(2002) 11 MAD CK 0024

In the Madras High Court

Case No : Tax Case Reference No. 106 of 1998 Reference No. 100 of 1998 13 November 2002

CWT — APPELLANT

Vs

K.G. Balakrishnan — RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 128 TAXMAN 661

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Full Bench

Advocate : Mrs. Pushya Sitharaman, for the Revenue P.P.S. Janardhana Raja, for the November Assessee, for the Appellant;

Judgement

N,V. Balasubramanian, J.

The Income Tax Appellate Tribunal has stated a case u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as ''the Act'') and referred the

following questions of law for our consideration :

1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in directing the assessing officer to value the properties

considering the valuation fixed for the earlier years pursuant to the order of the Tribunal ?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in law and had valid material in holding that the assessing officer

has gone beyond the remand order ?

3. Whether on the facts and in the circumstances of the case the Tribunal was right in law in treating the earlier orders of the Tribunal and the order

of the Commissioner (Appeals) were set aside and the entire matter was restored to the file of the assessing officer for fresh adjudication ?

2. The assessment year involved is 1983-84. The short facts that are necessary for the disposal of the Tax Case are that the assessee is a Hindu

undivided family. The karta is a partner in the firm styled as M/s. K. Govindaswamy Naidu & Sons and the issue that arises in all the three

questions is as regards the valuation of the properties belonged to the assessee, viz., Shri Shanmugha Mills, Pulliampatti, Shri Shanmugha Ginning

Factory, Annur, 86, Arts College Road, Coimbatore and No. 2, Arts College Road, Coimbatore. It is seen from the statement of the case that the

assessment under the provisions of the Act was originally made on 18-3-1998 by the assessing officer and there was an appeal against the order

of assessment to the Commissioner of Wealth Tax (Appeals) and the Commissioner of Wealth Tax (Appeals) by his order dated 10-1-1989 has

directed the assessing officer to determine the interest of the assessee in the properties of M/s. K. Govindaswami Naidu & Sons on the basis of

guidelines given by the Income Tax Appellate Tribunal in the order passed for the assessment year 1981-82 in the case of the assessee and four

others. The Wealth Tax Officer on the basis of the direction of the Commissioner of Wealth Tax (Appeals) referred the matter of valuation u/s 16A

of the Act to the District Valuation Officer and on the basis of the report of the District Valuation Officer, he has determined the value of the

properties of M/s. Govindaswami Naidu & Sons. The assessee challenged the order of the assessing officer. The Commissioner of Wealth Tax

(Appeals) partly allowed the appeal preferred by the assessee and against the order passed by the Commissioner of Wealth Tax (Appeals), the

assessee preferred the appeal before the Income Tax Appellate Tribunal. The Tribunal following its earlier order rendered in the case of the

assessee and other co-owners for the earlier years in W.T.A. Nos. 1087 and 1104 (Mds) 1992 dated 2-2-1996, directed the assessing officer to

value the properties considering the valuation fixed for the earlier years pursuant to the order of the Tribunal. The order of the Tribunal is the

subject matter of this Tax Case Reference.

3. Heard Mrs. Pushya Sitharaman, learned senior standing counsel for the revenue and Mr. P.P.S. Janardhana Raja, learned counsel appearing for

the assessee. The only submission of the learned senior standing counsel for the revenue is that the Tribunal was not correct in directing the

assessing officer to value the properties in accordance with the value determined by the Tribunal for the earlier assessment years and according to

the learned senior standing counsel for the revenue, the value of the property would change every year and, therefore, it is not open to the Tribunal

to give a direction to the assessing officer that the value of the properties in question should be fixed on the same basis fixed for the earlier

assessment years. Mr. P.P.S. Janardhana Raja, learned counsel for the assessee submitted that the order of the Tribunal does not give the

impression that the Tribunal has directed the assessing officer to adopt the same value but directed the assessing officer to value the properties

considering the valuation fixed for the earlier years.

4. We have carefully considered the submission of the learned senior standing counsel for the revenue and the learned counsel for the assessee.

We are of the opinion that the Tribunal has not directed the assessing officer to adopt the same value fixed for the earlier assessment years with

reference to the properties in question, but merely directed the assessing officer to value the properties considering the valuation fixed for the earlier

assessment years pursuant to the order of the Tribunal. We are, therefore, of the view that the Tribunal has merely directed the assessing officer to

take into consideration the earlier order passed by it in fixing the value for the same properties, and there can be no doubt that the assessing officer

has to determine the value of the properties in accordance with law. With the clarification so given to the order of the Tribunal, we answer the first

question of law as under :

First question is answered in the affirmative and against the revenue, but subject to the clarification which we have given earlier.

Second question : This question does not arise out. of'' the order of the Tribunal and it is not answered.

Third question: This question is not happily framed and it is not answered,

However, in the circumstances, there will be no order as to costs.

