(2002) 01 AHC CK 0212

In the Allahabad High Court

Case No : WT Reference No. 145 of 1983 21 January 2002

CWT APPELLANT

Vs

Smt. Nirmala Rani RESPONDENT

Date of Decision : 21-01-2002

Acts Referred:

Citation : (2002) 123 TAXMAN 582

Hon'ble Judges : V.M. Sahai, J;Sudhir Narain, J

Bench : Full Bench

Judgement

In this case the following question has been sought to be answered :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the valuation of the property for the above assessment year should be done in the light of rule 1BB of the Wealth Tax Rules, 1957, read with section 7 of the Wealth Tax Act, 1977 ?"

2. The assessee was having one-fourth and one-third share, respectively, in the land and building situated at 2/1/1B, Bright Street, Calcutta. In the original return for the assessment years 1973-74 to 1975-76 the assessee had shown the total value as Rs. 90,605 which was revised to Rs. 1,27,439 in the revised return. She claimed exemption of Rs. 1 lakh from the wealth-tax. The Wealth Tax Officer referred the matter to the Valuation Officer, Calcutta who valued the entire property at Rs. 10,21,000. The Wealth Tax Officer accordingly adopted the one-fourth share of the land valued at Rs. 2,58,000 at Rs. 64,500 and one-third share of the building valued at Rs. 7,84,000 at Rs. 2,61,333. He allowed 2 per cent for undivided interest for co-owners. The total share valued was adopted at Rs. 3,19,317. In appeal, the valuation was confirmed by the Appellate Assistant Commissioner. On appeal filed before the Tribunal the matter was decided as follows :

"5. We have considered the rival submissions carefully. In the case of Shri Biju Patnaik (supra), it was held that rule 1BB of the Wealth Tax Rules as enacted on

1-4-1979 is procedural in nature, is retrospectively in operation and, therefore, applies to all pending proceedings whether they were pending before the Wealth Tax Officer or the appellate authorities. Respectfully following the above decision, we held that the valuation of the property for the above assessment year should be done in the light of rule 1BB, read with section 7 of the Wealth Tax Act. We accordingly set aside the orders of the lower authorities and restore them to the file of the Wealth Tax Officer for fresh disposal in the light of rule 1BB and in accordance with law."

3. The Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, has held that rule 1BB of the Wealth Tax Rules, 1957 which came into force on 1-4-1979, prescribing the method of valuing a house wholly or mainly used for residential purposes, merely provides a choice amongst well-known and well-settled modes of valuation and even in the absence of rule 1BB, it would not have been objectionable nor would there have been any legal impediment, to adopt the mode of valuation embodied in rule 1BB.

4. In view of the above decision, the question is answered in the negative against the department.