
(2005) 11 RAJ CK 0047

In the Rajasthan High Court

Case No : WT Appeal No's. 29, 31 and 32 of 2005

Jagmohan Joshi

APPELLANT

Vs

Wealth Tax Officer

RESPONDENT

Date of Decision : 14-11-2005

Acts Referred:

Wealth Tax Act, 1957 — Section 16A(2), 7

Citation : (2006) 200 CTR 98

Hon'ble Judges : Rajesh Balia, J;R.P. Vyas, J

Bench : Division Bench

Advocate : Suresh Ojha, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—We have heard learned Counsel for the appellant at some length. The appellant -assessee has stated in his appeal that the following substantial questions of law arise for consideration in this appeal :

1. Whether the appeal is maintainable even if not filed in the prescribed form. The appeal was filed in Form No. 36 of the Income Tax, whereas the appeal was in respect of wealth-tax and should have (been) submitted in Form "F"?
2. Whether the appeal is maintainable even if the disputed tax is less than minimum limit laid down in the circular of CBDT, which is binding on the Department as per the judgment of apex Court as well as by this Court ?
3. Whether the value taken for the purpose of his interest in respect of land is correct by issuing notice only to the firm and without issuing the notice to the beneficiaries/owner of the land u/s 16A(2) in spite of judgment of Hon''ble this Court reported in Commissioner of Wealth-tax Vs. Tulsi Dass,
4. Whether the value of building taken is correct as on valuation date, especially when the Section 7 (unamended, applicable in case of appellant prior to 1st April, 1989) provides, if sold in the open market whereas Hotel Joshi, in which

the appellant is a partner having no land of his own, which too cannot be sold (in) any case ?

5. Whether the same authority can take different valuation for the same date as in case of appellant, for the purpose of Income Tax, value has been taken at Rs. 19,89,412 and for wealth-tax purpose, the value has been taken at Rs. 22,93,358 ?

6. Whether the valuation of land, which is let on rent, should be valued by rental method ?

7. Whether in the circumstances, the Tribunal was justified in not accepting the value of Hotel Joshi as per Rule 14 of Sch. III when there was no evidence to hold that value exceed 20 per cent of the book value ?

2. So far as question Nos. 1 and 3 are concerned, we are of the opinion that they do not raise any substantial question of law inasmuch as it does not give rise to any ground against the assessment of the wealth-tax and no prejudice has been caused to the appellant. It was wholly irrelevant to be examined by the appellate authority. At best it could be a curable defect and, therefore, would not give any rise to any substantial question of law.

3. So far as the question relating to issuance of notice only to the firm in respect of valuation of the assets of the firm in question under the WT Act is concerned, suffice it to say that WT Act does not recognise the firm as a separate entity as has been recognised under the IT Act. Therefore, for the purpose of wealth-tax assessment, firm does not exist as a separate assessable entity. It is only for the purpose of determining the share of the partner in the wealth of firm to be included in the net wealth of the assessee, the valuation of the wealth of firm has to be done. Under WT Act only individual, HUF and company are recognised as assessees. Therefore, notice to assessee is only required to be given, rest is question of material to be collected for the purpose of proper assessment. In that view of the matter, the notice given to the firm in respect of valuation to be adopted for the assets belonging to the firm was notice to the partners, who were liable to be assessed in respect of their share in the firm. It does not give any rise to the substantial question of law.

4. So far as the question Nos. 2, 4, 5, 6 and 7 are concerned, we are of the opinion that they are premature at this stage. The Tribunal has not determined the valuation of assets of the firm in question which is stated to be Hotel Joshi, which according to the assessee is an asset of the partner of the firm. The Tribunal has given a direction that the net wealth of the assessee has to be determined on each successive valuation date as per Sch. III attached to the WT Act. However, the Tribunal further recorded that neither the assessee has chosen to file the return nor the AO's record of the assessment shows that assessment has been made for each successive year by applying Sch. III on each valuation date, which cannot be sustained. With these findings, the matter has been remitted back to the AO for determining valuation of the assets in question as

per the Sch. III on each successive valuation date or the directions given by CWT(A). Thus, it is open for the assessee to raise all the questions about the applicability and the manner of determination of the valuation of the assets in question in terms of the Sch. III before the AO. It is only after the findings are recorded by the AO and reached final stage by the Revenue authorities that the question may arise in respect of the interpretation of s. (sic-Sch.) III.

5. In view of the above, we are of the opinion that no substantial question of law for consideration in this appeal arises at this stage and the assessee can raise all issues about the correct valuation to be adopted for the assessment of his net wealth in respect of the property in question before the AO and in subsequent proceedings, if required to be taken.

The appeals are, therefore, dismissed.