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(1993) 03 RAJ CK 0025

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 158 of 1981

Commissioner of Wealth-tax APPELLANT

Vs

Shriniwas Sharma RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 17(1)

Citation : (1993) 204 ITR 587

Hon'ble Judges : K.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated February 7, 1981, for the assessment years 1970-71 and 1971-72 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner quashing the reassessment proceedings u/s 17(1)(b) of the Wealth-tax Act, 1957, for the assessment year under consideration ?"

The brief facts of the case are that the original assessments for the assessment years 1970-71 and 1971-72 were made by the Wealth-tax Officer on September 23, 1970, and December 13, 1971, respectively. Subsequently, on November 7, 1974, the Wealth-tax Officer made a reference u/s 16A of the Wealth-tax Act, 1957, to the Valuation Officer requesting him to estimate the fair market value of the land and building situate at Moti Doongri Road, Navjiwan Upwan, as on Dewali 1971, 1972, 1973, and also as on Diwali 1969. He was also informed that the assessee had filed the returns for wealth-tax purposes for the assessment years 1972-73 and 1973-74 showing the valuation of the land and building at Rs. 2,42,685 and Rs. 3,12,217, respectively. It was also mentioned that the valuation as on Dewali 1969 is also required for action u/s 17(1)(b) of the

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Wealth-tax Act which will get barred by limitation on March 31, 1975.

2. The Valuation Officer submitted his report on March 22, 1975, and on that very date, notices were issued to the assessee for both the years, namely, 1970-71 and 1971-72. Reassessment proceedings u/s 17(1)(b) of the Wealth-tax Act were started. The reassessment orders were framed on February 17, 1979. Against these orders, appeals were preferred to the Appellate Assistant Commissioner where it was contended that the provisions of Section 16A could have been invoked only during the pendency of the assessment proceedings and there was no warrant for the Wealth-tax Officer to make the reference u/s 16A after the assessments were completed. The Appellate Assistant Commissioner accepted the plea and the appeals were allowed.

3. Against the order of the Appellate Assistant Commissioner, the Revenue preferred appeals to the Income Tax Appellate Tribunal and the Tribunal came to the conclusion that the Wealth-tax Officer having made the reference to the Valuation Cell after completing the assessments for the years under appeal, in view of the decision of this court in the case of Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, the reassessment proceedings are null and void.

4. The submission of learned counsel for the Revenue is that it was only on the basis of the returns for the subsequent years which were received by the Wealth-tax Officer, that the action u/s 16A was taken. It is further submitted that even a mistake which has been committed could not give any benefit to the assessee not to pay the due taxes.

5. We have considered the matter. During the pendency of the return and assessment proceedings, the Wealth-tax Officer could have formed an opinion for making a reference u/s 16A but after the assessment is completed, the Wealth-tax Officer becomes functus officio. The reference u/s 16A is not possible for initiating the reassessment proceedings. This court has already considered this matter in the case of Commissioner of Wealth-tax Vs. Smt. Gulnar Marfatia, wherein it was held that Section 16A permits the Wealth-tax Officer to make a reference to the valuation cell for the purpose of making an assessment and if no proceedings were pending before the Wealth-tax Officer then no reference can be made to the District Valuation Officer and he has no power to follow a reverse process. Reference to the valuation cell cannot be followed by reassessment proceedings.

6. In view of the decision of this court which is also the view taken by the Calcutta High Court in Smt. Uma Debi Jhawar Vs. Wealth Tax Officer and Others, the Bombay High Court in Smt. Bella Cajeton Travasso Vs. Third Wealth-tax Officer and others, and the Karnataka High Court in K.M. Vishnudas Prabhu, K.M. Ramdas Prabhu and K.M. Shankar Prabhu (HUF) Vs. First Wealth Tax Officer and Another, we are of the view that the Income Tax Appellate Tribunal was justified in upholding the order of the Appellate Assistant Commissioner quashing the reassessment proceedings u/s 17(1)(b) of the Wealth-tax Act, 1957, for the

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assessment years under consideration.

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