(2002) 06 GUJ CK 0004

In the Gujarat High Court

Case No : Wealth-tax Reference No. 6 of 1988

Commissioner of Wealth Tax APPELLANT

Vs

Lalitchandra M. Patel RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:
Wealth Tax Act, 1957 — Section 25(2)

Citation : (2002) 177 CTR 247 : (2002) 258 ITR 232

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Division Bench

Advocate : Tanvish Bhatt, for the Appellant; None, for the Respondent

Judgement

M.S. Shah, J.—In this reference at the instance of the Revenue, the following questions are referred for our opinion in respect of the assessment years 1970-71 to 1973-74 :

"(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in setting aside the order of the Commissioner of Wealth-tax u/s 25(2) of the Wealth-tax Act, 1957 ?

(ii) Whether, the finding of the Appellate Tribunal that the Commissioner of Wealth-tax had exceeded his jurisdiction and his order cannot be sustained is correct in law ?"

2. The respondent-assessee was a partner in the firm called L.M. Patel and Co. having a 40 per cent, share. While assessing the interest of the assessee as partner in the said firm, the question of the value of the property of the firm consisting of a five storeyed commercial-cum-office building on land admeasuring 11,043 sq. ft. came up for consideration. The Wealth-tax Officer adopted the value of the said property as determined by the assessee''s valuer. Subsequently on a reference made to the Departmental Valuer, the property was valued at Rs. 12,44,000 for the years under consideration.

3. The Commissioner of Wealth-tax ("the CWT") after examining the wealth-tax record of the assessee for the years under consideration found that the assessment framed by the Wealth-tax Officer were prejudicial to the interests of the Revenue, as the value determined by the District Valuation Officer (i. e., Departmental Valuer) was higher than the value assessed by the assessee''s valuer. Hence, there was a gross understatement. The Commissioner u/s 25(2) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), set aside the assessments made by the Wealth-tax Officer directing him to recompute the correct net wealth and tax accordingly. The assessee succeeded in appeal before the Income Tax Appellate Tribunal. Hence, this reference at the instance of the Revenue.

4. We have heard Mr. Tanvish Bhatt, the learned standing counsel for the Revenue. Though served, none appears for the respondent-assessee.

5. Learned counsel points out that the Tribunal''s decision holding that the Commissioner erred in law in referring to material which was not on record before the Wealth-tax Officer is based on the decision of the Calcutta High Court in Ganga Properties Vs. Income Tax Officer, . Mr. Bhatt, however, submits that the said view is now overruled by the Supreme Court in Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works, , wherein the apex court interpreted a pari materia provision of Section 263 of the Income Tax Act, 1961. Learned counsel further relied on the decision of the Madras High Court in Commissioner of Wealth-tax Vs. S.V. Sivarathina Pandian, , wherein the Madras High Court interpreted the provisions of Section 25(2) of the Wealth-tax Act, 1957, itself.

6. Having heard learned counsel for the Revenue and having perused the aforesaid decisions, we find considerable substance in the submissions made by Mr. Tanvish Bhatt, learned counsel for the Revenue. In Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works, , the Supreme Court interpreted a pari materia provision of Section 263 of the Income Tax Act and held that while calling for and examining the record of any proceeding u/s 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination. The Supreme Court even held that the decision of this court, i.e., the Gujarat High Court in CWT v. Rajashree S. Parekh [1991] 191 ITR 76, taking the contrary view and against which the department''s SLPs were dismissed, did not lay down the correct law and that the dismissal of the special leave petitions summarily did not mean that the Supreme Court approved the view that was taken by the Gujarat High Court in the case of Rajashree S. Parekh. The court explained the legislative history of Section 263 with particular reference to the controversy about the scope of the expression "record" and observed that if on further examining the record and after making or causing to be made an inquiry, the Commissioner considers the order to be erroneous and prejudicial to the interests of the Revenue, he can

pass the order thereon as the circumstances of the case justify and the apex court in terms observed that obviously, as a result of the enquiry, the Commissioner may come into possession of new material and he would be entitled to take the new material into account. If the material, which was not available to the Income Tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Hence, the apex court concluded that it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to Mm at the time of examination.

7. The Madras High Court followed the aforesaid decision in Commissioner of Wealth-tax Vs. S.V. Sivarathina Pandian, , which was concerned with a case similar to the case before us. Following the aforesaid decision, the Madras High Court held that the Commissioner of Wealth-tax was perfectly justified in setting aside the order of assessment and directing the Wealth-tax Officer to redo the assessment, taking into consideration the records relating to the proceedings available at the time of examination by the Commissioner and that the record was not confined to the material available to the Wealth-tax Officer.

8. Following the aforesaid decision of the apex court and agreeing with the aforesaid view of the Madras High Court, we are of the same view that the Commissioner of Wealth-tax was justified in setting aside the assessment made by the Wealth-tax Officer and in directing the Wealth-tax Officer to recompute the correct net wealth and tax after considering the valuation made by the Departmental Valuer.

9. In view of the above, our answer to both the questions referred to us is in the negative, i.e., in favour of the Revenue and against the assessee.

10. The reference, accordingly, stands disposed of.