(2009) 07 AHC CK 0343

In the Allahabad High Court

Case No : W.T. Appeal No''s. 208, 305 and 312 of 1999

Commissioner of Wealth Tax, Meerut APPELLANT

Vs

Gajoo RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Income Tax Act, 1961 — Section 260A
Wealth Tax Act, 1957 — Section 27A

Citation : (2009) 07 AHC CK 0343

Hon'ble Judges : S.K. Gupta, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present income tax appeal filed u/s 260A of the Income Tax Act (hereinafter referred to as the ''Act'') has been admitted on the sole substantial question of law framed in the memo of appeal:-

"Whether, on the facts and in the circumstances of the case, Ld. ITAT was legally correct in holding the appeal filed by the Department against the order of Ld. CWT(A) passed on 30,10.1992, as infructuous without considering the merits, facts and material available on records, as while passing the fresh assessment order on 30.1.92, the A.O. Had brought to tax further amounts of compensation, additional compensation and solatium etc. on the basis of these received as a result of decision dated 31.5.86 of the Additional District Judge, which were not assessed in the original assessment order, appeal in respect of which was decided by the Ld. 1TATon 31.1.1994 ?"

As the point and the parties in these three appeals are one and the same and have arisen out of common judgment and order dated 21st May, 1999 passed by the Tribunal, as such they are being disposed of by a common order.

2. Background facts in a nutshell essentially are as follows:-

3. All these appeals are directed against the common order dated 21st May, 1999

passed by the Tribunal for the assessment years 1985-86 to 1986-88. The assessment order was passed by the Assessing Authority on 30.3.1988 wherein the value of right to receive compensation was determined. The said order was set aside by the first Appellate Authority by order dated 21st July, 1989 and it was remanded to the Assessing Officer. The order dated 21st July, 1989 passed by the first Appellate Authority was challenged before the Tribunal and the Tribunal vide order dated 31st January, 1994 did not approve the order of the first Appellate Authority and set aside the same. At this stage, it will be useful to reproduce the relevant extract of the order dated 31st January, 1994 passed by the Tribunal, which is as follows:-

" We have heard both the parties carefully and have also gone through the relevant record. In our view, the learned CIT (A) erred in directing the AO to make the award dated May, 1986 of the ADJ as the basis for determining the value of right to receive additional compensation for the purposes of assessee''s wealth. The direction of the learned CWT(A) is contrary to the ratio of Hon''ble Supreme Court in the case of Chinoy''s case that the right to receive compensation can however be equal to the claim actually awarded by the Civil Court in view of the risk of hazards of litigation. In our view, therefore, the approach of the AO is reasonable adopting the value of right to receive additional compensation at Rs. 17.50 per sq. yd. We accordingly uphold that there was no bash with the learned CWT(A) to direct the AO in taking into consideration the interest and solatium ultimately awarded for the purposes of computation of such right. We accordingly direct that the directions of the learned CWT(A) to direct that the directions of the learned CWT(A) be ignored and the value of right to receive additional compensation as computed by the AO is upheld. However, we direct the AO allow deduction of Rs. 5,83,687 actually received by the assessee as compensation till 31st March, 1985 as against Rs. 2,20,251 allowed by the A.O. This disposes of assessee''s first two grounds of appeal."

4. It appears that before the passing of the order dated 31st January, 1994 by the Tribunal fresh assessment orders dated 26th February, 1992 were passed by the Assessing Authority in pursuant to the order dated 21st July, 1989. The same was challenged in appeal the assessee and the said appeals were partly allowed by the CWT(A) by order dated 30.10.1992. Against the said order dated 30-10-1992 appeal nos. 12, 13 & 14 (Delhi) of 1993 were filed for the assessment years 1985-86 to 87-88 before the Tribunal and the said appeals have been dismissed by the Tribunal by order dated 21-5-2001 as having become infructuous. Hence the present appeal u/s 27A of the Wealth-tax Act by the Revenue.

5. We have heard learned counsel for the parties and perused the record.

6. The perusal of the record shows that the original assessment order dated 30-3-1988 was set aside by the first Appellate Authority vide order dated 21st July 1989 which did not find favour with the Tribunal. Consequently the order dated 21st July, 1989 was set aside by the Tribunal by order dated 31-1-1994

and the-said order dated 31-1-1994 was not further challenged and it attained finality. Thus, any proceedings in pursuance of the order dated 21-7-1989 passed by the first Appellate Authority were misconceived and could not have been given any effect. Therefore, the appeal Nos. 12, 13 & I4/Del/93 for the assessment year 1985-86 to 87-88 filed before the Tribunal against the order dated 30-10-92 passed by the CWT(A) was rightly dismissed by the Tribunal as infructuous. The impugned order passed by the Tribunal does suffer from any illegality or infirmity. Reasons mentioned by the Tribunal are good enough to justify the order and no fault is found with the approach adopted by the Tribunal. In view of the aforesaid discussions these appeals are accordingly dismissed.

