(1994) 04 RAJ CK 0053

In the Rajasthan High Court

Case No : Wealth-tax Reference Petition No''s. 211, 225 and 240 of 1985

Commissioner of Wealth-tax APPELLANT

Vs

Mannalal Soorana RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 17, 18(1), 27

Citation : (1995) 211 ITR 427

Hon'ble Judges : V.K. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; J.K. Ranka, for the Respondent

Judgement

V.K. Singhal, J.—This application u/s 27(3) of the Wealth-tax Act, 1957, has been filed for giving directions to the Income Tax Appellate Tribunal to refer the following question of law, which were raised before us u/s 27(1) and the application for which was rejected by the Tribunal, vide its order dated November 16, 1984.

"1. Whether, the failure of the Income Tax Appellate Tribunal''s to appraise the import of their decision in the quantum appeal in Wealth-tax Appeals Nos. 425 to 427/(JP) of 1979, dated August 30, 1980, and in Wealth-tax Appeal No. 7/(JP) of 1978-79, dated July 17, 1978, constitutes a mistake apparent from the record in terms of Section 35(1)(e) of the Wealth-tax Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has acted without jurisdiction in entertaining u/s 35(1)(e) of the Act a point which is not only prima facie debatable in terms of the Supreme Court decision in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, but has actually been debated by the three Members of the Income Tax Appellate Tribunal in their orders dated February 6, 1982, February 15, 1982, and December 15, 1982, in M. A. No. 140/(JP) of 1980 arising out of Wealth-tax Appeals Nos. 527 to 529/(JP) of 1981 ?

3. Whether, on the facts and in the circumstances of the case, the action of the Income Tax Appellate Tribunal in rectifying u/s 35(1)(e) of the Act the so-called mistake apparent from the record is tantamount to the assumption of revisionary jurisdiction which is not vested in the Income Tax Appellate Tribunal under the law ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in passing an order u/s 35(1)(e) of the Act which has the effect of cancelling and revising its own order in Wealth-tax Appeals Nos. 527 to 529/(JP) of 1981, dated November 16, 1981, which had become final and conclusive by reason of the fact that the assessee did not challenge the same in reference u/s 27 of the Act ?

5. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the penalty imposed u/s 18(1)(c) of the Act in spite of the fact that the fact of concealing the particulars of the concerned assets had been established and was not challenged by the assessee at any stage ?"

2. The brief facts as stated in D. B. Wealth-tax Reference No. 225 of 1985 are that the assessee is an individual and filed the return for wealth-tax from 1967-68 to 1971-72. Additions of Rs. 65,919 and Rs. 35,969 were made on account of unexplained cash credits in the account of Motichand Dhandia for the assessment year 1967-68. The additions were deleted in appeal. On subsequent enquiries it was revealed that the transactions with Motichand Dhandia was not genuine, and therefore, on the basis of the material in the possession of the Department, notices u/s 17 were issued for the years 1961-64 to 1965-66 and also for 1966-67 and 1967-68. A petition dated September 26, 1974, was submitted to the Commissioner of Income Tax for settlement for the assessment years 1963-64 to 1965-66. The said petition was accepted on March 24, 1975, and a sum of Rs. 85,919 was agreed to be added on account of entries in the account of Motichand Dhandia. Twenty per cent. penalty was levied u/s 18(1)(c) for the assessment year 1967-68. The returns for 1968-69, 1969-70 and 1970-71 were revised by including additional wealth of Rs. 85,919 and Rs. 1,000 was levied as penalty u/s 18(1)(c) and the said petition covered the period up to 1970-71 and penalty for 1971-72 u/s 18(1)(c) was levied. The said wealth was included in the assessment year 1972-73 itself.

3. The return for the assessment year 1973-74 without including the additional wealth of Rs. 85,919 was filed on May 21, 1973. Since the amount was not included in the assessment years 1973-74 and 1975-76, the Wealth-tax Officer imposed penalty u/s 18(1)(c). The appeal before the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal were dismissed. After the order of the Tribunal dated November 16, 1981, a miscellaneous application u/s 254(2) was moved. The Accountant Member, vide order dated February 6, 1982, allowed the miscellaneous application and set aside the penalty, while the Judicial Member dismissed the application. On a difference of opinion, the matter was

referred to the third Accountant Member who agreed with the Accountant Member, vide his order, dated December 15, 1982, and, thus, the miscellaneous applications were allowed, vide order dated January 21, 1983. Against the said order, the Revenue filed a reference application u/s 27(1) and the Income Tax Appellate Tribunal found that question No. 1 does not give rise to any question of law, as there was failure on the part of the Tribunal while dismissing the assessee''s appeal to keep the position of law in mind which constituted a mistake apparent from the record. In respect of questions Nos. 2 and 3 also, it was held that there was a clear mistake apparent from the record, which calls for rectification, and, in respect of question No. 4, it was found that the earlier order of the Tribunal could not be referred and in respect of question No. 5, it was observed that no concealment took place. Hence the reference application was dismissed.

4. We have considered the arguments of learned counsel. We are of the opinion that a question of law does not (sic) arise out of the order of the Tribunal and, therefore, we hereby frame and direct the Tribunal to refer the following question of law, more particularly, that the matter goes to the very root of the jurisdiction of the Tribunal in rectifying its order :

"Whether the Income Tax Appellate Tribunal was justified in passing the order rectifying the order dated November 16, 1981, on the basis of the miscellaneous application submitted by the assessee ?"

5. The Income Tax Appellate Tribunal shall refer the above question of law arising out of its order and send the same along with the statement of the case.

6. No order as to costs.