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(1995) 10 GUJ CK 0001

In the Gujarat High Court

Case No : WT Ref. No''s. 17, 17A, 17B and 17C of 1992 & Wealth-tax Reference No''s. 17, 17-A, 17-B and 17-C of 1992

Commissioner of Wealth Tax — APPELLANT

Vs

Rajeshkumar R. Gandhi — RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:
Wealth Tax Act, 1957 — Section 46(2), 7, 7(1)

Citation : (1996) 88 TAXMAN 214

Hon'ble Judges : Rajesh Balia, J;M.S. Shah, J

Bench : Division Bench

Advocate : M.R. Bhatt and B.J. Shelat, for the Appellant; J.P. Shah, for the Respondent

Judgement

Rajesh Balia, J.—A joint statement of case has been submitted by the Tribunal, Ahmedabad Bench ''A'', in respect of the four assessment years 1980-81 to 1983-84 and referred the following questions of law for the opinion of this Court arising out of Wealth-tax Appeal Nos. 450 to 452/(A) of 1988 and Wealth-tax Appeal No. 1079/(A) of 1987: Whether the Appellate Tribunal is right in law and on facts in directing the Wealth-tax Officer to value the immovable properties in accordance with the new valuation rules which were brought on the statute book by the Direct Tax Laws (Amendment) Act, 1989, Schedule III, with effect from 1-4-1989?

The facts necessary for the present purpose are that during the pendency of appeals regarding wealth-tax assessment of the assessee for the assessment years 1980-81 to 1983-84. Section 7 of the Wealth-tax Act, 1957 (''the Act'') providing for the manner of determining the value of any asset other than cash was substituted by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1-4-1989. Prior to its amendment, section 7 provided that the value of any asset other than cash for the purposes of the Act shall be the estimated price which in the opinion of the Assessing Officer, it would fetch if sold in the open market on

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the valuation date. Under the provisions, as inserted by the Direct Tax Laws (Amendment) Act, 1989, it was provided that the value of an asset other than cash for the purposes of the Wealth-tax Act shall be determined in the manner laid down in Schedule III. As the appeal was also in respect of valuation of immovable properties as on the respective valuation dates, relevant to the respective assessment orders, the Tribunal remitted the question of valuation of the immovable properties to the WTO for valuation in accordance with the new rules conferred in Schedule III inserted by the Direct Tax Laws (Amendment) Act, 1989, by its order dated 3-9-1990. It is in these circumstances that the aforesaid question came for determination. 2. The learned counsel appearing for the revenue candidly stated that the answer to the question shall be governed by the principle enunciated by this Court in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, and in Commissioner of Wealth-tax Vs. Niranjan Narottam, . The court taking note of the fact that section 7(1) is a machinery section and section 46(2) provides for making rules for laying down the manner in which the market value of any asset may be determined. The rule-making authority can lay down the method or mode of determining the market value of each asset and such provision can be considered only procedural and not substantive and, therefore, such provision s apply to the pending cases. The court observed as follows:

...in order to determine the net wealth of an assessee, each asset has to be separately valued in accordance with section 7(1) read with the relevant rule, in this case, rule 1BB. Since section 7(1) is a machinery section and since the rule to be made u/s 46(2) must relate to the manner in which the market value of any asset may be determined, it can be safely inferred that the rule-making authority can lay down the method or mode of determining the market value of each asset. When a rule sets out the method or formula for determining the market value of any particular asset, it can only be considered to be procedural and not substantive...." (p. 120)

3. The court further observed that:

We do not think that the mere statement in the notification that the rules incorporated by the amendment shall come into effect from 1-4-1979, is decisive of the fact that the rules were not intended to be retrospective in nature. They had to be brought on the statute book either at once or with effect from a date decided upon by the rule-making authority but if the rule introduced by the amendment is found to be procedural in nature, it must operate retrospectively and the mere fact that it was given effect from 1-4-1979, will not clinch that issue." (p. 124)

The decision in Kasturbhai Mayabhai''s case (supra) has since been affirmed by the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, . Following the aforesaid decision we hold that law providing for manner and method of valuing the asset other than cash on the valuation date is a part of procedural law and operates on pending cases, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and

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against the revenue. There shall be no order as to costs.

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