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(1989) 08 DEL CK 0016

In the Delhi High Court

Case No : Wealth-tax Case No. 101 of 1985

Desh Raj Gupta — APPELLANT

Vs

Commissioner of Wealth Tax — RESPONDENT

Date of Decision : 02-08-1989

Acts Referred:

Citation : (1990) 182 ITR 231

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

Kirpal, J.—For the assessment year 1967-68, the petitioner-assessed seeks the following questions of law to be referred to this court :

" (1) That, in the facts and circumstances of the case and under the law, the provisions of section 17(1) of the Wealth-tax Act are wholly inapplicable and the action initiated u/s 17(1)(a) is ab initio void and contrary to the provisions of the law and the reassessment framed in consequence of the said action is null and void ?

(2) That, in the facts and circumstances of the case and under the law, since the Appellate Assistant Commissioner held that the action u/s 17(1)(a) was itself invalid, the provisions of section 23(3A) are inapplicable, and even so, since the Income Tax Officer relied upon the valuation report of the departmental valuer in the case of a co-owner and no separate valuation was made in the case of the assessed ?

(3) That, under the facts and circumstances of the case and under law, the value of the property at 31-40/708, Ajmeri Gate, Delhi, which was a fully tenanted property and in which the assessed in the original assessment at a total value of Rs. 1,20,000 and there is no justification for any action to assess the property at a higher value which would be totally against the accepted principle of valuation in the case of tenanted properties ? "

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2. It appears that the assessment was made in respect of the property at Ajmeri Gate, Delhi, in which the petitioner is a co-owner, Subsequently, a notice was issued u/s 17(1)(a) seeking to reopen the assessment. It was the case of the Wealth-tax Officer that this property was previously in slum areas and subsequently it had been released from the slum areas and this fact had not been disclosed by the assessed. The Wealth-tax Officer then passed the order of reassessment. Against this, an appeal was field to the Assistant Commissioner. The Assistant Commissioner came to the conclusion that the reassessment ought not to have been ordered and even the Valuation Officer had accepted the value given by the assessed.

3. The Department filed an appeal to the Tribunal. The Tribunal came to the conclusion that, while deciding the merits of the case, the Assistant Commissioner ought to have applied the provisions of section 23(3A) of the Wealth-tax Act and given an opportunity to the Departmental Valuation Officer to be heard. The Tribunal also observed that the Assistant Commissioner had not taken into consideration the fact that the property had been released form the Slum and Housing Department.

4. The Tribunal did not dispose of the appeal on merits but by its order dated August 23, 1984, had remanded the case to the Assistant Commissioner. The Assistant Commissioner, Therefore, had to decide whether notice u/s 17(1)(a) was validly issued, keeping in view the fact that the property had been released by the Slum and Housing Department and, secondly, whether, on merits, the value of the property had been properly fixed. The Tribunal not having taken any decision on merits and the case having been remanded, we feel that the present petition is premature. The assessed had an opportunity of raising all contentions before the Assistant commissioner and, if the assessed succeeds, he can have no grievance. This petition is dismissed. No costs.

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