(1993) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : DB WT Reference No. 107 of 1982

Commissioner of Wealth Tax APPELLANT

Vs

Man Bhadur Singh RESPONDENT

Date of Decision : 14-10-1993

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 27(1), 3, 46, 7

Citation : (1994) 116 CTR 47 : (1993) WLN 258

Hon'ble Judges : K.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : B.S. Bapna, for the Appellant; N.M. Ranka, for the Respondent

Judgement

V.K. Singhal, J.—The Tribunal, Jaipur Bench, has referred the following questions of law arising out of its order in respect of the assessment years 1971-72 to 1975-76 u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''): 1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the lower authorities and restoring the matter regarding valuation of self-occupied property to the Wealth-tax Officer with the direction to reframe the assessment in accordance with law and as per the decision of the Special Bench of the ITAT, Delhi Bench ''A'', dated 17th February, 1981 in WT Appeal Nos. 619 to 624 (Delhi) of 1979 and WT Appeal Nos. 703 to 717 (Delhi) of 1979 in the case of Biju Patnaik, New Delhi?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that rule 1BB of W.T. Rules, 1957 is procedural in nature and retrospective in operation and, therefore, the same is applicable in the year under consideration?

The brief facts of the case are that the assessee filed return of its net wealth on the basis of the report of the registered valuer but the WTO, referred the matter for valuation to the Departmental Valuation Officer u/s 16A of the Act and framed the assessments in conformity with the report of the Valuation Officer. The assessee''s wealth included immovable property which was self-occupied. In the self-occupied property the area of 901 sq. mtr. was under self-occupation and 319 sq. mtr. was let out. While valuing the immovable property which was partly under self-occupation, the Valuation Officer and the WTO did not give due consideration to the statutory rule 1BB of the Wealth-tax Rules, 1957. The Tribunal set-aside the order of the lower authorities and restored the matter back to the file of the WTO for fresh decision in accordance with law and in tune with the decision of the Tribunal, Special Bench, Delhi ''A'' referred to above. It was also observed that valuation in respect of property other than self-occupied property will also be subject to valuation afresh and the assessee will be entitled to place any evidence on the file of the WTO, if he so desires.

2. The Special Bench of the Tribunal in the case of Biju Patnaik v. WTO [1982] 1 SOT 623 (Delhi) was seized of the matter with regard to the interpretation of rule 1BB. In that case, the report of the Valuation Officer was dated 17-1-1977 on a reference made by the WTO on 19-9-1975. The assessments were completed by the WTO on 30-3-1979 and on that date rule 1BB was not enacted. Reliance was placed on the decision of the Apex Court in the case of Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, wherein it was observed that section 7 of the Act falls in Chapter II which deals with the charge of wealth-tax and assets subject to such charge; it is intended to provide machinery for the determination of the value of assets. After taking into consideration the various decisions, the Tribunal came to the conclusion that the provisions of rule 1BB are procedural in nature and, therefore, retrospective and will be applicable to the assessments which are pending before the WTO and before the appellate authorities.

3. The Allahabad High Court in Commissioner of Wealth-tax Vs. Laxmipat Singhania, while interpreting the provisions of rules 1C and 1D of the Rules has held that those rules prescribed the method of valuation of unquoted preference shares and unquoted equity shares respectively. The criteria prescribed by rule was held applicable to pending assessments of the assessee even though such assessments related to the assessment year prior to the date of the coming into force of those rules and the relevant valuation dates were also prior to that date. Reliance was placed on the decision of the Apex Court in the case of Izhar Ahmad Khan Vs. Union of India (UOI), it was observed as under:

In deciding the question as to whether a rule about irrebuttable presumption is a rule of evidence or not, it seems to us that the proper approach to adopt would be to consider whether fact A from the proof of which a presumption is required to be drawn about the existence of fact B, is inherently relevant in the matter of proving fact B and has inherently any probative or persuasive value in that behalf or not. If fact A is inherently relevant in proving the existence of fact B and to any rational mind it would bear a probative or persuasive value in the matter of proving the existence of fact B, then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of evidence. On the other hand, if fact A is inherently not relevant in proving the existence of fact B or has no probative value in that behalf and yet a rule is made prescribing for a rebuttable or an irrebuttable presumption in that connection, that rule would be a rule of substantive law and not a rule of evidence."(p. 276)

The SLP was also dismissed in the case of CWT v. Dr. B.N. Gyani and CWT v. Naresh 166 ITR (St.) 66/67 (sic).

4. The Karnataka High Court in Commissioner of Wealth Tax, Karnataka, Bangalore Vs. Vidyavathi Kapur, has held that the provisions of rule 1BB are procedural in nature and can be called into aid in respect of pending matters.

5. The Madhya Pradesh High Court in Commissioner of Wealth-tax Vs. Lachmandas Bhatia, has also held that the provisions of rule 1BB are procedural in nature.

6. The Gujarat High Court in the case of Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, has taken into consideration the provisions of section 7 and relying on the decision in Standard Mills Co. Ltd.''s case (supra), Smt. Kusumben D. Mahadevia V. N. C. Upadhya and Others Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I, Laxmipat Singhania''s case (supra), Commissioner of Wealth-tax, Andhra Pradesh Vs. Pachigolla Narasimha Rao, and Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh, has held that section 7 merely provides the machinery for the purpose of ascertaining the net wealth by valuing the assets. It states that the net value would have to be estimated on the basis of the price which the asset was likely to fetch on the valuation date if sold in the open market. There is, therefore, no doubt that while section 3 of the Act is the charging section, the machinery for the purpose of computing the net wealth is provided in section 7.

7. The fact that the CBDT constituted a committee for laying down proper guidelines to enable speedy disposal of cases in which questions relating to valuation of immovable property were involved was also taken into consideration. The report of the committee was submitted and pursuant thereto rule 1BB was introduced in the Rules providing the formula for the determination of the fair market value of the houses used wholly and mainly for the purpose of residence. This formula was applicable to all the assessees falling under rule 1BB, and, therefore, the uncertainty or arbitration litigation was avoided. It was held by the Gujarat High Court that there is no surmountable difficulty in applying rule 1BB retrospectively and, therefore, the benefit of rule 1BB was held to relate back to the date on which section 7(1) was made subject to the rules.

8. The Calcutta High Court in Smt. Manjushree Biswas Vs. Commissioner of Wealth Tax, has also held that the provisions of rule 1BB are retrospective in operation and could be applied even to the earlier assessment years which pertain to the period before the rules were promulgated.

9. The Delhi High Court in Commissioner of Wealth Tax Vs. O.P. Tandon and

others, has held that rule 1BB only lays down the procedure for valuation of assets and is as such purely procedural. It follows that it is retrospective in application. It applies to all the proceedings pending on the date it was brought into force.

10. In Dilip Kumar Mitra (deceased) (by legal heir Debashish Kumar Mitra) Vs. Commissioner of Wealth Tax, it was held by the Calcutta High Court that where the statute itself fixes a method of valuation as the statutory method, that method shall have its authoritative and statutory force for all the officers under the Act, on the Assessing Officer, the Appellate Officer, or the Tribunal, or the Departmental Valuation Officer. The provisions of rule 1BB were held mandatory and binding on the Departmental Valuation Officer.

11. In Smt. Bella Cajeton Travasso Vs. Third Wealth-tax Officer and others, the Bombay High Court has also held that the Valuation Officer is duty bound to take into consideration the applicability of rule 1BB and carry out the work of valuation in accordance with the provisions of the Act and the rules.

12. We have considered over the arguments of both the learned counsels. The provisions of rule 1BB were inserted with effect from 1-4-1979 vide gazette notification dated 30-3-1979. The said rule during the relevant period was as under:-

Valuation of house. -(1) For the purposes of sub-section (1) of section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely:-

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8; and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction 100/9:

Provided that in relation to a house which is built on leasehold land, this sub-rule shall have effect as if for the fraction 100/8 in clause (a) or, as the case may be, the fraction 100/9 in clause (b), the fractions 100/9 and 100/10, respectively, had been substituted.

Explanation : For the purpose of this sub-rule, a house shall be deemed to be mainly used for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third percent of its total built-up floor area.

13. The provision of section 7 during the relevant period provides that subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated at the price which in the opinion of the WTO it would fetch, if sold in the open market on the valuation date. From this provision, it would be evident that section 7 provides for estimation of the price on the valuation date and that work has to be done by the WTO. For the purpose

of making the estimate, the discretion of the WTO is now fettered and he has to take into consideration the rules which have been made in this regard for the valuation of any asset. The provisions of rule 1BB are applicable only for determination of the value of a house which is wholly or mainly used for residential purposes.

14. In Govind Das and Others Vs. The Income Tax Officer and Another, it was observed by the Apex Court that it is well settled rule of interpretation that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right and create a new obligation or impose a new liability as regards matter of procedure. If the enactment is express in language which is fairly capable of either interpretation, it ought to be construed as prospective only. From this observation of the Apex Court, it is evident that normally the interpretation with regard to the statute has to be taken as prospective and particularly in those cases where the right of any person is affected. If any vested rights are affected, then retrospectivity cannot be presumed. Thus, if a statute takes away or impairs any vested right or creates new obligation, then it has to be construed prospectively.

15. Maxwell on the Interpretation of Statutes has written as under:

The presumption against retrospective construction has no application to enactments which effect only the procedure and practice of the courts. No person has vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.

16. In respect of pending actions, it has been mentioned that in general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

It was further stated that the effect of a change in the law between a decision at first instance and the hearing of an appeal from that decision was discussed by the House of Lords in Att. Gen v. Vernazza. Lord Denning said that it was "clear that in the ordinary way the Court of Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. But it is different when the statute is retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for then Parliament has shown an intention that the Act should operate on pending proceedings, and the Court of Appeal are entitled to give effect to this retrospective intent as well as a court of first instance." For this purpose, however, a statute which actually takes away the right of appeal is not to be regarded as affecting mere matters of procedure.

17. Under the scheme of the Act a power is conferred on the WTO to determine the fair market value of asset u/s 7(1) which he has to determine on the basis of the price prevailing in the market on the valuation date. For arriving at the fair market value the recognised principles for value have to be taken into consideration. It was only with a view to eliminate an arbitrariness in determining the value of the residential house that the provisions of rule 1BB were inserted and once this rule comes into force, the other method for determining the fair market value could not be adopted. The dispute is as to whether it could be made applicable for the assessment year prior to 1979-80. The rule has not excluded its application in respect of earlier assessment years, the assessments of which were pending on the date when this rule came into force. It may also be observed that the appeals before the first appellate authority or before the Tribunal are continuation of the proceedings and if it is found that rule 1BB is applicable even in respect of the period prior to coming into force of, the said rule, that alone is to be adopted and it is only to exclude the discretion of the WTO in estimating the value of an asset. Beside this, provision of section 7(1) mentions that the value is to be estimated subject to any rules made in this behalf. This provision makes it clear that the intention for the method of valuation is to prescribe a procedure and the discretion of the WTO to adopt any other method no longer remains. The opinion which the Valuation Officer has to form no doubt relates to the valuation date in respect of property which, if sold in the open market, it would fetch the price but by taking into consideration the formula given under the said rule it eliminated discretionary or arbitrary action on the part of the WTO.

Sub-rule (5) of rule 1BB also provides that where the WTO is of the opinion that it is not practicable to apply rule 1BB in a particular case, then with the approval of the IAC the rule would have no application. The rule is also not applicable where the difference between the unbuilt area and specified area exceeds 5 percent of the aggregate area. It is also not applicable where the house is built on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease-deed. There is no other provision by which the rule has excluded its application in the determination of value on the valuation date. As a matter of fact, from the perusal of sub-rule (4) of rule 1BB, it would be evident that the principles which were laid down by the Apex Court in the case of Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, have been given a statutory recognition. Even, the other sub-rules of rule 1BB are based on the recommendations of the Committee appointed for the purpose. The provisions of section 7(1) itself are of machinery section and give an option to the WTO to estimate fair market value of the property as on valuation date. When the matter is being sent by the Tribunal for applying the provisions of rule 1BB, if it is found by the WTO that he is of the opinion that it is not practicable to apply the provisions of rule 1BB, then he can with the prior approval of the IAC refuse to apply the formula given under rule 1BB. Otherwise, the method which has been given therein has to be applied uniformally in respect of the assessee and for all pending matters. It is true that when a charge is created or the matter relates to substantive provision of law, then it would not be considered to be retrospective in operation unless specifically provided in the provision itself. The procedural provisions have retrospective effect but do not authorise to confer any right for reopening the closed matters. A provision of law which affects the rights of a citizen cannot have retrospective operation unless the statute so provides because the retrospective operation of the statute affects, alters, or destroys any right acquired. But when a provision is not affecting or impairing any right or creating any obligation and relates to procedure only, it is deemed to be retrospective unless such an inference is likely to lead to any absurdity. Beside this, it is also to be seen that the provision is for the general benefit of not only litigants but provides a simple formula for valuation by the WTO and Valuation Officer and this change is only to improve the existing system and, therefore, had to be considered as not inflicting detriment on anyone. The provision cannot be considered as substantive.

18. There can be no dispute that the provisions of section 7 are machinery provisions and prescribe the procedure for determination of estimation of the valuation of the asset. As observed by Apex Court, in the case of Maharaja Kumar Kamal Singh (supra), section 7 provides the method as to how the value has to be assessed and the section itself has been made subject to the rules. In accordance with the provisions of section 46 of the Act, power has been conferred to frame rules and rule 1BB having been framed in pursuance of such power is in aid of the section to determine the value of an asset. The provisions of rule 1BB, therefore, cannot be said to be substantive provisions so as to be applicable prospectively only. No existing right of any person is affected and, on the contrary, the rules have been made applicable uniformally to all the assessees in respect of the house property which is wholly or mainly used for residential purposes. No doubt, there was load of litigation and even the allegations with regard to the arbitrary actions for the valuation of the house property were raised as in respect of one part of the property a different value was taken than that in the other part and the valuation was made by adopting different methods like land and building method, contractors method, rental or yield method. The task for determining the fair market value was by itself defective one. The provisions of section 7(1) are subject to rules, if any rules are framed in this respect, but if no rules are framed, then the estimation has to be made by the WTO. The provisions of rule 1BB are applicable to the valuation of a house which is wholly or mainly used for residential purposes. If a house is not used for residential purpose, then the provisions of rule 1BB are not applicable. In all the cases where the valuation of the house is made which is wholly or mainly used for residential purposes, a uniform system was introduced. The

object of the rule is to lay-down the mode of determination of the market value of a particular asset and this rule has eliminated discretion to adopt any other method and, therefore, could not be said to be applicable only in respect of period after the rule was framed. If the assessment was pending or even an appeal which is only a continuation of the assessment proceedings was pending, the benefit of application of rule 1BB cannot be denied. If any amendment is made in the procedure, it will apply to all the pending proceedings. If the assessment has already been completed and no action is taken by filing of any appeal before coming into force of the procedural law, then the said procedure would not apply to reopen the closed matters.

19. On the basis of the decision given by the Karnataka, Madhya Pradesh Delhi, Calcutta and Gujarat High Courts and also on the basis of the decision of the Allahabad High Court which is in respect of interpretation of rules 1C and 1D, we are of the opinion that the provisions of rule 1BB are procedural in nature and apply to the pending assessments. Accordingly, it is held that the Tribunal was justified in setting aside the order of the lower authority and restoring the matter regarding valuation of self-occupied property to the WTO with a direction to re-frame the assessment in accordance with law and as per the decision of the Special Bench of the Tribunal, Delhi, Bench A, in the case of Biju Patnaik (supra). It is also held that the Tribunal was justified in holding that rule 1BB is procedural in nature and retrospective in operation and, therefore, the same is applicable in the year under consideration.