(2006) 07 GUJ CK 0012

In the Gujarat High Court

Case No : Wealth-tax Reference No''s. 7 and 8 of 1995

Commissioner of Wealth Tax — APPELLANT

Vs

Shashiben — RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 205 CTR 298 : (2007) 288 ITR 319

Hon'ble Judges : R.S. Garg, J;Mukesh R. Shah, J

Bench : Division Bench

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

Judgement

R.S. Garg, J.—By this common judgment, we dispose of Wealth-tax References Nos. 7 of 1995 and 8 of 1995.

2 The matters are being taken up for simultaneous hearing as in Reference Application No. 33/34-35/Ahd/87, a common statement of case was drawn and the questions posed in sub-paragraph (1) and sub-paragraph (2) were referred to this court for answer.

3 It is to be noted that the third matter was separately registered as Wealth-tax Reference No. 56 of 1991 and was finally disposed of on December 2, 2004. We had called for the judgment delivered on December 2, 2004 in the matter of CWT v. Shardaben, daughter of Haribhai Dalpatbhai, (one of the assessees in the present proceedings) in Wealth-tax Reference No. 56 of 1991. The question referred to the court in the said reference was whether the Appellate Tribunal was right in law and on facts in holding that the land in question was an agricultural land. The court, after considering everything, came to the conclusion that the Tribunal was justified in observing and holding that the land was agricultural land. At the same time, it also referred to its another judgment in Wealth-tax Reference No. 16 of 1993, between Commissioner of Wealth-tax and Shardaben, daughter of Haribhai (one of the assessees in these proceedings),

decided on December 2, 2004.

4 In Wealth-tax Reference No. 16 of 1993, the court, after considering the totality of the circumstances and taking into consideration the character of the land and further potential use to which it can be put in future, observed that the potentiality may increase price, but would not change the basic character. The court observed that the land was rightly treated as an agricultural land. It answered the reference in favour of the assessee.

5 In the present matters, the questions referred to us are as under:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the view taken by the Commissioner of Wealth-tax in adopting the valuation of the lands in question for the assessment years 1976-77 to 1978-79 ?

2. Whether, in law and on facts when the assessee ultimately sold the land at Rs. 175 per square yard in the assessment year 1979-80 despite the provisions of the Urban Land Ceiling and Regulation Act, 1976 the Tribunal was justified in giving the discounting value for the assessment years 1976-77 to 1978-79 ?

6. So far as the second question is concerned, that can immediately be answered in favour of the assessee. Inflation or escalation in price of the agricultural land would not change the basic character of the land. If the land is recorded as agricultural, it would continue to be agricultural land. If somebody, thinking that the said land can be put to some other purpose, purchases the land for a higher price and thereafter, changes the use, for the first holder, the property would not change its character so long as he himself does not change the use or put the land to some other use after getting the conversion of use from the competent authority/officer. The agricultural land''s price per acre or vigha or per square yard, would not be decisive for coming to the conclusion that the land in dispute is agricultural or non-agricultural. If the land is so recorded and it has not been put to any other use by the holder/owner of the land and even if it remains barren or uncultivated for some time and even grass only is raised on the land, it would continue to be an agricultural land. The sale of the land at Rs. 175 per sq. yard in the assessment year 1979-80 would not change the character of the land.

7. So far as the first question is concerned, the Income Tax Appellate Tribunal was absolutely right in law and on the facts in confirming the view taken by the Commissioner of Wealth-tax in adopting the valuation of the land in question for the assessment years 1976-77 to 1978-79. It is to be seen that the assessees before us were holding other agricultural lands also, which were also sought to be valued at the market price treating them to be non-agricultural land ; the very same submissions were put into service and it was only decided by the High Court that potentiality of the land or future change or proposed change in future would not change the basic character of the land. If that be so, the Tribunal did not commit any mistake in deciding the question in favour of the assessees.

8. On the facts and in the circumstances of the case, we must answer the questions in favour of the assessee and against the Revenue. We further hold that the Tribunal was justified in confirming the order passed by the Commissioner of Income Tax (Appeals). No costs.

