(1997) 03 MAD CK 0055

In the Madras High Court

Case No : T.C.P. No''s. 296 to 302 of 1996

Commissioner of Wealth Tax — APPELLANT

Vs

M. Rajagopal — RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:
Income Tax Act, 1961 — Section 28
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1999) 236 ITR 461

Hon'ble Judges : N.V. Balasubramanian, J;Abdul Hadi, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—These are all petitions filed by the Commissioner of Wealth-tax, Tamil Nadu-V, Madras, to direct the Appellate

Tribunal to state a case and refer the following question of law u/s 27(3) of the Wealth-tax Act, 1957.

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in deleting the additions made to the net wealth by

the Assessing Officer for the assessment years 1978-79 to 1984-85 ?

2. The assessment years involved are 1978-79 to 1984-85. The assessee is an individual and was working as a cashier in Cholan Roadways

Corporation Limited, Kumbakonam. The Assessing Officer received certain information from Cholan Roadways Corporation Ltd., that the

assessee had misappropriated funds from the Corporation Ltd., that the assessee had misappropriated funds from the Corporation Ltd., that the

assessee had misappropriated funds the Corporation to the tune of Rs. 55 lakhs during the assessment years 1978-79 to 1984-85. On the basis of the information obtained, the Assessing Officer brought to tax the entire amount of Rs. 55,00,000 spread over the assessment years 1978-79 to

1984-85, on the ground that the misappropriation of funds was confirmed by the employer-Corporation and the assessee was presumed to be in

possession of the funds as his assets. The assessee filed appeals before the Commissioner of Wealth-tax (Appeals) Challenging the aforesaid

inclusion representing misappropriated funds from the employer-Corporation. The case of the assessee was that in has not been proved that the

assessee had actually misappropriated funds and the case was still pending before the High Court and no investment was detected by the

Department. The Commissioner (Appeals) held that no material was brought on record to prove that the assessee had actually misappropriated the

funds and the amounts so misappropriated were available with the assessee in the form of assets. He, therefore, held that in the absence of any

evidence to prove that the assessee had made any investment or the assessee was found to be in possession of the misappropriated funds, the

additions made were not sustainable in law and therefore, deleted the entire additions. The Revenue filed appeals before the Income Tax Appellate

Tribunal. The Appellate Tribunal also held that it was not established that the assessee had any embezzled funds of the Corporation, and there was

nothing to indicate that the assessee had retained the amounts on the relevant valuation dates in the form of any asset. The Appellate Tribunal also

held that even if the assessee had retained any amount, it would be liable to be taken back and, consequently, the market value of such stolen

goods would be practically ""nil"". In this view of the matter, the Tribunal dismissed the appeals preferred by the Revenue.

3. The Revenue filed applications before the Tribunal to state a case and refer the question set out in paragraph 1 (page 462). The Appellate

Tribunal held that its conclusion on the facts of the case did not give rise to a question of law. It is this order that is the subject-matter of the present

tax case petitions.

4. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the Appellate Tribunal was not correct in deleting the entire additions.

According to him, the assessee had misappropriated funds from the Corporation to the extent of Rs. 55 lakhs and the assessee was having some properties in the name of his mother, Mangalathammal, and the properties were held by her as a benami of the assessee. Though notice was

served, the assessee remained unrepresented.

5. We have carefully considered the contentions raised by learned counsel for the Revenue and perused the records. We are of the opinion that

there is no referable question of law arising out of the order of the Appellate Tribunal. The Appellate Tribunal categorically found that the assessee

was accused along with several others of having embezzled large funds and both criminal and civil proceedings instituted are still pending and they

have not been concluded, but they are only at the initial stage. Since it was not proved before the Appellate Tribunal that the assessee had actually

embezzled any amount, the Appellate Tribunal was quite correct in holding that the additions made as if the assessee had embezzled amounts, is

based on certain surmises or suspicion, is justified. That apart, the Tribunal also found that the Department has not established that it has found that

the assessee had some assets of any kind on the relevant valuation dates. Therefore, we are of the view that the additions made by the Wealth-tax

Officer were based purely on surmises. Further, even if it is found that the assessee had retained embezzled money, under the law, he is liable to

return the same. Therefore, in the absence of any material to show that the assessee had been found guilty of embezzlement and in the absence of

any evidence to show that the assessee had some assets of any kind, the Appellate Tribunal came to the correct conclusion that the addition made

by the Wealth-tax Officer was not justified in law. That apart, we hold that even if the amount is said to embezzled, the assessee is duty bound to

return the money to the employer-Corporation. Hence, the market value of the embezzled money would be ""nil"" in the hands of the assessee on the

relevant valuation dates. We are of the opinion that the Appellate Tribunal, has come to the correct conclusion in holding that the additions made

by the Wealth-tax Officer were not correct. Though in the petitions, there is a reference to a judgment of the Sub-Court, Kumbakonam, in O.S.

No. 83 of 1984, dated December 23, 1985, a copy of the said judgment was not placed before us. Further, there is also reference to the

properties acquired in the name of the mother of the assessee in the petitions filed and that fact was also placed before, the Appellate Tribunal only and no enquiry was made either by the Assessing Officer or by the Commission (Appeals) with regard to the properties standing in the name of the

mother of the assessee. The finding is clear that the Department has not established that the embezzled funds were retained by the assessee. There

is no material to indicate that there was any asset, available with the assessee on the relevant dates of valuation. The finding of the Appellate

Tribunal that the amounts alleged to have been embezzled are not includible in the hands of the assessee is purely a finding on fact and no question

of law arises out of the order of the Appellate Tribunal. Accordingly, we reject the tax case petitions. No costs.