(2004) 03 BOM CK 0028

In the Bombay High Court

Case No : WT Appeal No''s. 309 of 1998 and 200 of 2004

Commissioner of Wealth Tax APPELLANT

Vs

Mohan Murari Sawant RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:
Income Tax Act, 1961 — Section 260A
Wealth Tax Act, 1957 — Section 27A

Citation : (2004) 191 CTR 497

Hon'ble Judges : R.M. Lodha, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : R.V. Desai and P.S. Jetley, instructed by K.B. Rao, for the Appellant; V.S. Hadade, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—Heard Mr. R.V. Desai, the learned senior counsel for the petitioner and Mr. V.S. Hadade, the learned counsel for the respondent.

2. The preliminary objection is raised by the learned counsel for the assessee about the maintainability of the appeal in view of the Instruction No. 1979 dt. 27th March, 2000 issued by the CBDT (for short ''the Board'') which provides that the appeal u/s 260A shall not be filed before the High Court by the IT Department from the judgment of the Tribunal where tax effect does not exceed Rs. 2 lakhs.

3. The learned counsel for the assessee submits that in the present appeal, the issues raised by the Revenue have tax effect of Rs. 1, 65, 000 only and therefore, by virtue of the aforesaid circular, the appeal is not maintainable. He relies upon the Division Bench judgment of this Court in Commissioner of Income Tax Vs. Camco Colour Co., .

4. That the circular issued by the CBDT is binding on the IT Department on administration side does not seem to be in doubt. There are good number of

cases under the Central Excise Act, 1944 wherein it has been held that the circular issued by the Central Board of Excise and Customs (CBEC) is binding on the, Excise and Customs Department on administrative side. M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, is an authority for that proposition.

5. In Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., , the three Judge Bench of the Supreme Court held that the Revenue cannot be permitted to take a stand contrary to instructions issued by the Board.

6. The aforesaid legal position is reiterated by the Supreme Court in The Paper Products Ltd. Vs. Commissioner of Central Excise, wherein it was held that the Department is precluded to file an appeal against the correctness of the binding nature of the circulars issued by CBEC.

7. In M/s. Hindustan Aeronautics Ltd., Bangalore Vs. Commissioner of Income Tax, Karnataka- I, Bangalore, , the view was taken by the Supreme Court that the Board''s circulars or instructions are no doubt binding on the authorities under the Act but when Supreme Court or the High, Court has declared the law on the question at issue, it will not be open to a Court to direct that the circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court.

8. Insofar as Hindustan Aeronautics Ltd. (supra) is concerned, this judgment is subsequently overruled by the Supreme Court to the extent it was held therein that the circular issued by the Board not in conformity with the law laid down by the Supreme Court or the High Court was not binding on the Department. In any case. In Hindustan Aeronautics Ltd. also, it has been held that the Board''s circular or instructions are no doubt binding on the authorities under the Act.

9. In Simplex Castings Ltd. Vs. Commr. of Cus., Vishakhapatnam, again, the legal position was reiterated that it was not open to the Department to challenge the circular issued by the Board.

10. The Five Judge Bench of the Supreme Court in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, , held in an unequivocal terms that the circulars issued by the CBEC are binding on the Revenue even if they placed different interpretation than the Supreme Court.

11. Mr. R.V. Desai invited our attention to the Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd. and Another, , particularly part 34 of the report which reads thus-

"34. I have referred to these cases to demonstrate that a common thread does not run through the decisions of this Court. The dicta/observations in some of the decisions need to be reconciled or explained. The need to redefine succinctly the extent and parameters of the binding character of the circulars of CBDT or CBEC looms large. It is desirable that a Constitution Bench hands down an authoritative pronouncement on the subject."

12. The learned senior counsel sought to urge that, since the extent and parameters of the binding character of the circulars of CBDT or CBEC are under consideration before the Constitution Bench of the Supreme Court. It cannot be said that the law is crystallised about the binding nature of the circulars issued by the Board. We are afraid, the reference to para 34 of the Indian Oil Corporation is out of context and not applicable in so far as the present case is concerned. In Indian Oil Corporation, the Bench comprised of Ruma Pal and P. Venkatarama Reddi, JJ. Ruma Pal, J. in paras 21 and 22 of the report held thus-

"21. In this view, it is not necessary for us to determine the further issue whether in the absence of Board circulars, demurrage would still be includible in the assessable value of the imported goods. For the purposes of these appeals, it is sufficient to hold, as we do, that demurrage was wrongly included by the adjudicating officer in the assessable value contrary to the directive of the CBEC at a time when the circular had not been withdrawn.

22. For the reasons aforesaid, the appeals are dismissed with costs."

13. P. Venkatarama Reddi, J. agreed with Ruma Pal, J. that the Revenue appeal was liable to be dismissed in the light of the circular dt. 14th Aug., 1991 issued by the CBEC. However the reference was made to the Constitution Bench as some doubt was expressed by His Lordship Venkatarama Reddi, J. in the two Dhiren Chemical Industries cases, reported in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, and Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries, .

14. In so far as maintainability of appeal by the Department inconsistent with the circular of the CBDT dt. 27th March, 2000 is concerned, it came up for the direct consideration before the Division Bench of this Court in CIT v. Cameo Colour Co. (supra). The Division Bench on consideration of the. said circular observed thus-

"The issue in the present case being one of some potential general significance in relation to the policy decision taken by the Board not to raise questions of law where the effect is less than the amount prescribed in the instructions issued by the CBDT with a view to reduce litigations before the High Courts and the Supreme Court, we propose to dispose of this appeal on this short contention canvassed by learned counsel for the respondent without examining the merits of the question of law sought to be raised in this appeal.

Learned counsel for the respondent also relied upon the decision in Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, ''D'' Range, Bombay, , Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, and K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, to contend that the circular issued by the CBDT is binding on all the officers and Commissioners and in terms of which he sought to examine the question of necessity of filing of the present appeal.

It appears that despite the above circular, the Revenue has chosen to file the present appeal knowing fully well that the corridors of the Courts are flooded with pending litigations, the presentation of this appeal is quite contrary to the instruction issued in the circular which is binding on the Revenue.

In the above view of the matter, considering the instructions issued by the CBDT, we are satisfied that the Board has taken a policy decision not to file appeal in a type of case in hand and the same is binding on the Revenue (appellant herein). In the result, we dismiss this appeal on this count in limine with no order as to costs.

15. In so far as the present controversy is concerned, it is squarely covered by the Division Bench of this Court in Cameo Colour Co. and therefore, this appeal has to be dismissed in limine as not maintainable and we order accordingly.