(1991) 08 GAU CK 0013

In the Gauhati High Court

Case No : Wealth-tax Reference No. 12 of 1987

Gulabrai Hanumanbox APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Constitution of India, 1950 — Article 14
Wealth Tax Act, 1957 — Section 7(1), 7(4)

Citation : (1992) 198 ITR 131

Hon'ble Judges : S.N. Phukan, J;J.M. Srivastava, J

Bench : Division Bench

Advocate : A.K. Saraf, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

Judgement

S.N. Phukan, J.—On the prayer of the assessee, the following four questions have been referred to this court for opinion u/s 27(1) of the Wealth-tax Act, 1957, for short "the Act". The said questions are :

" 1. Whether the Tribunal having held that the provisions of Section 7(4) being procedural would apply to assessment year 1975-76 was justified in law in holding that, on the facts and circumstances of the case, the provision of Section 7(4) would not apply to the assessee''s assessment for the assessment year 1975-76 ?

2. Whether the Tribunal was justified in law in upholding the finding of the Appellate Assistant Commissioner that the option u/s 7(4) of the Wealth-tax Act, 1957, has not been exercised by the assessee ?

3. Whether the Tribunal was justified in law in holding that it is not possible to infer that the same value of the property as determined in the case of the co-sharer, Keshoram Radheyshyam, for the assessment year 1975-76, vide order of assessment dated November 5, 1975, should be taken to be the value in the case of the assessee also ?

4. Whether the Tribunal was justified in law in holding that reference to the Valuation Officer u/s 16A was valid even though the provisions of Section 7(4) were applicable for the assessment year 1975-76 ?"

2. It may be mentioned that the assessee prayed for referring one more question, which was rejected by the Tribunal.

3. The facts are as follows :

4. The present reference relates to the assessment year 1975-76. The Wealth-tax Officer noted that the assessee owned movable and immovable properties located in Assam and Rajasthan and there is one self-occupied house property at Calcutta which is jointly owned by the two Hindu undivided families, viz., the assessee (Messrs. Gulabrai Hanumanbux) and Messrs. Keshoram Radheshyam, having equal shares. In the report of the valuer dated October 28, 1972, the value of the Calcutta property was shown as Rs. 3,63,500 being the half share of the assessee. This was adopted for the assessment year 1972-73. The contention of the assessee was that since the building is self-acquired, the value of the same should be frozen at the value determined as on March 31, 1972, relevant to the assessment year 1972-73 in view of the provisions of Section 7(4) of the Act. There is no dispute that the building was constructed and occupied in November, 1971. The Wealth-tax Officer, however, declined to accept the contention of the assessee to freeze the valuation u/s 7(4) of the Act as, according to him, this section came into force with effect from April 1, 1976, as per the Finance Act, 1976. The Wealth-tax Officer obtained a report from the Departmental Valuer and a copy of this was forwarded to the assessee and the assessee objected to the adoption of the value as determined by the Departmental Valuer in view of the provisions of Section 7(4) of the Wealth-tax Act. The Departmental Valuer valued the property at Rs. 16,21,100 and the share of the assessee was determined at Rs. 8,10,550 being 50% of the total value. As the assessing authority rejected the contention of the assessee, appeals were filed and both the appeals were rejected by the Appellate Assistant Commissioner and the Tribunal respectively. Hence, the present reference.

5. As all the questions referred to us have to be examined in the light of Section 7 of the Act, we quote below the said section :

"7. Value of assets how to be determined.--(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date.

Explanation.--For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purpose of determining the price such property would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in Sub-section (1),--

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the asset of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustments therein as may be prescribed ;

(b) where the assessee carrying on the business is a company not resident in India and a computation in accordance with Clause (a) cannot be made by reason of the absence of any separate balance-sheet drawn up for the affairs of such business in India, the Wealth-tax Officer may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year.

(3) Notwithstanding anything contained in Sub-section (1), where the valuation of any asset is referred by the Wealth-tax Officer to the Valuation Officer u/s 16A, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date, or, in the case of an asset being a house referred to in Sub-section (4), the valuation date referred to in that Sub-section.

(4) Notwithstanding anything contained in Sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house or on the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later :

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this Sub-section shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation.--For the purposes of this Sub-section,--

(i) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed ;

(ii) ''house'', includes a part of a house being an independent residential unit."

6. Sub-section (4) of Section 7 of the Act was inserted by Section 27(3)(b) of the

Finance Act, 1976. In the said section, the date from which the provisions of the said Sub-section (4) was to come into operation was not indicated. However, by Section 1(2) of the Finance Act, 1976, the said Act of 1976 became operative from April 1, 1976.

7. The first contention of Mr. Saraf is that Sub-section (4) being procedural would have retrospective effect, i.e., would apply to all pending proceedings including pending appeals. If the said Sub-section applied to the pending proceedings before the assessing authority, it would automatically apply to all pending appeals, as such an appeal is a continuation of the original proceeding. Learned counsel has also urged that though the Tribunal held that the provisions of Section 4 are procedural, the Tribunal erred in law in not giving the benefit to the assessee.

8. Let us first examine whether Sub-section (4) of Section 7 of the Act is procedural and whether it would have retrospective effect or, in other words, it would apply both to pending proceedings and pending appeals. We may state here that though the present reference relates to the assessment year 1975-76, the assessment order was passed on March 20, 1980, i.e., after April 1, 1976, which is the date on which the Finance Act, 1976, came into force. Mr. Talukdar, learned counsel for the Revenue, has urged that the above provision being substantive in character, it would operate prespectively.

9. At page 216 of ''Maxwell on the Interpretation of Statutes'', Twelfth Edition, the learned author has reproduced the judgment of R.S. Wright J., in In re Athlumney [1898] 2 QB 547, wherein it was held as follows:

"Perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

10. The learned author at page 222 has observed that--"The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters the mode of procedure, he can only proceed according to the altered mode". The learned author has also quoted the observation in Gardner v. Lucas [1878] 3 AC 582, in which, according to Lord Blackburn--"Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be ".

11. Thus, from the above well-settled principle of interpretation, we hold that, according to the general rule of interpretation, a substantive law is intended to be prospective unless a contrary intention is manifest from the language of the

statute or arises by necessary implication. But, if the law deals with matters of procedure only, it is deemed to be retrospective unless such inference is likely to lead to unjust results. This is also the view expressed by the Commissioner of Wealth-tax Vs. Niranjan Narottam, We are in respectful agreement with the views expressed by the Gujarat High Court. If we have a close look into sub-section (4) of Section 7 of the Act, we find that this Sub-section (4) only provides the method of valuation and as such we have no hesitation in holding that Sub-section (4) is procedural in nature. In Commissioner of Wealth-tax Vs. Niranjan Narottam, , it was also held that Sub-section (4) which provides for an alternative method of valuation is procedural and not a substantive provision of law, and even if it confers upon the assessee a right to exercise an option to value his asset under either Sub-section (1) or Sub-section (4), it is not taken out of the domain of procedure or machinery. Such right is in the procedural field. We are also in respectful agreement with the above views expressed by the Gujarat High Court. Therefore, the Tribunal was right in holding that Section 7(4) of the Act is a procedural provision.

12. Now, the question is whether Sub-section (4) of Section 7 can be invoked by the assessee. His contention was rejected inasmuch as the assessee did not exercise his option. According to learned counsel for the Revenue, such option has to be exercised along with the filing of return and that apart, according to learned counsel for the Revenue, in the petition dated January 25, 1980, exercising the option, vide annexure-D to the paper book, it was not clearly stated that the assessee exercised his right under Sub-section (4) of Section 7 of the Act. In reply, Mr. Saraf has urged that the assessment year relates to 1975-76 and as the new amendment came into force on April 1, 1976, the assessee could not have exercised his option at the time of filing the return ; that apart, according to learned counsel, exercising the option at the time of filing of return is not mandatory and such option can be given before the assessment order is passed. According to Mr. Saraf, the petition exercising the option fulfils all the requirements of Sub-section (4) of Section 7 of the Act.

13. We have already held that Sub-section (4) of Section 7 of the Act is procedural. The proviso to the said Sub-section, inter alia, provides that the option has to be specified in the return of net wealth. The crucial point is whether specifying the option along with the return is mandatory in nature or only directory.

14. We have already held that being procedural in nature, the Sub-section shall have retrospective effect, So, the question of giving option in the return could not have arisen at least for the assessee in respect of the assessment years prior to April 1, 1976. That apart, as this Sub-section would apply also to appeals, it would follow that the assessee could get the benefit for the period prior to April 1, 1976, even at the appellate stage. We are, therefore, of the opinion that this option could have been exercised by the assessee before the assessment order was passed by the assessing authority and in the case of an appeal before the

final appellate order was passed. We have, however, not dealt with the question for the subsequent periods and we keep it open.

15. In view of the above legal position, we hold that the contention of learned counsel for the Revenue that the option was not exercised in time in the present reference has no force.

16. Now, the question is whether the option at annexure-D to the paper book is a valid option or not. According to Mr. Talukdar, learned counsel for the Revenue, this is a question of fact and the finding of the Tribunal is binding. In reply, Mr. Saraf has drawn our attention to the decision of this court in Saligram and Co. Vs. Commissioner of Income Tax, wherein the Division Bench of this court held that the Tribunal is charged with the duty to decide whether the inference drawn is a question of fact or a question of law and once the question is referred by the Tribunal it is accepted as a question of law.

17. In question No. 2 of the present reference, the specific question referred to us is whether the Tribunal was justified in law in upholding the finding of the Appellate Assistant Commissioner that the option u/s 7(4) of the Act has not been exercised by the assessee. In view of the above ratio and as the question has been referred as a question of law in the present reference, the contention of learned counsel for the Revenue has no force.

18. We find that under Sub-section (4) of Section 7 of the Act no particular procedure or form for exercising this option has been prescribed. If the petition before the Wealth-tax Officer dated January 25, 1980, at annexure-D to the petition is read as a whole, we are of the opinion that the assessee duly exercised the option as required under the same sub-section. We may, in this respect, refer to the settled position of law that if two views are possible, the view in favour of the assessee may be accepted (see The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., In the present reference also, assuming that, even if there is any doubt that the above petition dated January 25, 1980, was not a proper option, it should be held that it was an option duly exercised by the assessee.

19. Situated thus, our view in respect of questions Nos. 1 and 2 is that Section 7(4) of the Act being procedural shall have retrospective effect and would, accordingly, apply to the assessment year 1975-76 in the case of the present assessee and the assessee is entitled to get the benefit of Sub-section (4). We further hold that the assessee has duly exercised his option as required under Sub-section (4) of Section 7 of the Act. As to question No. 4, we are of the opinion that, as the option has been exercised by the assessee validly and legally under Sub-section (4) of Section 7 of the Act, the reference to the Valuation Officer by the assessing authority u/s 16A was not a valid one.

20. We may mention that the submission made in respect of question No. 3 has got some legal importance. From the facts of the present reference stated above, the house property in question at Calcutta was jointly held in equal shares by the

assessee and Keshoram Radheshyam for the assessment year in question. In the case of the co-sharer, Keshoram Radheshyam, for the above assessment year, by the assessment order dated November 5, 1975, the report of the valuer of the assessee was accepted and the share of the half property in the case of Keshoram Radheshyam was taken to be Rs. 3,63,500. According to Mr. Saraf, the present assessee being a co-sharer is entitled to the same benefit. In this connection, learned counsel has referred to the decision of the Punjab and Haryana High Court in Jaswant Rai Vs. Commissioner of Wealth-tax, The Punjab and Haryana High Court held that if during the same assessment year the same quantity of wealth in the possession of one co-sharer is subjected to a lower rate of taxation, it would be highly improper to burden a similarly situated co-sharer with a higher rate of tax and if such an action on the part of the assessing authorities is sanctioned, it would militate against the principle of equality of laws enshrined in Article 14 of the Constitution. We are in respectful agreement with the above ratio laid down and we hold that the action of the assessing authority in the present reference is absolutely arbitrary and unjustified being violative of the principle of equality by assessing the same property in respect of the same assessment year for the co-sharer, i.e., the present assessee, at a higher value. Mr. Saraf has drawn our attention to the decision of this court in Gulabrai Hanumanbux and Another and Keshoram Radheshyam and Another Vs. Wealth-tax Officer/Income Tax Officer and Another, to show that the valuation of the property in respect of the co-sharer, Keshoram Radheshyam, as stated above was also upheld by this court in the above decision. We have perused the decision and accept the contention of learned counsel for the assessee. Our attention has been drawn to the decision of the apex court in Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, We have perused the judgment and we find that the apex court dealt with Sub-sections (1) and (2) of Section 7 of the Act and Rules 2, 2A and 2B of the relevant Rules and we are of the opinion that this ratio is not relevant for our present purpose.

21. For what has been stated above, we answer all the four questions referred to us in favour of the assessee and against the Revenue.

