(1985) 12 RAJ CK 0015

In the Rajasthan High Court

Case No : Wealth-tax Reference Application No. 141 of 1983

Commissioner of Wealth-tax APPELLANT

Vs

Master Kairas Tarapore RESPONDENT

Date of Decision : 16-12-1985

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 17, 27(3)

Citation : (1986) 53 CTR 318 : (1987) 163 ITR 311

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant;

Judgement

Kasliwal, J.—The Commissioner of Wealth-tax, Jaipur, has filed this application u/s 27 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for giving a direction to the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to draw up the statement of the case and refer the following question of law:

"Whether, on the facts and in the circumstances of the present case, the Tribunal was justified in holding that the assessment has not been validly reopened and in setting aside the order of the Appellate Assistant Commissioner and cancelling the assessment made u/s 17 of the Wealth-tax Act, 1957 ?"

2. Brief facts leading to this application are that the assessees were partners in the firm of new Majestic Talkies, Ajmer. The Wealth-tax Officer issued a notice under the Wealth-tax Act and mentioned in his order that during the proceedings for the assessment year 1976-77, a reference was made to the valuation cell in January, 1977, for the purpose of valuation of immovable properties of the firm, M/s. New Majestic Talkies. The report was received in December, 1978. This report assessed the value of the assets of the firm at Rs. 9,92,000 as against the balance-sheet value of the properties, namely, Rs. 3,85, 522. On this basis, the Wealth-tax Officer came to the conclusion that the wealth had been under-assessed due to failure on the part of the assessee to disclose true and correct

particulars of wealth.

3. An argument was raised before the Income Tax Appellate Tribunal that a reference could be made to the valuation cell when the proceedings were actually pending and the Wealth-tax Officer had no power to follow a reverse process, namely, the reference to the valuation cell being followed by the assessment proceedings. The Appellate Tribunal agreed with the above submission of the learned counsel for the assessee. It was observed by the Tribunal that it was evident from the facts stated above that no proceedings were pending before the Wealth-tax Officer when it made a reference for the purpose of making an assessment. Section 16A permitted the Wealth-tax Officer to make a reference for the purpose of making an assessment. The Tribunal placed reliance on a decision of the Calcutta High Court in Satyendra Chunder Ghose Vs. Wealth Tax Officer and Others, and held that the assessment had not been validly reopened and completed. An application submitted under Sub-section (1) of Section 27 of the Act for making a reference to this Hon''ble Court was also dismissed and reliance was placed on a decision of this court in Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another,

4. We have heard Mr. Surolia for the Department. In our view, no mistake has been committed by the Tribunal in taking the aforesaid view. The view taken by the Tribunal is based on the decisions of the Calcutta High Court and also of this court.

5. In view of the above circumstances, we find no force in this application and it is accordingly dismissed with no order as to costs.

