(2004) 08 AHC CK 0250

In the Allahabad High Court

Case No : WT Ref. No. 56 of 1981

Commissioner of Wealth Tax APPELLANT

Vs

Phool Chand RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Citation : (2004) 191 CTR 528 : (2005) 272 ITR 239

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Shambhu Chopra, for the Appellant; Diwakar Rai Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. The Tribunal, New Delhi, has referred the following question of law u/s 27(2) of the WT Act, 1957 (hereinafter referred to as the Act), for opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in cancelling the order u/s 25(2) of the WT Act, 1957, passed by the CWT, Agra, and in restoring the order u/s 16(3) of the WT Act, 1957, passed by the WTO?"

2. Briefly stated the facts giving rise to the present reference are as follows :

The assessee opposite party is an individual, who owned a cinema building, the construction of which was completed on 31st March, 1970. It started running the cinema w.e.f. 20th April, 1970. While framing the assessment under the Act, the WTO referred the valuation of the cinema building to a valuation officer. According to the valuer the value of the property as on 31st March, 1970, and 31st March, 1971, was taken at Rs. 3,63,330 in each of the two asst. yrs. 1970-71 and 1971-72. It appears that the valuation officer has given his report on the basis of costs of land and construction thereon. Later on, another valuation officer of the Department gave the valuation report in respect of the cinema building as on 31st March, 1972, valuing at a higher figure of Rs.

7,61,600. This report was given on the basis of yield method and was adopted by the WTO for the asst. yrs. 1972-73, 1973-74 and 1974-75. On the basis of the subsequent report of the valuation officer, the CWT considered the assessment order for the asst. yr. 1970-71 to be erroneous and prejudicial to the interest of the Revenue and initiated proceedings u/s 25(2) of the Act. After giving opportunity of hearing to the assessee, he cancelled the assessment and directed the WTO to reframe the assessment afresh after obtaining another report from the valuation officer. Similar order was passed for the asst. yr. 1971- 72 also. The assessee feeling aggrieved preferred an appeal before the Tribunal, which allowed the appeals and cancelled the orders passed by the CWT u/s 25(2) of the Act on the ground that subsequent valuation report could not have been taken into consideration while initiating proceedings u/s 25 of the Act.

3. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue. Sri Diwakar Rai Sharma has put in appearance (sic-on behalf) of the assessee.

4. Learned standing counsel for the Revenue submitted that now it is well-settled by the apex Court that all materials, which are available before the Commr. at the time of scrutiny by him can be taken into consideration in the proceedings u/s 25 of the Act. He referred to the following decisions of the apex Court :

(1) South India Steel Rolling Mills, Madras Vs. Commissioner of Income Tax, Madras, .

(2) CIT v. Shiee Manjunathesware Packing Products & Camphor Works, (1998) 231 ITR 53.

5. According to him the provisions of Section 25 of the Act are in pari materia to the provisions of Section 263 of the IT Act. Therefore, principles laid down by Hon''ble the Supreme Court in the aforesaid two cases would squarely apply to the provisions of Section 25 of the Act.

6. In the case of South India Steel Rolling Mills (supra) the Hon''ble Supreme Court has held as follows :

"The revisional power conferred on the CIT u/s 263 is of wide amplitude. It enables the CIT to revise an order passed by the AO, if he considers it to be erroneous and prejudicial to the interest of the Revenue."

In the case of Shree Manjunathesware Packing Products (supra) the Hon''ble Supreme Court has held as follows :

"It, therefore, cannot be said, as contended by the learned counsel for the respondent, that the correct and settled legal position with respect to the meaning of the word "record" till 1st June, 1988, was that it meant the record which was available to the ITO at the time of passing of the assessment order. Further, we do not think that such a narrow interpretation of the word "record" was justified, in view of the object of the provision and the nature and scope of the power conferred upon the CIT. The revisional power conferred on the CIT u/s 263 is of wide amplitude. It enables the CIT to call for and examine the record of any proceeding under the Act. It empowers the CIT to make or cause to be made such enquiry as he deems necessary in order to find out if any order passed by the AO is erroneous insofar as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an enquiry if he considers the order to be erroneous, then he can pass the order thereon as the circumstances of the (case) justify. Obviously, as a result of the enquiry he may come into possession of new material and he would be entitled to take that new material into account. If the material, which was not available to the ITO when he made the assessment could thus be taken into consideration by the CIT after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Moreover, in view of the clear words used in Clause (b) of the Explanation to Section 263(1), it has to be held that while calling for and examining the record of any proceeding u/s 263(1) it is and it was open to the CIT not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination."

Thus, it is now well-settled that the CIT can take into consideration materials and other documents which are available upto the time of scrutiny by him u/s 263 of the IT Act or Section 25 of the WT Act.

7. Respectfully following the aforesaid principle laid down by Hon''ble the Supreme Court, we hold that the CWT was perfectly justified in taking into consideration the subsequent valuation reports while initiating proceedings u/s 25 of the Act.

8. In view of foregoing discussions, we answer the above-mentioned question of law in negative, i.e., in favour of the Revenue and against the assessee. However, there will be no order as to costs.

