(2004) 10 AHC CK 0081

In the Allahabad High Court

Case No : W.T.R. No. 94 of 1986

Commissioner of Wealth Tax APPELLANT

Vs

Smt. Phoolwati Agarwal RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:
Wealth Tax Act, 1957 — Section 25(2), 27(1)

Citation : (2005) 276 ITR 623

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for opinion to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the case of the Delhi High Court in the case of Gee Vee Enterprise Vs. Additional Commissioner of Income Tax, was distinguished ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the order of the Commissioner of Wealth-tax passed u/s 25(2) of the Wealth-tax Act as without jurisdiction in view of the Calcutta High Court decision in Ganga Properties Vs. Income Tax Officer, "

2. The reference relates to the assessment year 1975-76. The Wealth-tax Officer had valued the immovable property at Rs. 50,809 as on March 31, 1975. The Commissioner of Wealth-tax on examination of the record of the case was of the opinion that the order passed by the Wealth-tax Officer is erroneous and prejudicial to the interests of the Revenue inasmuch as the value of land and building has been placed by the Valuation Cell at Rs. 1,52,000. He initiated a proceeding u/s 25(2) of the Act and after giving opportunity of hearing and considering the reply filed by the respondent-assessee, set aside the assessment

order with a direction to give proper opportunity and reframe the assessment according to law. Feeling aggrieved the respondent preferred an appeal before the Tribunal. The Tribunal has allowed the appeal on the ground that the valuation report could not have been taken into consideration by the Commissioner of Wealth-tax for initiating proceedings u/s 25(2) of the Act, the report was brought on record subsequently.

3. We have heard Sri A. N. Mahajan, learned counsel for the Revenue. Nobody appears for the respondent-assessee.

4. Learned counsel for the Revenue submitted that the record is not confined to what was available before the Wealth-tax Officer at the time of completion of assessment and it will include all such documents, materials which are on record at the time when the Commissioner of Wealth-tax examined and decided to initiate proceeding. He relied upon a decision of the apex court in the case of CIT v. Shree Manjunathesware Packing Products and Camphor Works [1998] 231 ITR 53 wherein the Supreme Court has held that in view of the clear words used in Clause (b) of the Explanation to Section 263(1) of the Act, it is to be held that while calling for and examining the record of any proceeding u/s 263(1), it is and it was open to the Commissioner of Wealth-tax not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination. The provisions of Section 263(1) of the Income Tax Act and Section 25(2) of the Wealth-tax Act are analogous. In this view of the matter we are of the considered view that the Tribunal was not justified in holding that the valuation report could not have been taken into consideration by the Commissioner of Wealth-tax. We accordingly answer the questions in the negative, i.e., in favour of the Revenue and against the assessee.

