(2000) 02 KAR CK 0094

In the Karnataka High Court

Case No : C.P. No''s. 906 to 909 of 1999

Commissioner of Wealth-tax APPELLANT

Vs

S.D. Narayansa RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (2000) 161 CTR 366 : (2000) ILR (Kar) 2553 : (2000) 244 ITR 593 : (2000) 4 KCCR 213 SN

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; None, for the Respondent

Judgement

T.N. Vallinayagam, J.—The arguments of learned standing counsel for the Department are heard.

2. In this petition, a prayer is made to direct the Income Tax Appellate Tribunal to refer the following question of law arising out of its order dated April 3, 1998.

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in directing the Assessing Officer for valuation of the property as per Schedule III whereas such Schedule is effective from April 1, 1989, so applicable for the assessment year 1989-90 ?"

3. The reference application u/s 27(1) was rejected on the ground that the controversy is covered by the decision given in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, and also the decision of the Rajasthan High Court in the case of Commissioner of Wealth-tax Vs. Sunder Lal Gupta, .

4. The dispute in the present matter pertains to the assessment years 1985-86 to 1988-89. Schedule III was inserted in the Wealth-tax Act, with effect from April 1, 1989. According to the Revenue, the valuation should have been done in accordance with Rule 1BB of the Wealth-tax Rules, which was in force during the

relevant time.

5. Reliance is placed on the decision given in the case of P.J. George Vs. Commissioner of Income Tax, , wherein the Kerala High Court has held that the provisions of Schedule III came into force on April 1, 1989, and, therefore, in respect of the earlier assessments Schedule III could not be applied. In the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, , rule 1BB which came into force on April 1, 1979, was interpreted, and it was observed that (page 895) :

". . . rule 1BB is essentially a rule of evidence as to the choice of one of the well-accepted methods of valuation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate valuations resulting from application of different methods of valuation respecting properties of a similar nature and character."

6. The method which is provided under Schedule III of the Wealth-tax Act has also prescribed the procedure. Schedule III has to be considered as procedural and not substantive as the market value has to be determined in accordance with the provisions of the said rule. All matters which were pending on April 1, 1989, therefore, have to be covered by the said rule.

7. There is another reason for taking this view, i.e., if there are two provisions, the interpretation which is beneficial to the assessee has to be taken in accordance with law. The decision in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, , since the provisions for determining the market value have been considered to be procedural law and applicable to all the pending" cases in which no right can be vested in respect of the procedure, the procedure as prescribed by Schedule III of the Act has to be applied.

8. In these circumstances, we are of the view that the Tribunal was right in rejecting the application u/s 27(1). This civil petition is accordingly dismissed.

