
(1995) 03 RAJ CK 0059

In the Rajasthan High Court

Case No : Wealth-tax Reference No. 161 of 1985

Kushal Chand

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 25, 25(2), 8AA
Wealth Tax Rules, 1957 — Rule 2, 2(1)

Citation : (1996) 217 ITR 320

Hon'ble Judges : Y.R. Meena, J; V.K. Singhal, J

Bench : Division Bench

Advocate : T.C. Jain, for the Appellant; G.S. Bafna, for the Respondent

Judgement

V.K. Singhal, J.—On the request of the assessee, the Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated January 25, 1984, in respect of the assessment years 1976-77, 1977-78 and 1978-79 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Commissioner of Wealth-tax has power and jurisdiction to revise the order of the Inspecting Assistant Commissioner (Assessment) u/s 25(2) of the Wealth-tax Act, 1957 ?"

2. The brief facts of the case are that the assessment of the assessee under the Wealth-tax Act were finalised by the Inspecting Assistant Commissioner (Assessment). The Inspecting Assistant Commissioner (Assessment) included the amount of capital standing to the credit of the assessee in the books of the firm, Messrs. Surana Enterprises, which owned a cinema building known as "Raj Mandir Cinema", of which the assessee was a partner. In the assessment order framed by the Inspecting Assistant Commissioner (Assessment), he took the value of the said building without applying the provisions of Rule 2 of the Wealth-tax Rules, 1957. The Commissioner of Wealth-tax issued a notice to the assessee u/s 25(2) on the ground that the Inspecting Assistant Commissioner

(Assessment) included the amount of capital standing to the credit of the assessee in the books of the said firm on its face value without applying his mind to the relevant rules and the valuation as provided under Rule 2 of the Wealth-tax Rules.

3. After hearing counsel for the assessee, the Commissioner of Income Tax was of the view that in accordance with the Rule 2(1) of the Wealth-tax Rules, while determining the value of a partner's share in the firm, the net wealth of the firm has first to be determined and this includes the valuation of the assets owned by the firm. Since, the Inspecting Assistant Commissioner (Assessment) has not applied his mind to this aspect at all, the assessment orders so framed were set aside on this limited issue and the Inspecting Assistant Commissioner (Wealth-tax) was directed to determine the value of the assessee's share in the firm in accordance with the said rule and substitute the same in place of the value already adopted. Against this order dated December 20, 1982, an appeal was preferred to the Income Tax Appellate Tribunal and the provisions of section 8AA were taken into consideration. On the basis of the aforesaid provisions of law, the Income Tax Appellate Tribunal came to the conclusion that it is not necessary that the specific provision should have been made in each and every section of the Act to substitute the Inspecting Assistant Commissioner of Wealth-tax in place of the Wealth-tax Officer and, therefore, u/s 25(2), the Commissioner of Wealth-tax is competent to review the order of the Inspecting Assistant Commissioner. The appeal of the assessee was dismissed.

4. Mr. T.C. Jain, learned counsel on behalf of the assessee, has submitted that the Tribunal has observed that the order passed by the Commissioner of Wealth-tax are bereft of any details. Neither has he mentioned the value of Raj Mandir Cinema as per the balance-sheet nor has he referred to the value which according to him should have been adopted. The orders passed by the Commissioner were considered to be vague and non-speaking. It is submitted that once this observation is made then the order of the Commissioner of Wealth-tax should have been quashed on that ground alone. The further submission of Mr. Jain is that in accordance with the provisions of section 25(2) of the Act, the order of the Wealth-tax Officer alone could have been revised/cancelled u/s 25(2) of the Act. It is also stated that even if the order is erroneous, it cannot be said to be prejudicial.

5. We have considered over the matter. The provisions of section 8AA were inserted by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975. Sub-section (4) of section 8AA provides that where an order is made under Sub-section (1) and the Inspecting Assistant Commissioner exercises the powers or performs the functions of the Wealth-tax Officer in respect of any case or person or proceedings, references under this Act or any rule made therein to the Wealth-tax Officer shall be construed as references to the Inspecting Assistant Commissioner and any provision requiring approval or sanction of the Inspecting Assistant Commissioner shall not apply. Sub-section (1) authorises

the Commissioner to direct by special or general order in writing to perform or to act any of the powers or functions conferred on or assigned to the Wealth-tax Officer by the Inspecting Assistant Commissioner. It is an admitted position that the Inspecting Assistant Commissioner has exercised the power of the Wealth-tax Officer in accordance with the order of the Commissioner and once such power is exercised under Sub-section (1), reference to the Wealth-tax Officer u/s 25(2) has to be construed as to the Inspecting Assistant Commissioner of Wealth-tax in accordance with the provisions of section 8AA(4) of the Act. The contention that the order of the Inspecting Assistant Commissioner (Assessment) cannot be revised by the Commissioner of Wealth-tax, therefore, has no substance.

6. The other submission of learned counsel for the assessee is that since the order was vague and non-speaking, therefore, it should have been set aside by the Tribunal. We are of the view that this contention has also no force because what the Commissioner of Wealth-tax has found in the present case is that when the assessments were framed under the Wealth-tax Act the Inspecting Assistant Commissioner has not applied his mind to the provisions of Rule 2 of the Wealth-tax Rules. Non-application of a provision which is binding on the assessing authority makes the order liable to be quashed. It was not necessary for the Commissioner of Wealth-tax to have referred to the valuation as per the balance-sheet of the cinema because he has not chosen to go to the facts of the case at all and the illegality which was committed by the assessing authority was set at naught. The details could have been calculated by the assessing authority after it is found that the order is liable to be cancelled. Even the Tribunal in respect of this objection has found that the order was not void as these details were available on record and the mind is yet to be applied by the assessing authority to the figures given. Mr. Jain has submitted that in accordance with the provisions of Rule 2, the valuation may be even lesser than what has been declared by the assessee, It is only an academic point and cannot be considered. The provisions of Rule 2 should have been kept in view while determining the value of the shares of a partner in the firm.

7. The contention that the order could be said to be only erroneous and not prejudicial to the interests of the Revenue has also no substance. Learned counsel for the assessee has placed reliance on the decision of CIT v. Trustees Anupam Charitable Trust [1987] 167 ITR 129. The said decision is of no assistance to learned counsel for the assessee. It was observed in this case that the error envisaged by section 263 was not one which depended on possibility or guess work, but it should be actually an error either of fact or of law. The Commissioner of Income Tax categorically said that the speculative business could not qualify for deduction, much less exemption u/s 11, it cannot be said that there was any error in the order of the Income Tax Officer relating to the assessment year 1971-72. The judgment relied on by learned counsel for the assessee is not on the proposition that even if the mistake of law is committed, the order cannot be revised. Conversely it supports the view of the Revenue that

if there is an error either of fact or law, the power u/s 263 could be exercised.

8. The decision in the case of Commissioner of Income Tax Vs. Kashi Nath and Co., is also of no assistance in the facts of this case because the Commissioner did not apply his mind to the relevant material on record and did not give reasons for his conclusions that the assessment order was prejudicial to the interests of the Revenue. The order of the Tribunal was confirmed by the High Court on the ground that the Commissioner has not given reasons for his conclusion that the assessment order was prejudicial to the interests of the Revenue. The dismissal of the SLP in the case of CWT v. Rajashree S. Pareekh [1991] 191 ITR 76 is also not applicable because in that case, the assessment was made on the basis of the approved valuation report and the Commissioner while exercising the power of revision directed the valuation to be made in accordance with the Departmental valuer's report. The Tribunal rejected the reference application on the ground that the revision was permissible only on the material on record and the Departmental valuer's report was not part of the record. The High Court rejected the reference application and it met the same fate in the apex court in the special leave petition.

9. The provisions of sections 25(2) of the Wealth-tax Act contemplate that the power could be exercised by the Commissioner if he considers that any order passed by the Wealth-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The word "erroneous" is comprehensive enough to include such an order which is prejudicial to the interests of the Revenue. An error which may be of fact or law as is evident from the record could confer jurisdiction on the Commissioner u/s 25(2). In the present case, the dispute is with regard to non-application of the provisions of Rule 2(1) of the Wealth-tax Rules while determining the value of the partner's share in the firm. Besides the provisions in the rule itself, the apex court in the case of Bharat Hari Singhanian and others Vs. Commissioner of Wealth Tax (Central) and others, has held that the provisions of Rule 1D are mandatory. The error of law, therefore, will make an order passed by the Inspecting Assistant Commissioner (Wealth-tax) erroneous, in respect of which the jurisdiction u/s 25(2) could be exercised. The said error committed by the assessing authority could not be considered dependent on possibility or guess work and is clearly an error of law. The non-consideration of the mandatory provision of law which the assessing authority was bound to consider is an error of law and the order so passed is erroneous under law. The power u/s 25(2) of the Wealth-tax Act, therefore, exercised in the present case is in accordance with law and the order passed by the assessing authority was erroneous under law. The other condition that the erroneous order should be prejudicial to the interests of the Revenue is also to be examined from the facts of each case. In the present case, the Inspecting Assistant Commissioner (Wealth-tax) has accepted the value as given in the balance-sheet of the share of a partner while valuing its interest in the firm and the valuation of the property as existing in the books of the firm was not done by taking into consideration the market value, in accordance with the provisions of Rule 2(1) of

the Wealth-tax Rules. Taking the share of a partner on the basis of the book value was prejudicial to the interests of the Revenue because under Rule 2 of the Wealth-tax Rules, it was provided that the value in the interest of a firm of which he is a partner, or an association of persons of which he is a member shall be determined in the manner provided hereunder. The net wealth of the firm or association on the valuation date shall be first determined. That portion of the net wealth of the firm as is equal to the amount of its capital shall be allotted among the partners or members in the proportion in which capital has been contributed by them. The determination of the market value of an asset of firm cannot be at a figure lesser than shown in the balance-sheet. The exercise of the power by the Commissioner u/s 25(2) is in accordance with law and the order passed by the assessing authority was prejudicial to the interests of the Revenue as well.

10. In these circumstances, we are of the opinion that the Tribunal was justified in holding that the Commissioner of Wealth-tax has power and jurisdiction to revise the order of the Inspecting Assistant Commissioner (Assessment) u/s 25(2) of the Wealth-tax Act.

11. The reference is answered in favour of the Revenue and against the assessee. No order as to costs.