(1990) 07 KL CK 0049

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 98 and 99 of 1987

Controller of Estate Duty APPELLANT

Vs

K.C. Moosa Haji RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:

Citation : (1991) 187 ITR 277

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; K.P. Balasubramanyan, for the Respondent

Judgement

K.S. Paripoornan, J.—The matter arises under the Estate Duty Act. At the instance of the Revenue, the Income tax Appellate Tribunal has referred the following question of law for the decision of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in reducing the value of the teak wood plantation by about 85% despite the offer made by the assessee to have it valued at a higher figure ?"

2. The proceedings arise out of the estate duty assessment in respect of the estate of late Shri Kakkodam Mammu Haji. The respondent herein is an accountable person of the deceased. Kakkodam Mammu Haji died on July 13, 1968. Amongst others private forest lands in Wynad are one of the assets left by the deceased. The deceased had converted 691 acres into teak plantations. Initially, permission was obtained for clear-felling in 1954 of 50 acres. In the subsequent years also, permission was given and the total area cleared was 691 acres. This was covered by teak plantations. The plants were of varying age, 1 to 14 years. The accountable person returned the value at Rs. 69,100, i.e., at Rs. 100 per acre. He got the teak plantation valued by an approved valuer who fixed the total value at Rs. 3,56,750. On the basis of the report of the Inspector, the Assistant Controller valued the teak plantations at Rs. 24,67,500. On appeal, the

Appellate Controller held that the valuation given by the approved valuer was reasonable. He directed that the value fixed by the valuer should be adopted, as it is more likely to be the valuation as on July 13, 1968. The accountable person as also the Revenue carried the matter in appeals before the Income Tax Appellate Tribunal. The Tribunal passed a common order dated January 28, 1981, in the appeals. After detailed discussion, the Tribunal held that the value of the plantation would amount to Rs. 16 lakhs, It is so stated in paragraph 19 of the appellate order. The discussion that led to the said conclusion is contained in paragraphs 12 to 18 of the order. After so fixing the value, the Tribunal stated that,'' in view of the Kerala Private Forest (Vesting and Assignment) Act, 1971, which was apprehended then, only 15% of Rs. 16 lakhs would be the value of the property, i.e., Rs. 2.4 lakhs. It is therafter at the instance of the Revenue that the Income Tax Appellate Tribunal has referred the question of law formulated hereinabove for the decision of this court.

3. We heard counsel for the Revenue, Mr. N.R.K. Nair, as also counsel for the accountable person, Mr. K.P. Balasubramanyan. The accountable person returned the value at Rs. 69,100. He filed the valuation report wherein the value was fixed at Rs. 3,56,750. The Assistant Controller fixed the value, on the basis of the Inspector''s report, at Rs. 24,67,500. This was not accepted in the appeal. The valuer''s report was accepted. The Appellate Tribunal has not stated any cogent or valid reason to discard the valuer''s report. What is more, that was a report filed by the accountable person himself to substantiate his plea. The valuation finally arrived at by the Appellate Tribunal is far less than the evidence produced by the accountable person himself. It is seen from paragraph 7 of the Appellate Controller''s order that at one time, the accountable person himself proposed the value of the teak plantation at Rs. 9,18,580. In such circumstances, it does not stand to reason as to how and why and on what basis the Appellate Tribunal fixed the value at Rs. 16 lakhs. What is more, the Appellate Tribunal arbitrarily held that only 15% of Rs. 16 lakhs would be the value of the teak plantations. We are of the view that the fixation of the value of the teak plantation at Rs. 16 lakhs as also adopting only 15% of such figure, as the value of the property, are mere surmises. There is no basis for the said figures when, admittedly, an approved valuer has fixed the value at Rs. 3,56,750 which has not been assailed by the accountable person or found to be in any way erroneous by the Appellate Tribunal.

4. We hold that the Appellate Tribunal was in error in fixing the value of the teak plantations. The total value adopted and 15% of the value so arrived at as the value of the teak plantations, in view of the impending legislation, is totally illegal, unreasonable and arbitrary. Ordinarily, the determination or fixation of the market value of an asset, is a question of fact. But, the Tribunal has arrived at the conclusion arbitrarily and at its ipse dixit No principle bearing on the matter has been adverted to. Such a finding is not one binding on the High Court. See Commissioner of Wealth Tax, Patna Vs. Raghubar Narain Singh, and CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai, (1988)

170 ITR 144 (SC) .

5. We, therefore, answer the question referred to us in the affirmative, against the assessee and in favour of the Revenue.

6. In all the circumstances of the case, we find that the valuation given by the approved valuer and accepted by the Appellate Controller of Estate Duty has not been shown to be illegal or infirm. In the light of our answer to the question referred to this court, we direct the Appellate Tribunal to restore the appeal to file, on this limited aspect, and pass consequential final orders in accordance with law.

7. The Income Tax referred cases are disposed of as above.

8. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

