(1999) 03 RAJ CK 0046

In the Rajasthan High Court

Case No : WT Ref. Application No. 33 of 1993 18th March, 1999

COMMISSIONER OF WEALTH TAX	APPELLANT
Vs	
SMT. GULAB DEVI	RESPONDENT

Date of Decision : 18-03-1999

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1999) 155 CTR 100

Hon'ble Judges : P.P. Naolekar, J;M.A.A. Khan, J

Bench : Full Bench

Judgement

BY THE COURT:

By this application under s. 27(3) of the WT Act, 1957 (the Act), the CWT Jaipur seeks directions from this Court to the Tribunal, Jaipur Bench, Jaipur, to refer the following question of law for the opinion of this Court :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that r. 2B(2) of the WT Rules cannot be invoked in the case of the assessee for valuing the closing stock only on the basis of gross profit rate declared by the assessee in the year ?"

2. The relevant facts are that during the asst. yr., 1982-83 Smt. Gulab Devi, the assessee, was a partner in M/s Jewels Emporium. M.I. Road, Jaipur, to the extent of 30 per cent share. She returned her net wealth at Rs. 4,99,100 for that year. Her wealth comprised of, inter alia, her share in the aforesaid partnership firm. The said firm had valued its closing stock at cost and the gross profit for the accounting period as on the valuation date was Rs. 22,98,750. The AO noted that the fair market value of the closing stock of the firm had been undervalued by Rs. 11,23,400. He accordingly applied the provisions of r. 2B(2) of the Act as per decision of the Supreme Court in the case of Juggilal Kamlapat Bankers and Another Vs. Wealth-tax Officer, C-Ward and Others, . and increased the return wealth of the assessee by Rs. 3,37,020. However, in appeal the AAC of Wealth

tax. Kota Range. Kota, relying upon CIT(A)''s order dt. 29th Dec., 1986 made in the case of the assessee for asst. yrs. 1980-81 and 1981-82. held that r. 2B(2) of the Act cannot be invoked on the basis of gross profit shown by the assessee. He accordingly deleted the addition made by the AO to the net wealth of the assessee. The order so made by the AAC of Wealth tax, Kota, dt. 17th Feb., 1988 was upheld by the Tribunal in WT No. 94Qp)/1988 dt. 15th March, 1989 Revenue sought reference under s. 27(1) of the Act but the Tribunal declined to refer the above question for the opinion of this Court.

3. It was urged before us that the AO could have applied the provisions of r. 213(2) of the Act to the case of the assessee on the basis of gross profit declared by the firm in valuing the closing stock of the firm on the valuation date. That position is not disputed but the question is as to whether Revenue had been successful to prove that the valuation of closing stock as given in the balance sheet was not true value and that the market value of the closing stock exceeded the valuation disclosed by more than 20 per cent. The burden to prove such fact was on Revenue. The Tribunal has categorically recorded a finding to the effect that such burden was not discharged by the AO by bringing any evidence or material on the record of the case so as to justify the application of r. 213(2) of the Rules. That is the condition precedent for applicability of r. 213(2) of the Act to a given case. It is the settled position of law that the condition precedent for applicability of r. 213(2) has to be satisfied before applying that provisions to the valuation of closing stock of an assessee. This condition was not, undisputedly satisfied in assessee''s case. Hence, there was no justification for applying the provisions of r. 213(2) to assessee''s case.

4. A similar question, as is before us, had arisen for the consideration of this Court in the case of DARJEELING DOOARS PLANTATIONS LTD. Vs. COMMISSIONER OF Income Tax., and the issue was decided in the following manner :

"The mode of determining the value of a partner''s interest in a firm in accordance with the provisions of s. 7 of the WT Act, 1957, is as follows : First, the net wealth of the firm has to be determined in accordance with s. 7 of the Act and then, according to r. 2 of the WT Rules, 1957, the net wealth of the firm so determined is allocated amongst the partners of the firm, which allocated amount is to be regarded as the value of the interest of each partner in the firm. Sub-s. (2) of s. 7 is an enabling provision conferring discretion on the business as a whole having regard to the balance sheet as on the valuation date, instead of proceeding under sub-s. (1) of s. 7. It is, therefore, optional for the WTO to resort to either of the methods provided in sub-s. (2) of S. 7 itself provides that in making the valuation according to the mode prescribed therein, the WTO has to make "such adjustments therein as may be prescribed". Rule 2A of the WT Rules, 1957, prescribes that where determination of the net value of the assets of the business as a whole is made under s. 7(2)(a), having regard to the balance sheet of such business, the WTO shall make the adjustments specified in rr. 2B, 2C, 2D. 2E, 217 and 2G of the WT Rules. Rule 213(2) lays down that where the market value of an asset exceeds its written down value or its book value or the value adopted for the purposes of assessment under the IT Act, 1961, by more than 20 per cent the value of that asset shall, for the purposes of r. 2A, be taken to be its market value. In other words, unless the determination of that market value on the basis of definite material is at an amount exceeding 20 per cent of the value disclosed in the balance sheet, no occasion arises for invoking r. 213(2) and the value disclosed in the balance sheet has to be accepted for the purpose of wealth-tax assessment. When the assessee relies on the valuation of the closing stock shown in the balance sheet of the firm and the mode of determination of market value adopted is that provided under s. 7(2)(a), it is obvious that the burden lies on the Revenue, if it seeks to invoke the aid of r. 2B(2), to show that the market value exceeds by more than 20 per cent the valuation disclosed in the balance sheet. Obviously, the onus lies on the party which would fail if no evidence is led by either side. If the balance sheet and books of account of the firm on which the assessee relies are the only material present and the WTO does not accept the valuation disclosed in the balance sheet, then the burden lies on the WTO to show that the market value exceeds by more than 20 per cent the valuation given in the balance sheet. This burden may, however, be discharged even by the facts and circumstances appearing from the material produced by the assessee. Unless this burden is discharged by the Revenue. The conditions precedent for invoking the aid of r. 2B(2) would not be satisfied."

5. The same question was again considered by this Court in the case of Commissioner of Wealth-tax Vs. Kanchan Bai Bader (Decd.) and Others (by legal representatives, H.C. Bader and K.C. Bader), and therein it was held that the burden is on the Revenue to prove that the valuation of closing stock given in the balance sheet was not true value and the market value of the closing stock exceeded the valuation disclosed by more than 20 per cent. This Court further held that a finding recorded on the above question was purely a finding of fact and no question of law arises from such findings.

6. Following with respect consistent view of this Court on the question sought to be got referred we hold that the answer to the above question stands covered and concluded by the above-mentioned decisions of this Court, in favour of the assessee and against the Revenue. Accordingly, we decline to direct the Tribunal to refer the above question to this Court for its opinion.

The application is dismissed.

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