(2004) 12 GUJ CK 0041

In the Gujarat High Court

Case No : WT Ref. No. 16 of 1993

Commissioner of Wealth Tax	APPELLANT
Vs	
Shashiben	RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Citation : (2005) 193 CTR 140

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

D.A. Mehta, J.—The board shows endorsement to the effect that notice has not been received back. However, in light of the view that the Court is inclined to take, it is not necessary to keep the matter pending, considering the fact that the reference is pertaining to 1993.

2. The following three questions have been referred for the opinion of this Court u/s 27(2) of the WT Act, 1957 ("the Act"), by the Tribunal Ahmedabad Bench "C", at the instance of CWT, Gujarat IV, Ahmedabad :

"(1) Whether the Tribunal has not reached an erroneous conclusion in law in holding that the land in question was agricultural in character, when for several reasons and in view of decisions of the Courts on the points, the conclusion was inescapable that the land had lost the character as agricultural ?

(2) Whether, in view of the tests laid down by the several decisions including the decisions of the Gujarat High Court in the case of Commissioner of Income Tax Vs. Sarifabibi Mohmed Ibrahim, and the decision in the case of Arundhati Balkrishna Vs. Commissioner of Income Tax, Gujarat, and in view of the facts on record, the character of the land was not required to be taken as non-agricultural in nature ?

(3) Whether the Tribunal is right in law in holding that the question of valuation

of land does not survive in the facts and circumstances of the case ?"

3. The assessment years in question are asst. yrs. 1976-77 to 1979-80, and the relevant valuation dates are 31st March, 1976, 31st March, 1977, 31st March, 1978 and 31st March, 1979, respectively. The assessee claimed exemption in relation to lands owned by the assessee by treating the said lands as agricultural in nature. The WTO denied the exemption for the reasons stated in the assessment orders.

3.1 the assessee carried the matter in appeal before the AAC, who for the reasons stated in his order, rejected the claim made by the assessee. The assessee preferred further appeals before the Tribunal and the appeals came to be registered as WTA Nos. 52, 53, 54 and 55/Ahd/1983. The Tribunal for the reasons given in the impugned order dt. 15th Jan., 1986, accepted the claim of the assessee and held the land to be agricultural in nature.

4. Heard Mr. M.R. Bhatt, the learned senior standing counsel appearing on behalf of the applicant. He has reiterated the reasons which weighed with the AO and the AAC and urged that in such circumstances, the Tribunal was in error in treating the land in question as agricultural. According to him, the land in question was surrounded by building sites, is in a developed area within municipal limits and covered by town planning scheme. In the circumstances, it was contended that, if these factors are borne in mind, it was apparent that the potentiality of the land had undergone change and the character as an agricultural land did not survive. He pressed into service the decision of this Court in the case of CIT v. Sarifabibi Mohmed Ibrahim (supra) and another-decision in the case of Arundhati Balkrishna v. CIT (supra) and submitted that the character of the land was required to be taken as non-agricultural in nature. Though served, there is no appearance on behalf of the respondent.

5. As can be seen from the order of the Tribunal, it has been found from the facts and evidence on record that the assessee''s conduct was to show that the intention was to keep the land in the condition in which it was, namely, not convert it into non-agricultural land by initiating any action on its own. In this connection, the Tribunal has taken into consideration, the decision in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah, to hold that potentiality will only affect the valuation of the land, but it does not change its character. In relation to various factors like land being surrounded by building sites, etc., the Tribunal has stated that these are factors which are not within the control of the assessee, and the character of the land of the assessee would not change because of action of others. The Tribunal has also found on the basis of certificate issued by Talati-cum-Mantri dt. 10th Aug., 1979, that various crops such as dangar, bajra, etc. were grown even for the period after the valuation dates. The Tribunal has summed up the position by stating that the land has history of agricultural use even after the valuation dates and has been assessed as such for wealth-tax purposes right upto the preceding assessment year, namely, 1975-76, and that it has been shown as agricultural

land in revenue records. Therefore, the Tribunal allowed the appeals of the assessee.

6. After taking into consideration, the submissions made by the learned counsel for the Revenue as well as the settled legal position, it is apparent that there is no infirmity in the order of the Tribunal, the Tribunal having arrived at findings of fact based on appreciation of evidence, after applying correct legal tests. Therefore, all the questions referred for opinion are answered in favour of the assessee and against the Revenue. Reference stands disposed of accordingly. There shall be no order as to costs.