(1989) 02 KL CK 0004

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 299 and 300 of 1982

Commissioner of Wealth-tax APPELLANT

Vs

Ravi Cheloor RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Citation : (1989) 78 CTR 153 : (1989) 2 ILR (Ker) 415 : (1989) 178 ITR 640

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant;

Judgement

K.A. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court:

"Whether, on the facts and in the circumstances of the case, the Wealth-tax Officer had validly reopened the assessment u/s 17(1)(b) of the Wealth-tax Act ?"

2. A common question arises for consideration in both these cases. The common respondent is an assessee to wealth-tax. For the years 1972-73 and 1973-74, assessments were effected against the respondent by the Wealth-tax Officer on 23-3-1974. The Wealth-tax Officer followed the balance-sheet of the assessee in valuing the assets. The main asset was a cinema theatre. He accepted the value admitted by the assessee substantially. Subsequently, the successor Wealth-tax Officer, apprehending that the market value of the assets was not properly determined; made a reference u/s 16A of the Wealth-tax Act for valuation of the cinema theatre. The Valuation Officer determined the market value on the income capitalisation method. On the basis of the valuation report, the Wealth-tax Officer reopened the assessments for the above two years u/s 17(1)(b) of the Act and made the assessments adopting the value determined by the Valuation Officer. The pleas of the assessee, that the reassessment proceedings are invalid and also the value adopted by the Valuation Officer is arbitrary, were rejected. In the appeals, the Appellate Assistant Commissioner accepted the

pleas of the assessee and held that the reassessments, made on the basis of ,a reference made u/s 16A of the Act, subsequent to the completion of the original assessments, is not in accordance with law and so the assessments were held to be illegal. The other questions raised by the assessee were not decided. In further appeal by the Revenue, the Income Tax Appellate Tribunal, in the common order passed dated February 23, 1982, concurred with the decision of the Appellate Assistant Commissioner. The Appellate Tribunal referred to the decision of the Rajasthan High Court in Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, nd held that a reference u/s 16A cannot be legally and validly made after the completion of the assessment and that the valuation report obtained on the basis of such an illegal enquiry cannot form the basis for reopening the assessment. Thereupon, the Revenue filed Reference Applications Nos. 194 and 195/Coch/82 before the Tribunal to refer certain questions of law which, according to it, arose out of the appellate order passed by the Tribunal. Accordingly, the Appellate Tribunal has referred the question of law, extracted hereinabove, for the decision of this court

3. We heard counsel for the Revenue as also counsel for the respondent/ assessee. It is common ground that the wealth-tax assessments for the two years 1972-73 and 1973-74 were completed on March 23, 1974. The successor Wealth-tax Officer, apparently not satisfied with the valuation of the assets, made a reference u/s 16A of the Wealth-tax Act to the Valuation Officer for determining the value of the property. On a plain reading of section 16A of the Wealth-tax Act, we are constrained to state that the reference made to the Valuation Officer was totally without jurisdiction and unauthorised. The pendency of the assessment proceedings is a condition precedent for making a reference to the Valuation Officer u/s 16A of the Wealth-tax Act. The language of Section 16A(1) taken along with Section 16A(4) 16A(5) and 16A(6) of the Wealth-tax Act points out that it is only for the purpose of making an assessment that the assessing officer can refer the valuation of any asset to the Valuation Officer. Admittedly, the assessments were completed for the two assessment years 1972-73 and 1973-74 as early as on March 23, 1974. At the time when the reference was made to the Valuation Officer, no assessment proceeding was pending. The reference made to the Valuation Officer was, therefore, unauthorised. The basis for reopening the assessments, for both the years u/s 17(1)(b) of the Act, was the valuation report Since the valuation report was obtained unauthorised or illegally, the reassessment proceedings founded on the said valuation report are equally tainted. We hold so. We are fortified in taking the above view by the decisions of various High Courts--vide Smt. Bella Cajeton Travasso Vs. Third Wealth-tax Officer and others, ; Satyendra Chunder Ghose Vs. Wealth Tax Officer and Others, ; Smt. Uma Debi Jhawar Vs. Wealth Tax Officer and Others, ; K.M. Vishnudas Prabhu, K.M. Ramdas Prabhu and K.M. Shankar Prabhu (HUF) Vs. First Wealth Tax Officer and Another, ; Onkarji Kasturchand (HUF) Vs. Wealth Tax Officer, "D" Ward and Others, ; Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, and Commissioner of Wealth-tax Vs. Master Kairas

Tarapore,

4. In the light of the above discussion, we answer the question referred to us in the negative, against the Revenue and in favour of the assessee.

5. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.

