
(1999) 03 RAJ CK 0032

In the Rajasthan High Court

Case No : .W.T. Reference Application No. 33 of 1993

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)
Wealth Tax Rules, 1957 — Rule 2B(2)

Citation : (2000) 245 ITR 80

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

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant; Ashok Gaur, for A. Kasliwal, for the Respondent

Judgement

1. By this application u/s 27(3) of the Wealth-tax Act, 1957 (the Act"), the Commissioner of Wealth-tax, Jaipur, seeks directions from this court to the Income Tax Appellate 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 Rule 2B(2) of the Wealth-tax Rules, 1957 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 assessment year 1982-83, Smt. Gulab Devi, the assessee, was a partner in 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, inter alia, of 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 Assessing Officer 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 Rule 2B(2) of the Rules as per the decision of the Supreme Court in the case of

Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , and increased the returned wealth of the assessee by Rs. 3,37,020. However, in appeal the Appellate Assistant Commissioner of Wealth-tax, Kota Range, Kota, relying upon the Commissioner of Income Tax (Appeals)'s order dated December 29, 1986, made in the case of the assessee for the assessment years 1980-81 and 1981-82, held that Rule 2B(2) of the Rules cannot be invoked on the basis of gross profit shown by the assessee. He accordingly deleted the addition made by the Assessing Officer to the net wealth of the assessee. The order so made by the Appellate Assistant Commissioner of Wealth-tax, Kota, dated February 17, 1988, was upheld by the Tribunal in W. T. No. 94 (JP) of 1988, dated March 15, 1989. The Revenue sought reference u/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 Assessing Officer could have applied the provisions of Rule 2B(2) of the Rules 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 the Revenue had been successful to prove that the valuation of closing stock as given in the balance-sheet, was not the 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 the Revenue. The Appellate Tribunal has categorically recorded a finding to the effect that such burden was not discharged by the Assessing Officer by bringing any evidence or material on the record of the case so as to justify the application of Rule 2B(2) of the Rules. That is the condition precedent for applicability of Rule 2B(2) of the Rules to a given case. It is the settled position of law that the condition precedent for applicability of Rule 2B(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 the assessee's case. Hence, there was no justification for applying the provisions of Rule 2B(2) to the assessee's case.

4. A similar question as is before us, had arisen for the consideration of this court in the case of COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., and the issue was decided in the following manner (headnote) :

"The mode of determining the value of a partner's interest in a firm in accordance with the provisions of Section 7 of the Wealth-tax Act, 1957, is as follows : First, the net wealth of the firm has to be determined in accordance with Section 7 of the Act and then, according to Rule 2 of the Wealth-tax 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-section (2) of Section 7 is an enabling provision conferring discretion on the Wealth-tax Officer to determine the net value of the assets of the business as a whole having regard to the balance-sheet as on the valuation date, instead of proceeding under Sub-section (1) of Section 7. It is,

therefore, optional for the Wealth-tax Officer to resort to either of the methods provided in Sub-section (1) and Sub-section (2). Sub-section (2) of Section 7 itself provides that in making "the valuation according to the mode prescribed therein, the Wealth-tax Officer has to make "such adjustments therein as may be prescribed". Rule 2A of the Wealth-tax Rules, 1957, prescribes that where determination of the net value of the assets of the business as a whole is made u/s 7(2)(a), having regard to the balance-sheet of such business, the Wealth-tax Officer shall make the adjustments specified in Rules 2B, 2C, 2D, 2E, 2F and 2G of the Wealth-tax Rules. Rule 2B(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 Income Tax Act, 1961, by more than 20 per cent, the value of that asset shall, for the purposes of Rule 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 Rule 2B(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 u/s 7(2)(a), it is obvious that the burden lies on the Revenue, if it seeks to invoke the aid of Rule 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 Wealth-tax Officer does not accept the valuation disclosed in the balance-sheet, then the burden lies on the Wealth-tax Officer 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 Rule 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 the closing stock given in the balance-sheet was not the true value and that 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 the 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 abovementioned 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.

7. The application is dismissed.