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(1989) 08 KL CK 0021

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 231 of 1984 and 1 and 2 of 1985

George Paul Puthuran APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:
Wealth Tax Act, 1957 — Section 17, 23, 35(8)

Citation : (1990) 181 ITR 438

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : N.N. Venkatachalam, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

K.A. Nayar, J.—As required by this court, the Income Tax Appellate Tribunal, Cochin Bench, referred the following questions of law at the instance of the assessee :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that an appeal lies to the Tribunal from the order of the Appellate Assistant Commissioner u/s 35 of the Wealth-tax Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was no mistake apparent from the record in the original orders passed by the Appellate Assistant Commissioner and consequently in cancelling the rectification orders ?"

2. The matter arises out of the wealth-tax assessments for the assessment years 1967-68, 1968-69 and 1969-70 for which the valuation dates are August 16, 1966, August 16, 1967, and August 16, 1968, respectively. Assessments for the years 1967-68 and 1968-69 were originally completed on March 31, 1970, and the assessment for the year 1969-70 was completed on October 22, 1970. The property of the assessee was acquired by the Government in 1961 under the Land Acquisition Act and the compensation given by the authority was included

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in the assessment. The compensation was includible in these assessments. The assessee also agitated for enhanced compensation which was awarded by the court subsequently on October 28, 1968. The Income Tax Officer thereafter reopened the assessments u/s 17 of the Wealth-tax Act pursuant to which returns were filed by the assessee for the aforesaid three assessment years on November 4, 1975, showing Rs. 3,34,548, Rs. 3,50,133 and Rs. 3,65,718, respectively, as compensation and interest. These returns were accepted by the Wealth-tax Officer. These amounts represented compensation and interest, though the split-up had not been shown in the return. The asses-see filed appeals to the Appellate Assistant Commissioner. According to the Revenue, the assessee had challenged only the inclusion of interest, in the assessments, but according to the assessee, he has challenged also the inclusion of the enhanced compensation. The Appellate Assistant Commissioner passed an order stating that the only ground urged before her was the inclusion of interest as being bad in law as such inclusion was held to be incorrect by the Tribunal in I. T. A. No. 27(Coch) of 1974-75 dated July 26, 1975, in the case of the same assessee. The Appellate Assistant Commissioner deleted the inclusion of interest. Thereafter, the assessee filed a petition for rectification of the order praying that the additional compensation awarded by the court also should be excluded from the assessment for these three assessment years. The Appellate Assistant Commissioner rectified the assessment u/s 35(8) of the Wealth-tax Act directing exclusion of the principal amount of additional compensation as well. The Revenue thereafter filed appeals before the Tribunal. It was contended on behalf of the assessee that such appeals by the Revenue are not maintainable since no express provision is made for the filing of appeals against the orders passed u/s 35(8). This preliminary objection raised by the assessee regarding the maintainability of the appeals was rejected by the Tribunal and in so doing, the Tribunal relied upon the decision in CWT v. B.M. Ramalingam [1983] 140 ITR 219 . The Tribunal held that there was no mistake in the original order of the Appellate Assistant Commissioner. In that original order, the Appellate Assistant Commissioner had deleted only the addition of interest. The extra compensation received by the assessee and returned by him for these three assessment years had been retained by the Appellate Assistant Commissioner in the assessments. This was in conformity with the decision of the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, . Since the assessment of the additional compensation in these three assessment years was in conformity with the decision of the Supreme Court, the Appellate Tribunal cancelled the order passed u/s 35(8) by the Appellate Assistant Commissioner. It is thereafter that the aforesaid two questions were referred to this court for opinion.

3. We heard counsel. The Appellate Assistant Commissioner passed an order u/s 35(8) of the Wealth-tax Act. That Sub-section says that-

"Where any matter has been considered and decided in a proceeding by way of an appeal or revision delating to an order referred to in Subsection (1), the

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authority passing such order may, notwithstanding anything contained in any other law for the time being in force, amend the order under this section in relation to any matter other than the matter which has been so considered and decided."

4. By virtue of the jurisdiction conferred u/s 35(8), the Appellate Assistant Commissioner rectified the appellate order. In rectifying the appellate order, he also exercised the power of the appellate authority u/s 24 (23?) of the Act. The rectified order is the order coming u/s 24 (23?) of the Act. The rectification of an error is not an independent exercise of power, but it only impinges on the exercise of the appellate jurisdiction and gets fused into the original appellate order. Dealing with the maintainability of appeal, the Division Bench of the Madras High Court in CWT v. B.M. Ramalingam [1983] 140 ITR 219 held that (at page 226):

"Section 35 provides, inter alia, that an Appellate Assistant Commissioner may amend any order passed by him u/s 23 with a view to rectifying any mistake apparent from the record. The purport of this provision is that while the record may make apparent a mistake, the mistake, as such, is in the appellate order. The mistake is not in the record. Therefore, a rectification is not a rectification of the record, but a rectification of the appellate order. When the mistake is rectified thus, it is the appellate order which is amended. After rectification, the order in appeal is the order as amended. Both before and after rectification, there is no change in the character of the appellate order. As it merges, so it continues to remain only an appellate order, that is to say, an order passed by the Appellate Assistant Commissioner u/s 23 of the Act."

5. In the decision reported in S. Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore, , the Supreme Court also had an occasion to examine the nature of the proceedings for rectification. The Supreme Court considered the proceedings taken for rectification of assessment to tax and held that they are proceedings for assessment. The Supreme Court observed (at page 764) :

"It is clear that, when proceedings are taken for rectification of assessment to tax either u/s 35(1) or Section 35(5) of the Act of 1922, those proceedings must be held to be proceedings for assessment. In proceedings under those provisions, what the Income Tax Officer does is to correct errors in, or rectify, orders of assessment made by him, and orders making such corrections or rectifications are, therefore, clearly part of the proceedings for the assessment."

6. The Supreme Court also observed that a composite order redetermining the tax payable by the firms, directing refund and apportioning the income of the firms between the partners can be held to be nothing other than an order made in proceedings for assessment of the firms. Therefore, against the order passed by the Appellate Assistant Commissioner rectifying his order by directing deletion of the additional compensation also from the computation of wealth, an appeal

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will lie to the Tribunal. The next question to be considered is whether there was a mistake in the original order passed by the Appellate Assistant Commissioner. In the original order, the Appellate Assistant Commissioner deleted only the additional interest. The asset to be valued is the land owned by the assessee and it was acquired by the Government under the provisions of the Land Acquisition Act. The compensation received by the assessee will have to be assessed representing the value in the years in question and the assessee included in his returns the amount representing the additional compensation also. The value as quantified will have to be assessed in the hands of the assessee when he was dispossessed of the landed property pursuant to the acquisition proceedings. But when the amount is ultimately quantified, it will relate back to the year in which the land was acquired. This was so held in the decision, Joginder Singh and Others Vs. State of Punjab and Another, . In that case, it was held that the right to compensation and the quantification thereof are two distinct concepts. The right to compensation arises when the land vests in the State while its quantification may be concluded much later. Although the process of quantification may pass through several stages from the Land Acquisition Officer to the District Judge and thereafter to the High Court, etc., the process of quantification is merely one of computing the value of the land according to the principles enacted in the Land Acquisition Act. However, the right to compensation so quantified refers back to the date of acquisition. Their Lordships held that (at page 383 of AIR 1985 SC) :

"The additional amount of compensation awarded by the District Judge or by the High Court represents the difference between the true value of the land on the one hand and the actual amount awarded on the other which fell short of the true value. The owner of the land is entitled to be paid the true value of the land on the date of taking over of possession. Since, however, the true value is usually determined only after it is computed through a multi-tiered process passing through different levels of a hierarchical judicial structure, by the very nature of things it takes some time before the true value can be finally determined. The fact that it is determined later does not mean that the right to the amount comes into existence at a later date."

7. Therefore, the additional compensation in the case accrued to the assessee when the land was acquired from him. In that view of the matter, the additional compensation was rightly included by the assessee in his return for the aforesaid three years and the same was rightly assessed by the Wealth-tax Officer. It would appear that only the inclusion of interest was pressed in appeals by the assessee before the appellate authority and the Appellate Assistant Commissioner by its original order rightly directed deletion of the interest portion alone but retained the additional compensation in the net wealth. There was no mistake apparent on the records.

8. In the circumstances of the case, we answer both the questions referred to us in the affirmative, that is, in favour of the Revenue and against the assessee.

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9. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

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