(2006) 12 AHC CK 0196

In the Allahabad High Court

CWT — APPELLANT

Vs

Smt. Prem Lata Kanodia — RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3)

Citation : (2008) 170 TAXMAN 410

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad has referred the following two questions of law u/s 27(3) of the Wealth Tax Act, 1957, hereinafter referred to as ''the Act'' for opinion to this Court:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the valuation was not referred to a proper valuer and in directing the W.T.O. to refer the valuation to a competent valuer?

2. The present Reference relates to the assessment year 1987-88. Briefly stated the facts giving rise to the present Reference are as follows:

3. The assessment was completed on 31-1-1991 on a total wealth of Rs. 35,69,200 u/s 16(3) of the Act as against the net wealth shown in the return at Rs. 26,60,900.

4. The assessee is a partner in the firm M/s. Kanodia and Sons in which her share of income is 1/3rd. The Wealth-tax Officer while framing the assessment found that the valuation of the assets of the firm (land, building and machinery), as shown by the firm was on the lower side. Consequently, he referred the valuation to a departmental Valuer u/s 16A of the Act. Thereafter, he computed the value of the assets of the assessee on the basis of the report submitted by the departmental Valuation Officer. The assessee, not satisfied with the said order filed an appeal before the Commissioner of Wealth-tax (Appeals), who held that the reference had not been made to a proper Valuation Officer, who was

authorised by the Government to value the plant and machinery. Consequently, he set aside the order and directed the Wealth-tax Officer to refer the valuation to a competent Valuation Officer and thereafter to reframe the assessment order giving the assessee an opportunity of being heard.

5. The department being not satisfied with the said order, came up in appeal to the Tribunal and the Tribunal confirmed the order of the Commissioner of Wealth-tax (Appeals).

6. We have heard Sri R.K. Upadhyay, learned Standing Counsel for the revenue and have perused the order of the Tribunal.

7. We find that the similar question came up for consideration before this court in CWT v. S.P. Kanodia WT Reference No. 148 of 1988, dated 19-9-2006 where in this court had answered the said question in favour of the assessee and against the revenue. The respondent-assessee is a member of the same family and also partner of the same firm.

8. Following the aforesaid decision, we answer the question referred to us in favour of the assessee and against the revenue. However, there shall be no order as to costs.

