(1994) 03 KL CK 0043

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 146 and 147 of 1985

Commissioner of Wealth-tax — APPELLANT

Vs

Smt. B. Indira Devi — RESPONDENT

Date of Decision : 07-03-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 25(2)

Citation : (1994) 03 KL CK 0043

Hon'ble Judges : P.K. Balasubramanyan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; C. Kochunni Nair, T.M. Sreedharan and G. Sivarajan, for the Respondent

Judgement

K. Sreedharan, J.—These references are u/s 27(1) of the Wealth-tax Act, 1957. The question referred is :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the order of the Commissioner passed u/s 25(2) of the Wealth-tax Act, 1957, cannot be sustained for the assessment years 1976-77 and 1977-78 in the matter of valuation of property of Messrs, Rajadhani Tourist Home, Trivandrum?"

2. The matter arises out of wealth-tax assessments for the assessment years 1976-77 and 1977-78 for which the relevant Valuation dates are March 31, 1976, and March 31, 1977, respectively. The original assessment for the assessment year 1976-77 was completed on March 28, 1981, The valuation of Messrs. Rajadhani Tourist Home, an item of property belonging to the assessee, was adopted as Rs. 1,39,595. This was so fixed on the basis of the value as per the balance-sheet. During the assessment proceedings for the year 1977-78, the Wealth-tax Officer referred the valuation of the property to the valuation cell on January 22, 1982, u/s 16A of the Act. Before the valuation report was received, the assessment was completed on March 31, 1982. It appears that the assessment was so done to get over the bar of limitation. While passing the

order of assessment, the Wealth-tax Officer adopted the average of the value of cost of construction and the cost as per the rent capitalisation method. The value so arrived at was Rs. 4,96,941. The valuation, cell submitted its report on August 20, 1982, fixing the value at Rs. 8,42,000. The Commissioner invoked. his revisional power under Section, 25(2) of the, Act in relation to both years of assessment. According to him, even though no reference was made to the valuation cell for the assessment year 1976-77, the report subsequently submitted was information as regards the correct value of the property and that on that basis it was clear that there was an error on the face of the record with regard to valuation, which was prejudicial to the interests of the Revenue. With regard to the assessment year 1977-78, the Commissioner took the view that the valuation report received subsequent to the completion of the assessment forms part of the records and that the assessment was also erroneous and prejudicial to the interests of the Revenue. By order dated March 26, 1983, the Commissioner held the order passed by the Wealth-tax Officer to be erroneous and, therefore, prejudicial to the interests of the Revenue. Consequently, he set aside the orders of assessment and directed the Wealth-tax Officer to adopt fresh valuation and pass fresh orders, according to law after giving due opportunity to the assessee.

3. The assessee took up the matter in appeal before the Income Tax Appellate Tribunal, Cochin Bench, invoking the provisions of Section 26 of the Wealth-tax Act. The Tribunal allowed the appeal taking the view that the Valuation Officer''s report should not have been looked into by the Commissioner for invoking jurisdiction u/s 25(2) of the Act.

4. The short question that arises for consideration in these references is whether the Commissioner was justified in looking into the report of the Valuation Officer for coming to the conclusion that the order of assessment was erroneous and prejudicial to the interests of the Revenue.

5. For the assessment year 1976-77, the Wealth-tax Officer adopted the value of the building as per the balance-sheet. The value so adopted came to Rs. 1,39,595. During that year, the assessing authority did not think it proper to refer the matter to the Valuation Officer u/s 16A of the Act for valuing the building, Messrs. Rajadhani Tourist Home. But for the subsequent assessment year, the Wealth-tax Officer referred the valuation of the property of Messrs, Rajadhani Tourist Home to the valuation cell on January 22, 1982. Before the report from the Valuation Officer was received, the Assessing Officer completed the assessment on March 31, 1982. Subsequent to that the valuation report was submitted by the valuation cell on August 20, 1982, fixing the value at Rs. 8,42,000. The Commissioner later found that the order of assessment was erroneous and prejudicial to the interests of the Revenue. Of course, he came to that view basing on the valuation report submitted on August 20, 1982. Section 25(2) enables the Commissioner to call for and examine the record of any proceeding under the Wealth-tax Act, and if he considers that any order passed

therein by a Wealth-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard, pass such order thereon as the circum stances of the case justified. This means that he has to examine the records of the proceedings under the Act in order to invoke the said jurisdiction. For invoking the revisional power u/s 25(2) as stated above, the Commissioner has to examine the records. The word "record" has been given a wider interpretation as per the Finance Act of 1989, with effect from June 1, 1988, which amended Section 25(2) of the Wealth-tax Act in the following terms :

"''Record'' shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner."

6. From this definition it is abundantly clear that the Commissioner while invoking the jurisdiction u/s 25(2) can examine all records relating to the proceedings which are available at the time of his examination. In the instant case, the Commissioner examined the record, as could be seen from the papers now available, on March 26, 1983. On that date, the valuation report dated August 20, 1982, was among the records. As per the amended provisions, the Commissioner was justified in taking note of the valuation report as well. At this juncture it is worthwhile to state that the amendment brought to the Act has necessarily to govern the matter pending before the Commissioner. Reference may be made to the decision of the Supreme Court in Commissioner of Income Tax, Madhya Pradesh etc. Vs. Straw Products Ltd., Bhopal, . In that case, their Lordships quoted with approval the following observations of Shah J. in Commissioner of Sales Tax, U.P. Vs. Bijli Cotton Mills, Hathras,

"Undoubtedly the Tribunal called upon to decide a taxing dispute must apply the relevant law applicable to a particular transaction to which the problem relates, and that law normally is the law applicable as on the date on which the transaction in dispute has taken place. If the law which the Tribunal seeks to apply to the dispute is amended, so as to make the law applicable to the transaction in dispute, it would be bound to decide the question in the light of the law so amended. Similarly, when the question has been referred to the High Court and in the meanwhile the law has been amended with retrospective operation, it would be the duty of the High Court to apply the law so amended if it applies. By taking notice of the law which has been substituted for the original provision, the High Court is giving effect to legislative intent and does no more than what must be deemed to be necessarily implicit in the question referred by the Tribunal, provided the question is couched in terms of sufficient amplitude to cover an enquiry into the question in the light of the amended law, and the enquiry does not necessitate investigation of fresh facts."

7. The amendment brought about to Section 25(2) has retrospective operation. It can also be taken as a declaration of what the law is. So that provision has necessarily to be given effect to by us in answering the question now referred to

us. Since the Commissioner considered the records after the valuation report was received, the valuation report forms part of the records and he was perfectly justified in invoking the jurisdiction u/s 25(2) of the Act. The Commissioner, therefore, could direct the assessing authority to reopen the issue and to pass fresh orders of assessment.

8. From the order of the Tribunal it appears that the assessee had a contention that the Commissioner was not justified in invoking the revisional power u/s 25(2) of the Act for reopening the assessment of the years 1976-77 and 1977-78. This contention was negatived by the Tribunal. Even though the decision of the Tribunal was in favour of the assessee the said question could have been got referred to this court, if the assessee so wanted. The assessee''s right to have such a question referred to this court is well recognised by law as is seen in the decision in Commissioner of Income Tax, Kerala Vs. V. Damodaran, .

9. In view of what has been stated above, we answer the question in the negative, that is in favour of the Revenue and against the assessee.

10. Copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.