
(2000) 04 CAL CK 0030
In the Calcutta High Court
Case No : Matter No. 354 of 1983

Commissioner of Wealth Tax

APPELLANT

Vs

P.P. Ghosh (Decd.) (through executrix Smt. Jayanti Ghosh)

RESPONDENT

Date of Decision : 06-04-2000

Acts Referred:

Wealth Tax Act, 1957 — Section 25

Citation : (2000) 244 ITR 574 : (2001) 115 TAXMAN 606

Hon'ble Judges : Y.R. Meena, J;R.K. Mazumdar, J

Bench : Division Bench

Judgement

Y.R. Meena, J.—On an application u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred the following questions set out at page 2 of the statement of case for our opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Commissioner cannot rely on the report of the valuer to invoke the provision of Sub-section (2) of Section 25 of the Wealth-tax Act, 1957 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in quashing the order of the Commissioner of Wealth-tax under Sub-section (2) of Section 25 of the Wealth-tax Act, 1957 and in allowing the assessee's appeal ?"

2. The assessment years involved are 1967-68 to 1974-75. The Wealth-tax Officer has made assessment valuing the immovable properties of the assessee and in 1967-68, he valued the property of the assessee at Rs. 7,70,090. The same value was repeated up till 1969-70. In the assessment year 1970-71, the value has been taken at Rs. 7,69,690. The same value has been taken for the assessment years 1971-72 to 1973-74. In the assessment year 1974-75, the value has been taken at Rs. 7,15,400.

3. On a perusal of the records and considering the valuation report of the

Valuation Officer, the Commissioner of Wealth-tax has set aside the assessment orders and directed the Wealth-tax Officer to make a fresh assessment in accordance with law and consider the report of the Valuation Officer by making fresh assessment orders.

4. In appeal before the Tribunal, the Tribunal has considered the decision of this court in *Ganga Properties Vs. Income Tax Officer*, and held that the Commissioner cannot look into the valuation report, as it was not part of the record of the Wealth-tax Officer.

5. Heard learned counsel for the Revenue. None appeared for the assessee, though the matter was listed twice. Learned counsel for the Revenue submits that after the decision in *Ganga Properties Vs. Income Tax Officer*, this court has reconsidered its earlier view in *Commissioner of Income Tax Vs. S.M. Oil Extraction Pvt. Ltd.*, and held that the valuation report received after completion of the assessment forms part of the assessment record and the Commissioner can consider the report for the purpose of revision of the assessment orders u/s 25 of the Act. He further submits that the subsequent decision of the Calcutta High Court has been affirmed by the apex court in the case of *Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works*. He further submits that though the decisions are u/s 263 of the Income Tax Act, 1961, Section 263 of the Income Tax Act is *pari materia* with Section 25 of the Wealth-tax Act, 1957.

6. In *Commissioner of Income Tax, Bangalore Vs. Shree Manjunatheaware Packing Products and Camphor Works*, their Lordships have considered the meaning of "record". For the purpose of revision, "record" means, "the material available" to the Assessing Officer at the time of assessment or whether "record", means, "the material available on record at the time of examination of the report by the Commissioner of Income Tax u/s 263 ?" Their Lordships held that "record" is not confined to material available to the Income Tax Officer and any material available to the Commissioner of Income Tax at the time of examination for the purpose of revision of the assessment order. In view of the subsequent decision of this court and the aforesaid decision of the apex court, in our view, the Commissioner of Wealth-tax can consider the valuation report which was not available to the Wealth-tax Officer at the time of his completion of assessment.

7. In the result, we answer question No. 1 in the negative, i.e., in favour of the Revenue and against the assessee. Question No. 2 is consequential. We also answer this in the negative, i.e., in favour of the Revenue and against the assessee.

8. The reference application is accordingly disposed of.

9. All parties are to act on an operative part of this judgment on the usual undertaking.