(2006) 12 AHC CK 0132

In the Allahabad High Court

Commissioner of Wealth-tax — APPELLANT

Vs

Ravi Malhotra — RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:
Income Tax Act, 1961 — Section 124, 139, 142, 143, 144

Citation : (2007) 292 ITR 171

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Delhi Bench "D", New Delhi, has referred the following question of law u/s 27(1) of the Wealth-tax Act, 1957, for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessment made by the Wealth-tax Officer at Agra was to be annulled on the ground that he had no legal jurisdiction over the matter as there was no valid transfer of the case ?

2. The reference relates to the assessment year 1978-79.

3. Briefly stated the facts giving rise to the present reference are that the assessee-opposite party had filed a return of wealth disclosing net wealth of Rs. 1,60,500 on March 5, 1982. The proceedings for assessment were taken by the Wealth-tax Officer, D-Ward, Circle-I, Agra, by issuing notice under Sub-section (2) of Section 16 of the Act. Pursuant to the notice the respondent-assessee along with Sri S.P. Kapoor attended the proceedings from time to time. After discussion the net wealth was assessed at Rs. 7,03,419 vide order dated February 28, 1983. Feeling aggrieved the assessee-opposite party preferred an appeal before the Appellate Assistant Commissioner of Income Tax, Range-I, Agra. Before the Appellate Commissioner the plea regarding the jurisdiction of the Wealth-tax Officer was raised on the ground that he was an existing assessee at Delhi and the assessing authority at Delhi had the jurisdiction to pass valid

order for assessment u/s 8 of the Act and the Wealth-tax Office at Agra could not have assumed the jurisdiction without taking recourse to the prescribed procedure under the Act. The assessment framed by the Wealth-tax Officer, Agra, was a nullity. The Appellate Commissioner of Income Tax relying upon a decision of the apex court in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, , upheld the objection and declared the assessment made by the Wealth-tax Officer, Agra, as null and void. The Revenue feeling aggrieved by the order of the Appellate Commissioner preferred an appeal before the Income Tax Appellate Tribunal, Delhi Bench "D", New Delhi. The Tribunal upheld the order on the basis of its earlier order in the earlier assessment year 1977-78.

4. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue and have perused the orders passed by the Wealth-tax Officer as also the Appellate Commissioner of Income Tax, Agra. At the outset it may be stated that the Tribunal in its order has simply followed its order for the earlier assessment year 1977-78 wherein the following observation was made:

6. If the order of the Wealth-tax Officer, Agra, goes by itself it does not show that the assessee had come and taken objection to his jurisdiction to make the assessment. So on the face of it, there is nothing illegal therein. However, we agree with the conclusion of the Commissioner of Wealth-tax, the assessee was not given a reasonable opportunity of being heard. Then the automatic result of this opportunity of being heard would be that the assessee''s objection filed in this behalf would have to be considered. As soon as one were to consider that one would certainly come to the conclusion that the Wealth-tax Officer at Agra had improperly assumed jurisdiction in the matter. The proper course for the Commissioner of Wealth-tax in these circumstances was to quash the order of the Wealth-tax Officer and direct him to give an opportunity of being heard to the assessee. Ultimately, the Wealth-tax Officer would come to the conclusion that the file had not been properly transferred to him. So he would have either to get regular orders of transfer passed in the matter, alternatively, the proper course for him was to return the file to the Wealth-tax Officer at New Delhi for such action as the latter thought fit. Therefore, without going into other technicalities of the matter and to save from unnecessary harassment and inconvenience to the parties, we are of the opinion that the same should be done now. Accordingly, we modify the order of the Commissioner of Wealth-tax to the extent that while the assessment in question shall stand annulled, the Wealth-tax Officer at Agra is further directed to return the file to the Wealth-tax Officer, Delhi, where the return was originally filed, for further proceedings according to law. Both the appeal and the cross-objection are partly allowed for statistical purpose as above.

Thus the assessment was annulled with certain directions. Both the parties have accepted before us that the facts in this year continue to be the same and it is the same circumstances which have been considered by the Appellate Assistant

Commissioner. In view of this, we uphold the order of the Appellate Assistant Commissioner annulling the assessment with similar directions as given in the assessment year 1977-78.

5. We find that in the present case the assessee had filed the return voluntarily. He had also appeared before the Wealth-tax Officer along with his representative and from the perusal of the earlier order it does not appear that any objection regarding the jurisdiction of the Wealth-tax Officer was taken by him. u/s 11 of the Act the provisions of Section 124 of the Income Tax Act, 1961, have been applied with certain modification specified therein. The modification is only to the extent of Sub-section (3) of Section 124 of the Income Tax Act, 1961. Reference to the provisions of the Income Tax Act is to be construed as references to the corresponding provisions of the Wealth-tax Act and Sub-section (2) of Section 124 shall stand omitted in so far as it relates to the Wealth-tax Officer. u/s 124 of the Income Tax Act, the jurisdiction of the Assessing Officer has been defined. Sub-section (3) puts a bar on the assessee or any person to call in question the jurisdiction of the Assessing Officer beyond a certain period. For ready reference Sub-section (3) of Section 124 of the Income Tax Act is reproduced as below:

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer--

(a) where he has made a return under Sub-section (1) of Section 115WD or under Sub-section (1) of Section 139, after the expiry of one month from the date on which he was served with a notice under Sub-section (1) of Section 142 or Sub-section (2) of Section 115WE or Sub-section (2) of Section 143 or after the completion of the assessment, whichever is earlier ;

(b) where he has made no such return, after the expiry of the time allowed by the notice under Sub-section (1) of Section 142 or u/s 148 for the making of the return or by the notice under the first proviso to Section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

6. From a reading of the aforesaid provisions we find that the assessee or the person cannot question the jurisdiction of the assessing authority beyond one month after service of the copies of the notice or after the completion of the assessment whichever is earlier. Apparently in the present case the return was filed voluntarily. Notice u/s 16(2) of the Act was also served and up till the stage of assessment no objection whatsoever was taken by the assessee relating to the jurisdiction of the Wealth-tax Officer, Agra. In this view of the matter it would be presumed that the assessee-opposite party had acquiesced in the jurisdiction of the Wealth-tax Officer, and, therefore, he could not be permitted to raise such objection subsequently. The view of the Income Tax Appellate Tribunal in the circumstances cannot be said to be correct.

7. In view of the aforesaid discussion we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee. There shall

be no order as to costs.

