(1990) 02 RAJ CK 0029

In the Rajasthan High Court

Case No : Wealth-tax Reference Application No. 137 of 1988

Commissioner of Wealth-tax APPELLANT

Vs

Umraomal Dhaddha RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 27
Wealth Tax Rules, 1957 — Rule 2B(2)

Citation : (1990) 85 CTR 91 : (1992) 195 ITR 738

Hon'ble Judges : S.N. Bhargava, J;G.K. Sharma, J

Bench : Division Bench

Advocate : V.K. Singhal and S.L. Sharma, for the Appellant; N.M. Ranka, for the Respondent

Judgement

1. This is a reference application u/s 27(3) of the Wealth-tax Act arising out of the following facts :

The respondent, Umraomal Dhadda, is a wealth-tax assessee and deals in precious and semi-precious stones. The assessee filed his return for the assessment year 1975-76 declaring his wealth to the tune of Rs. 1,52,330. The assessee declared a profit of 20% in his trading account. The Wealth-tax Officer made the assessment relying upon Rule 2B(2) of the Wealth-tax Rules, vide annexure-1, dated December 27, 1979, but did not grant him exemption u/s 5 of the Wealth-tax Act. The assessee preferred an appeal and the first appellate court, vide annexure 2, dated October 21, 1980, accepted both the contentions of the assessee regarding non-applicability of Rule 2B(2) and also with regard to exemption u/s 5 of the Act. The Department preferred a second appeal before the Income Tax Appellate Tribunal, wherein there was a difference of opinion between the two members and the point of difference was referred to the third member. The Tribunal, while upholding the order of the first appellate authority, rejected the second appeal filed by the Department, vide annexure dated September 29, 1987. The Department, thereafter, submitted a reference application before the Income Tax Appellate Tribunal u/s 27 of the Wealth-tax Act for making reference of the questions to the High Court. The said reference application was also dismissed by the Tribunal, vide its order dated June 10, 1988, and, hence, the Department has filed the present application u/s 27 of the Wealth-tax Act for referring the following questions :

"1. Whether, on the facts and in the circumstances of the case, the gross profit rate taken in the case of the firm constitutes adequate material to come to the conclusion that the market value of the closing stock of the firm exceeds the cost price as adopted by the firm by more than 20% and, whether, on that basis, Rule 2B(2) of the Wealth-tax Rules, 1957, could be invoked ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Rule 2B(2) were not applicable to the assessee''s case and, consequently, in deleting the addition made by the Wealth-tax Officer ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to exemption u/s 5 of the Wealth-tax Act, 1957, in respect of investment in the firm, M/s. Sardarmal Umraomal, Jaipur ?"

2. Notice was issued and arguments have been heard on behalf of both the parties.

3. Mr. V. K. Singhal, learned counsel for the Revenue, has submitted that these questions arose in other cases and have already been referred by this court, on an application u/s 27 of the Act, directing the Tribunal to refer these questions to this court for its decision. In this connection, he has placed reliance on CWT v. Smt. Jatan Devi (D. B. Wealth-tax Reference No. 88 of 1988), CWT v. V. K. Kasliwal (D. B. Wealth-tax Reference No. 86 of 1988) and CWT v. Vimal Kumar Surana (D. B. Wealth-tax Reference Application No. 131 of 1988), decided on July 6, 1989-See Commissioner of Wealth-tax Vs. Prakash Chand Surana,

4. On the other hand, Mr. N. M. Ranka, learned counsel for the assessee, has submitted that, in so far as the question with regard to the applicability of Rule 2B(2) of the Rules is concerned, it stands decided by this court in COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., and therefore, the said question does not need further consideration by this court. Moreover, the total tax effect in the present case would hardly be a sum of Rs. 1,000 only and, therefore, also, no reference need be made as was done in Commissioner of Wealth Tax Vs. Umrao Mal Dhadda, (D. B. Wealth-tax Reference No. 138 of 1988, decided on July 6, 1989), Commissioner of Wealth-tax Vs. Ugar Singh and Others, (D. B. Wealth-tax Reference No. 136 of 1988, decided on October 17, 1989) and CWT v. Smt Lad Kanmar (D.B. Wealth-tax Reference No. 128 of 1988, decided on October 24, 1989).

5. He has further submitted that the question with regard to the applicability of

Rule 2B(2) in the instant case is a question of fact. The Tribunal, after appreciation of evidence, came to the conclusion that the fair market value of the stocks was the purchase value and the facts found by the Tribunal have not been disputed and challenged either under an application u/s 27 before the Tribunal or under the present application and, therefore, this question cannot be referred and in this connection, he has placed reliance on Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, , Aluminium Corporation of India Ltd. Vs. Commissioner of Income Tax, West Bengal, and Commissioner of Income Tax Vs. Mahendra and Co. Ltd.,

6. Mr. N. M. Ranka, learned counsel for the assessee, has also placed reliance on the decision of this court in D. B. Wealth-tax References Nos. 93 of 1988 and 56 of 1988, Commissioner of Wealth-tax Vs. Manmohan Lal, decided on October 26, 1989, wherein the reference application u/s 27 of the Wealth-tax Act was dismissed and the High Court refused to call for a reference.

7. The provisions of Rule 2B(2) of the Wealth-tax Rules have been considered by this court in COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., In that case, this court was considering the question whether the market value of the closing stock could not be determined on the basis of the gross profit rate alone shown by the assessee. This court has held that where the only material available is the gross profit rate and there is no positive material to indicate the extent of deduction which has to be made therefrom for the purpose of arriving at a figure which alone can be added to the cost price for determining the market value, there is no definite evidence to determine the market value on the sole basis of the gross profit rate. In that case, this court has considered the question whether the onus of proof with regard to the valuation of the closing stock lies on the assessee or on the Revenue. After referring to the decisions of the Supreme Court in Commissioner of Wealth Tax, Calcutta Vs. Tungabadra Industries Ltd., Calcutta, and Commissioner of Wealth Tax, Calcutta Vs. Hindustan Motors Ltd., , this court has held that where the balance-sheet value is asserted to be the true value by the assessee, but is assailed by the Revenue, the burden lies on the Revenue to show that the balance-sheet value is not the true value and that the market value is higher, and when material is shown by the Revenue that the market value exceeds the balance-sheet value by more than 20%, then only the aid of Rule 2B(2) can be invoked.

8. In view of the aforesaid decision of this court in COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., it cannot be said that the Tribunal was not justified in upholding the finding of the Appellate Assistant Commissioner that Rule 2B(2) of the Wealth-tax Rules was not applicable in the assessee''s case because the Wealth-tax Officer had applied Rule 2B(2) only on the basis of the gross profit rate being more than 20%, Similarly, in view of the aforesaid decision, the question with regard to onus of proof also stands concluded because this court has held that the onus is on the Department. In other words, the questions which are sought to be raised by the Revenue in the instant case stand fully

covered by the decision of this court in COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA.,

9. Keeping in view the facts and circumstances of the case, that the total tax effect will be around a sum of Rs. 1,000 only, that the questions have already been considered and decided in COMMISSIONER OF WEALTH-TAX Vs. MOTI CHAND DAGA., and further that these questions have already been referred to the Tribunal for making a reference, no useful purpose will be served in multiplying the references on the same questions of law.

10. In this view of the matter, we do not find any force in this application. The application u/s 27(3) of the Wealth-tax Act is dismissed.

