(2002) 02 RAJ CK 0148

In the Rajasthan High Court

Case No : DB WT Reference Application No. 55 of 1988 26 February 2002

CWT APPELLANT

Vs

Santosh Chand RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 27(1)

Citation : (2002) 124 TAXMAN 25

Hon'ble Judges : Y.R. Meena, J;A.C. Goyal, J

Bench : Full Bench

Advocate : J.K. Singhi, for the Revenue, for the Appellant;

Judgement

On an application filed u/s 27(1) of the Wealth Tax Act, the Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of Appellate Assistant Commissioner that in the case of residential properties, rule 1BB being procedural, would apply to assessment years 1972-73 to 1977-78, even prior to 1-4-1979 ?"

2. The assessee is a partner in the firm Chandan Mal Poonam Chand, Jaipur, having 1/3rd share of profit. Return was filed after declaring net wealth at Rs. 1,60,989 showing immovable property consisting of agriculture land, plot of land and residential house so also movable assets consisting of cash in hand, capital with the firm and personal effects, silver utensils, etc. For the valuation of the properties, specially the house property, the reference was made to the Valuation Officer u/s 16A of the Wealth Tax Act, 1957 to ascertain the market value of the immovable properties. The value of the immovable properties as determined by the DVO and value of the movable properties, so declared by the assessee, were taken as value of the wealth of the assessee. The relevant assessment year is 1973-74.

3. In appeal, the Appellate Assistant Commissioner has directed to revalue the

property after allowing reasonable opportunity to the appellant in the light of discussion in his order specially in para 9.

4. Being aggrieved, the revenue carried the matter before the Tribunal. The Tribunal has followed the decision of Special Bench in the case of Biju Patnaik 1 SOT 623, wherein the Tribunal has taken the view that residential properties should be valued as per rule 1BB of the Wealth Tax Rules, 1957 as rule 1BB runs procedural and has a retrospective effect.

5. None appeared for the assessee. Heard Mr. Singhi, the learned counsel for the revenue. Now the issue has been covered by the decision of the Hon''ble Apex Court in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, wherein their Lordships held that rule 1BB is not substantive but procedural and any house which is wholly or mainly used for the purpose of residence should be valued as per rule 1BB.

6. Considering the view taken by the Hon''ble Apex Court, there is no infirmity in the order of the Tribunal.

7. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue. Reference so made stands disposed of accordingly.