Assistant Commissioner and restored the matter for fresh orders in line with Ratan Prabhas case and other related cases. But the cross-objections filed by the assessee which should have been decided by the common order were not decided and the learned Tribunal took up the cross-objection and decided them under his order dated March 25, 1988, in the case of L. K. Kasliwal and referred the matter back to the Appellate Assistant Commissioner. Reference applications were filed and the learned Tribunal dismissed the same.

We have heard learned counsel for the Revenue as well as learned counsel for the assessee. The main contention of learned counsel for the assessee is that in the case of Ratan Prabha, the Tribunal had taken a decision that the initiation of proceedings u/s 17 of the Wealth-tax Act was valid and, therefore, the Tribunal could not have taken a contrary view and could not have remanded the case on this point to the Appellate Assistant Commissioner and, according to learned counsel for the Revenue, it is a question of law whether the Tribunal was bound to follow its earlier decision rendered in the case of Ratan Prabha, one of the partners of M/s. Mani Ram & Sons. Learned counsel for the assessee, on the other hand, contends that the Tribunal has only remanded the case to the Appellate Assistant Commissioner to whom the case was already remanded on appeal to the Tribunal by the Revenue and the Wealth-tax Officer or, for that matter, the Appellate Assistant Commissioner, did not consider the question whether the initiation of proceedings u/s 17 of the Wealth-tax Act was legal or not. Therefore, no question of law arises for opinion by this court. It is further contended by learned counsel for the assessee that, when the case has been remanded, it is all the more a ground to call for a reference and it is for the Appellate Assistant Commissioner to decide whether the initiation of proceedings u/s 17 of the Wealth-tax Act was valid or not.

Learned counsel, in support of his contention that a finding recorded by any authority in respect of one year will be binding in respect of subsequent years and at any rate propriety demands that no different finding should be recorded in respect of subsequent years than the one which has been recorded by the

Tribunal for the earlier year, has placed reliance on the case of Commissioner of Income Tax, Central Vs. L.G. Ramamurthi and Others, . Learned counsel for the assessee contends that so far as the principles of res judicata are concerned, they have no application to the proceedings under the Income Tax Act or for that matter under the Wealth-tax Act, since each assessment is a separate and independent case and, therefore, any finding recorded in respect of one year will not be binding in the subsequent years. He further contents that each partner cannot be binding in respect of another partner. In the aforesaid case, the Madras High Court was considering a similar question and taking into consideration the facts of that case, the court said (at page 462) :

"Even assuming that this court on the earlier occasion had not given any finding with regard to the nature of the gift, whether it was real or sham, and merely went on to consider the question of law embedded in the question actually referred to this court, still we are of the opinion that no Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the identical facts. It may be that the members who constituted the Tribunal and decided on the earlier occasion are different from the members who decided the case on the present occasion. But what is relevant is not the personality of officer presiding over the Tribunal or participating in the hearing, but the Tribunal as an institution. If it is to be conceded that simply because of the change in the personnel of the officers who manned the Tribunal, it is open to the new officers to come to a conclusion totally contradictory to the conclusion which had been reached by the earlier officers manning the same Tribunal on the same set of facts, it will not only shake the confidence of the public in judicial procedure as such, but it will also totally destroy such confidence. The result of this will be conclusions based on arbitrariness and whims and fancies of the individuals presiding over the courts or the Tribunal and not reached objectively on the basis of the facts placed before the authorities."

It will be clear from the aforesaid case that the principle of res judicata may not be attracted but if the Tribunal has jurisdiction and, in exercise of its jurisdiction, has come to a conclusion, then on a subsequent occasion, it has no jurisdiction to come to a conclusion entirely contrary to the one reached by it on identical facts despite the fact that, on a subsequent occasion, the Tribunal is manned by different persons. In the case of Ratan Prabha, the Tribunal under its order dated December 31, 1987, said that the Appellate Assistant Commissioner upheld the reopening of the assessment after stating that the Wealth-tax Officer had recorded necessary reasons and there was sufficient material for reopening the assessment u/s 17. In that case also, cross-objections were filed and the Tribunal, in para 3 of its order, said :

"Since before us, the reopenings were vaguely claimed to be not in order and nothing further was stated, we reject the cross-objections on the ground that the assessee's action of offering only closing balances in her capital account resulted

in omission and understatement of taxable assets justifiably attracting the provisions of section 17."

While dealing with the cases of the present assessee in the cases out of which the present reference applications have arisen, it was brought to the notice of the Tribunal that, in the case of Ratan Prabha, the cross-objections challenging the jurisdiction of the Wealth-tax Officer to initiate action u/s 17(1)(a) were rejected by this Bench, the Tribunal said that the reopening of the proceedings was vaguely challenged and nothing in support of the cross-objection was stated by the assessee. It can, therefore, be said that the question whether action initiated u/s 17 of the Wealth-tax Act in respect of the assessee was warranted or not is yet at large before the Appellate Assistant Commissioner to whom the case has been remanded. In the case of CIT v. Grand Bazaar [1991] 187 ITR , the court was considering a case where the Tribunal referred the matter to the Income Tax Officer for de novo consideration. The Madras High Court said (headnote) :

"... the effect of the order of the Tribunal was merely to set aside the matter and remit the same to the officer with the direction that, in the course of the de novo proceedings, it would be open to the officer to examine all the aspects including the applicability of section 68 of the Income Tax Act to the cash credits and no prejudice would be caused to the Department by the course adopted by the Tribunal."

Again, in the case of Bijoy and Company Vs. Commissioner of Income Tax, this court took a similar view. The court said that the Tribunal did not give any definite finding in the matter. The court was examining a case where the Tribunal remanded the matter to the Income Tax Officer for recording evidence in respect of the question as to whether service was properly effected upon the partners of the firm within the time permissible under the law. The court said that the Tribunal did not give any definite finding in the matter. If the Tribunal had held that the reassessment proceedings were properly initiated, it would not have proceeded to pass an order of remand in order to find out whether the service of notices was properly effected. The court agreed with the Tribunal that, at the premature stage of passing an order of remand, no question of law arises, which can be referred by the Tribunal to this court. In the case of Commissioner of Income Tax, West Bengal Vs. Brij Lal Lohia and Mahabir Prasad Khemka, the apex court was examining the question of gifts which, in the proceedings, were not accepted as genuine but, in the proceedings in the later assessment years, evidence was led and the Tribunal held that the gifts were genuine. The court said that the fact that, in the earlier proceedings, the Tribunal took a different view of those deeds is not a conclusive circumstance. The decision of the Tribunal reached during those proceedings does not operate as res judicata, and there was a great deal more evidence before the Tribunal during the proceedings for subsequent years.

It will appear from the order of the Tribunal under which it allowed the cross-

objections and remanded the case to the Appellate Assistant Commissioner that the Tribunal has not expressed a definite opinion as to whether the Appellate Assistant Commissioner or, for that matter, the Wealth-tax Officer had jurisdiction to initiate proceedings u/s 17 of the Wealth-tax Act and all that has been said by the Tribunal is that the objection of the assessee that the initiation of proceedings u/s 17 of the Wealth-tax Act was bad in law has not been properly considered by the Appellate Assistant Commissioner as per para 4 of his order dated April 9, 1987. The Tribunal said that :

"Thus, there being no finding by the Appellate Assistant Commissioner whether initiation of proceedings u/s 17 of the Wealth-tax Act were validly made the matter should go back to him to record finding on the above issue."

It will therefore, be clear that the Tribunal has not recorded a categorical finding as to whether the initiation of the proceedings u/s 17 was valid or not or whether the Wealth-tax Officer had jurisdiction in the matter. The matter has only been remanded and we are of the opinion that the entire question is open before the Appellate Assistant Commissioner and no question of law for the opinion of this court, as sought to be referred to this court which has been extracted in the earlier part of this order, arises in the present case.

Consequently, we find no merit in any of the reference applications and they are hereby dismissed with no order as to costs.