(2004) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : Income Tax Reference No. 103 of 1998

Commissioner of Wealth Tax — APPELLANT

Vs

Yeshwant Singh Utam Singh Bias — RESPONDENT

Date of Decision : 29-04-2004

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1), 27(3)

Citation : (2004) 140 TAXMAN 303

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and Smt. S. Gupta, for the Appellant; K.N. Puntambekar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The decision rendered in this reference shall also govern disposal of other connected reference arising between the same parties being ITR No. 104/98, ITR No. 105/98, ITR No. 106/98, ITR No. 107/98 and ITR No. 109/98. All these applications are made at the instance of Revenue u/s 27(3) of the Wealth-tax Act, requiring the Tribunal to send/refer to this Court the question proposed for being answered by this Court u/s 27(1) of the Wealth-tax Act. Since the Tribunal decline to make a reference prayed for by the Revenue and hence, these applications are submitted.

2. The dispute in this case pertains to assessment years 1983-84 to 1988-89. The dispute relates to the question as to which method of valuation should be applied for making valuation of property belonging to the respondent (assessee), which is in possession of his tenant - Postal Department. Assessee applied the method provided under rule 1BB of the Wealth-tax Rules. This issue was then taken up before the CIT (Appeals) and then before the Tribunal. The question arose before the Tribunal as to which method should be applied. One contention was that the method provided under rule 1BB should be applied whereas the other contention was the method provided under Schedule III, which had

replaced rule 1BB should be applied. In the opinion of the Tribunal which decided the second appeal, the property in possession of tenant should be valued in accordance with the method provided under the Scheduled III and not as per rule 1BB. The Tribunal placed reliance on the two authorities of the Supreme Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, and later upheld by the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, and was followed by Rajasthan High Court in the case of Commissioner of Wealth-tax Vs. Bhanwar Lal Gupta, . It is against this view of the Tribunal, the Revenue felt aggrieved and submitted an application u/s 27(1) of the Wealth-tax Act to the Tribunal requesting the Tribunal to make a reference to this Court to decide the issue proposed - namely which method should be applied in such case. By impugned order (Annexure H), Tribunal declined to make a reference to this Court holding that when the issue is already answered by the decision of the Supreme Court in Bharat Hari Singhania''s case (supra) and later affirmed in Sharvan Kumar Swarup''s case (supra), there arises no occasion for the Tribunal to make any reference to the High Court for its answer on merits. It was held that when the issue is settled for all practical purposes by the decision of the Supreme Court, then there is no need to make any reference to High Court as the decision of Supreme Court is binding on all Courts in the country. It is against this order, revenue has come up to this Court u/s 27(3) of the wealth-tax requesting this Court to call for a reference on the question proposed.

3. Heard Shri R.L. Jain, Learned Sr. Advocate with Smt. S. Gupta, Learned Counsel for petitioner and Shri K.N. Puntambekar, Learned Counsel for respondent.

4. Heaving heard the learned counsel for the parties and having perused the record of the case, we are inclined to uphold the order passed by the Tribunal when it rejected the application submitted by the Revenue u/s 27(1) of the Wealth-tax Act. In our considered opinion, no fault can be found in the approach of the learned Members of the Tribunal when they declined to make a reference to this Court on the question proposed by the Revenue.

5. One cannot dispute this fact that the issue proposed to be raised by the Revenue is settled by the aforementioned two decisions of the Supreme Court. The question as to whether rule 1BB of the Wealth-tax Rules should be applied or Scheduled III for undertaking valuation of the assessee''s properties has since been answered. It has been held inter alia that these two provisions are not substantial one on the statute book but being procedural in nature, they are applicable to the pending proceedings as well. It is on the basis of this principle laid down by their Lordship of Supreme Court in the aforementioned two cases, the taxing authorities were justified in directing the Assessing Officer to apply Schedule III which came into force while pendency of proceedings and make valuation of the assets of the assessee accordingly. We, therefore, find no ground much less good ground to call for a reference from the Tribunal on the questions

proposed because in our view, question of law does not arise for being answered. In our opinion, the view taken by the Tribunal while deciding the appeal and also while rejecting the application submitted by the Revenue u/s 27(1) of the Wealth-tax Act is legal and proper. It does not call for any interference. All the applications, therefore, found to be devoid of substance and are accordingly dismissed.