(2001) 09 GUJ CK 0057

In the Gujarat High Court

Case No : Estate Duty Reference No. 3 of 1987

Controller of Estate Duty APPELLANT

Vs

Vikramkumar B. Parshave RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Wealth Tax Act, 1957 — Section 7(4)
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (2001) 09 GUJ CK 0057

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : B.B. Nayak, for Manish R. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

M.S. Shah, J.

In this reference at the instance of the revenue, the following questions are referred for the opinion of this Court under Estate Duty Act,1983 :

1. "Whether the Tribunal has not erred in confirming the CED(A)''s order, that Rule 1BB of the W.T. Rules was applicable in the instant case and hence directing the ACED to take the value of the property at Rs.1,36,570/- instead to Rs.2,65,000/- as taken by the ACED ?

2. Whether the Tribunal ought not to have held that Rule 1BB and Section 7(4) not being procedural are not applicable to all pending assessments ?"

2. The reference is made in respect of the estate of Babulal Chimanlal who died on 20/9/1978. The Assistant Controller of Estate Duty (ACED) has valued the residential bungalow of the deceased at Rs.2,65,000/-. The Controller of Estate Duty (Appeals) held that rule 1BB of the Wealth Tax Rules,1957 was applicable in the instant case and directed ACED to take the value of the property at Rs.1,36,570/- which was the valuation placed on the same property in the wealth

tax assessment for assessment year 1971-72. The Tribunal confirmed the order of the Controller of Estate Duty. Hence this reference at the instance of the revenue.

3. We have heard Mr. B.B. Nayak, learned Counsel for the revenue. None appears for the respondent though served.

4. Having heard learned Counsel for the revenue and having perused the order of the Tribunal as well as the Controller of Estate Duty, we are of the view that the Controller as well as the Tribunal have rightly followed the decision of the Bombay High Court in the case of Madhusudan Dwarkadas Vora v. Superintendent of Stamps (Petition No.601 of 1980) decided on 16/8/1982, wherein the Bombay High Court has held that the wealth tax imposes tax upon man''s wealth when he is alive and the estate duty imposes tax upon man''s wealth at the time of his death and therefore, for the purpose of determining the value of a house on the basis of the price it would fetch, if sold in the open market, the Wealth Tax Rules provide a method and the same must be applied to determine the value of the price it would fetch if sold in the market for the purpose of estate duty. Similar reasoning was given in the decision of Mysore High Court in the case of Controller of Estate Duty, Mysore Vs. J. Krishna Murthy, .

5. In Estate Duty Reference No.2 of 1987 which is decided today, we have already agreed with the reasoning of the Mysore High Court in the case of Controller of Estate Duty, Mysore Vs. J. Krishna Murthy, for taking the view that for the purpose of determining the value of the property, the method prescribed by the Wealth Tax Rules should be followed for the purpose of estate duty also, since no rules were framed under Estate Duty Act for this purpose.

6. In view of the above, the Tribunal did not err in confirming the order of the Controller of Estate Duty that Rule 1BB of the Wealth Tax Rules was applicable and hence the Assistant Controller of Estate Duty was directed to take the value of the property at Rs. 1,36,570/- instead of Rs.2,65,000/-. We accordingly answer question No.1, in the affirmative i.e. in favour of the accountable person and against the revenue.

7 Coming to question No.2, we are of the view that Rule 1BB of the Wealth Tax Rules and Section 7(4) of the Wealth Tax Act only provided the method of valuation and therefore, were applicable to all pending assessments as on 1.4.1979 as held by the Apex Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, . Accordingly, we are of the view that the Tribunal rightly held that Rule 1BB and Section 7(4) being procedural in nature were applicable to all pending assessments on the date of coming into force of the said provisions. Accordingly, we answer question No.2 in the negative i.e. in favour of the accountable person and against the revenue.

8 The Reference stands disposed of accordingly with no order as to costs.

