
(1985) 09 RAJ CK 0058

In the Rajasthan High Court

Case No : W.T. Reference Petitions No's. 213,214,217 and 221 of 1985

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

S. K. BADER AND OTHERS.

RESPONDENT

Date of Decision : 04-09-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1), 27(3)

Citation : (1987) 52 CTR 68 : (1987) 167 ITR 890

Judgement

These wealth-tax reference petitions filed u/s 27(3) of the Wealth-tax Act, 1957, raise common questions and, therefore, they are being disposed of by this common order.

D.B. Wealth-tax Reference Petition No. 214 of 1985 relates to the assessment year 1974-75 and the other three reference petitions relate to the assessment year 1975-76. In Wealth-tax Reference Petitions Nos. 213 and 214 of 1985, the assessee is Smt. S. K. Bader, in Wealth-tax Reference Petition No. 217 of 1985, the assessee is Shri Gulabchand Bader, and in Wealth-tax Reference Petition No. 221 of 1985, the assessee is Shri H. C. Bader. Smt S. K. Bader and Gulabchand Bader are partners of M/s. K. D. Jhaveri, Jaipur, which carry on the business of purchase and sale of precious and semi-precious stones both in India and abroad. Shri H. C. Bader, the assessee, in W.T. Reference Petition No. 221 of 1985, is a partner of the firm, M/s. Cosmopolitan Trading Corporation, Jaipur, which also carries on the business of export of precious and semi-precious stones.

In so far as the assesseees in W.T. Reference Petitions Nos. 213,214 and 217 of 1985 are concerned it has been stated that in respect of the assessment year 1974-75, M/s. K. D. Jhaveri declared a closing stock of Rs. 10,95,667 in the jewellery account and Rs. 5,880 in the precious and semi-precious stones account and the assesseees submitted their wealth-tax returns on the basis of the aforesaid value of the closing stock. The Wealth-tax Officer in the assessment order dated January 3, 1979, did not accept the aforesaid value of the closing stock and fixed the market value of the closing stock in the jewellery account at

Rs. 19,57,189 as per the export invoice value (EIV) as a result of the aforesaid revision in the market value of the stock, the value increased by more than 20 per cent. and as per rule, 2B(2) of the Wealth-tax Rules, 1957, the net wealth was computed on that basis. During the assessment year 1975-76, the value of the closing stock of M/s. K. D. Jhaveri was declared at Rs. 2,21,202 and the returns were filed on that basis. The Wealth-tax Officer did not accept that figure and fixed the market value of the stock at Rs. 14,88,247, the export invoice value, and after applying the provisions of rule 2B, computed the net wealth of the assesseees. The assesseees filed appeals against the assessment orders passed by the Wealth-tax Officer and the said appeals were allowed by the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the export invoice could not be made the basis for the market value of the stock and that the Wealth-tax Officer was not justified in invoking the provisions of rule 2B(2) to determine the net wealth of the firm, M/s. K. D. Jhaveri, Jaipur, and then the aforesaid orders of the Appellate Assistant Commissioner before the Tribunal by order dated December 31, 1983. The Tribunal agreed with the Appellate Assistant Commissioner that the export invoice value could not be the basis for determining the market value of the stock, because the goods did not fetch the export invoice value in the foreign markets. According to the Tribunal, it will be reasonable if the fair market value of the closing stock was arrived at by making a deduction of 35 per cent. from the export invoice value. The Tribunal found that if deduction of 35 per cent. was made from the export invoice value and the fair market value is determined on that basis, then for the assessment years 1974-75 and 1975-76, the said fair market value was less than 20 per cent. as contemplated in rule 2B(2) of the Wealth-tax Rules, 1957, and no addition on account of enhanced market value of the closing stock could be made under rule 2B(2). Being aggrieved by the aforesaid order of the Tribunal, the Revenue moved the petitions u/s 27(1) of the Wealth-tax Act, whereby it was prayed that the following four questions may be referred to this court :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that in order to ascertain the actual market value of the closing stock of the firm for the purpose of rule 2B(2) of the Wealth-tax Rules, the export invoice value has to be reduced by 35% ?
2. Whether, on the facts and in the circumstance of the case, the Appellate Tribunal is justified in holding that the Export Invoice Value is not the market price but merely a quotation notwithstanding the provisions of section 18 of the Foreign Exchange Regulation Act ?
3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the difference between the market value and the cost price of the closing stock of the firm is less than 20% and, therefore, no addition on account of increased value could be made to the assesseees net wealth under rule 2B(2) of the Wealth-tax Rules ?
4. Whether, on the facts and in the circumstances of the case, the Appellate

Tribunal is justified in holding that M/s. Cosmopolitan Trading Corporation, Jaipur, is an industrial undertaking and as such the assessee is entitled to exemption u/s 5(1)(xxxii) of the Wealth-tax Act, 1957 ?

By order dated August 30, 1984, the Tribunal declined to refer questions Nos. 1, 2 and 3 and has referred question No. 4 to this court. Thereupon the Revenue has filed D.B. W.T. Reference Petitions Nos. 213,214 and 217 of 1985.

In so far as the D.B. W.T. Reference Petition No. 221 of 1985 is concerned, it relates to the assessment year 1974-75. In this case, the firm of which the assessee was a partner had declared the value of the closing stock in the jewellery account at Rs. 19,49,960 and the value of the closing stock in the precious and semi-precious account at Rs. 1,31,809. The Export invoice value of the goods in the jewellery account was Rs. 33,79,560. The Wealth-tax Officer assessed the market value of the stock on the basis of the export invoice value and applying the provision of rule 2B(2) computed the wealth of the assessee, Shri H. C. Bader. On appeal, the Appellate Assistant Commissioner held that the market value could not be assessed on the basis of the export invoice value and that rule 2B(2) of the Wealth-tax Rules could not be applied. The Income Tax Appellate Tribunal upheld the said order of the Appellate Assistant Commissioner and by its order dated December 31, 1983, held that the market value should have been fixed by making a deduction of 35% of the export invoice value, for the reasons given by the Tribunal in its order of the same date in the appeals filed by the Department in the case of the assessee in W.T. Reference Petitions Nos. 213,214 and 217 of 1985. The Revenue moved a petition u/s 27(1) of the Wealth-tax Act for reference of the four questions, referred to above, and the Income Tax Appellate Tribunal referred only question No. 4 and refused to refer questions Nos. 1, 2 and 3, and thereupon this petition has been filed by the Revenue u/s 27(3) of the Wealth-tax Act.

Shri. Surolia, learned counsel appearing for the Revenue, argued in support of all the petitions and has urged that the Tribunal was in error in refusing to refer questions Nos. 1, 2 and 3 on the view that the said questions relate to pure findings of fact given by the Tribunal. In this connection, with reference to question No. 2, Mr. Surolia has submitted that the finding of the Tribunal making a deduction of 35% in the export invoice value of the goods in stock is perverse and based on no evidence. It may be stated here that question No. 1 which the Revenue is seeking to be referred to this court does not raise the question that the finding recorded by the Tribunal giving a deduction of 35 per cent. in the export invoice value is perverse and based on no evidence. It cannot, therefore, be said that the aforesaid issue is covered by question No. 1 sought to be referred. Even otherwise, we are of the opinion that on the basis of the record before the Tribunal, it cannot be said that the view of the Tribunal giving reduction of 35% of the export invoice value is perverse or based on no evidence. The Tribunal has taken note of the findings recorded by the Settlement Commission and keeping in view the aforesaid findings, the Tribunal has held

that it will be reasonable if the fair market value of the closing stock of the firm is arrived at by making a deduction of 35% from the export invoice value. u/s 7 of the Wealth-tax Act, it is provided that the value of the asset shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. In the present case, Tribunal on a consideration of the facts and circumstances on record has estimated the market value of the closing stock by giving deduction of 35% in the export invoice value. In our opinion, the said finding of the Tribunal is purely a finding of fact and it does not involve a question of law for reference to this court.

As regards question No. 2, which relates to the provisions of section 18 of the Foreign Exchange Regulation Act, it may be stated that no argument on the basis of the provisions of section 18 of the Foreign Exchange Regulation Act was advanced by the Revenue before the Tribunal and it cannot, therefore, be said that the question arises out of the order of the Tribunal.

With regard to question No. 3, Mr. Surolia had contended that the said question is dependent on question No. 1 and if question No. 1 cannot be referred, question No. 3 also cannot be referred.

For the reasons aforesaid, we find no force in these petitions and they are, therefore, dismissed. No order as to costs.