**(1990) 07 AHC CK 0061**

**In the Allahabad High Court**

**Case No :** Wealth-tax Reference No''s. 334 of 1989

Mehmood Halim APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

**Date of Decision :** 31-07-1990

**Acts Referred:**
Wealth Tax Act, 1957 — Section 27

**Citation :** (1991) 187 ITR 312 : (1990) 53 TAXMAN 32

**Hon'ble Judges :** B.P. Jeevan Reddy, C.J;J.K. Mathur, J

**Bench :** Division Bench

**Advocate :** Vikram Gulati, for the Appellant;

**Final Decision :** Partly Allowed

## Judgement

B.P. Jeevan Reddy, C.J.—Common questions are raised in these applications filed by Mehmood Halim u/s 27(3) of the Wealth-tax Act, 1957. As many as 12 questions are sought to be referred. They read as follows :

"(1) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in including the whole of the value of property No. 13 of 286, Parmat, Kanpur, in view of the fact that, on account of the modified distribution of the assets of the father, this property was excluded from the share of the assessee and was eventually kept apart and utilised for the payment of arrears of taxes of the deceased ?

(2) Whether, on the facts and circumstances of the case, the direction of the Income Tax Appellate Tribunal regarding ownership of this property is sustainable in law when the matter of the modified distribution including this property has been set aside by the Tribunal for fresh consideration by the Commissioner of Wealth-tax (Appeals) vis-a-vis the admission of the additional ground regarding the court order of the Second Civil Judge, Kanpur, dated May 22, 1984, in the subsequent assessment years ?

(3) Whether, on the facts and circumstances of the case, the Tribunal was correct

in law in upholding the inclusion of this property in the hands of the assessee when the property having not been allocated to any of the legal heirs was legally assessable either u/s 21 of the Wealth-tax Act, 1957, in the hands of the association of persons or legally only one-third share could have been included in the hands of the legal heirs as under Muslim law, each of the heirs becomes tenants-in-common and would have equal share in this property subject to deduction of the whole of the arrear tax demand of the deceased in the hands of each legal heir?

(4) Whether, on the facts and circumstances of the case, the Tribunal was correct in law in upholding that this property was a vacant plot of land on the relevant valuation date when the property was being assessed in the hands of the assessee in Income Tax proceedings on the basis of the annual letting value and was also assessed on the same basis in the wealth-tax case of late Shri S.M. Bashir, the previous owner of the property ?

(5) Whether, on the facts and circumstances of the case, the Tribunal was correct in upholding the assessee as the owner of this property when the same never passed to the assessee on account of overriding charges and title of the estate duty, wealth-tax and Income Tax arrear demand ?

(6) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in upholding this property as a vacant plot on the basis of the departmental valuer''s report, and the estate duty assessment of late Shri S.M. Bashir, when all the departmental reports relied upon by the Tribunal were subsequent to the date of the public auction in 1980 when the property had been sold as a plot of land as structures had fallen down and in the estate duty assessment, the property was not assessed as a vacant plot ?

(7) Whether, on the facts and circumstances of the case, the finding of the Tribunal that the property was a vacant plot of land can be upheld in view of the positive evidence in the form of the valuation report of the Registered Valuer, Shri Shobha Ram, dated May 22, 1975, which also included the site plan of the property showing the structures existing on the land and was on record ?

(8) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in rejecting the assessee''s contention to value the property in accordance with the provisions of Rule 1BB of the Wealth-tax Rules, when the property was a residential one ?

(9) Whether, on the facts and circumstances of the case, the Tribunal was correct in law in upholding the value of this property at Rs. 3,50,000 which was based on the estimate and the value returned by the assessee was in accordance with the report of the registered valuer. In view of the mandatory provisions contained in Section 16(A)(1)(a) wherein it has been specifically provided that when the value of an asset is returned in accordance with the valuation report of a Registered Valuer and the Wealth-tax Officer is of the opinion that the value as returned is

 

less than its fair market value, the only recourse left to the Wealth-tax Officer to disturb the report of the registered valuer is to take recourse to Section 16A of the Wealth-tax Act, 1957, and having failed to do so in the assessment proceedings and the discretion vested under the Act having been lost, now cannot be restored by any appellate authority. Now, no option is left with the Wealth-tax Officer, but to accept the value as returned by the assessee, which is based on the valuation report of a registered valuer ?

(10) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in not excluding the property No. 81A Gutaiya, Kanpur, from the net wealth of the assessee, after having recorded a conclusive finding in the orders of the subsequent assessment years, that the assessee was not the owner of this property on April 30, 1975, i.e., the relevant valuation date for the assessment year under reference, as the same had been gifted by him to his daughter in January, 1975 ?

(11) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in rejecting the assessee''s plea for excluding of this property on a technical ground that the Commissioner of Wealth-tax (Appeals) was justified in not entertaining the assessee''s plea, as the same was not taken in the memorandum of appeal filed before him, whereas all the material and evidence arrived at the conclusive finding regarding the ownership of this property as on the relevant valuation date, i.e., April 30, 1975, were very much on record placed before the Tribunal, and the Tribunal had given conclusive findings to this effect in the subsequent assessment years, as also the assessee had raised a specific ground for exclusion of this property irrespective of admission or non-admission of the additional ground by the Commissioner of Wealth-tax (Appeals) I, Kanpur ?

(12) Whether, on the facts and circumstances of the case, the Tribunal was correct in law in confirming the rejection of the additional ground regarding plot No. 81A, Gutaiya, Kanpur, raised before the Commissioner of Wealth-tax (Appeals) when the ground went to the root of the matter for deciding the title/ ownership of the property and was crucial for disposing of the appeal in accordance with the principles of law, equity and natural justice ?"

2. So far as questions Nos. 1 and 2 are concerned, we see no occasion for referring them inasmuch as the question of inclusion of the said asset has been sent back by the Tribunal to the Commissioner of Wealth-tax (Appeals). The Tribunal has asked the appellate authority to consider afresh the assessee''s request for raising an additional ground pertaining to this aspect.

3. So far as question No. 3 is concerned, it is based upon a misapprehension. The assessee is under the impression that the value of the said asset has been included in his wealth. The very fact that the question relating to the exclusion of the said asset has been remanded by the Tribunal to the appellate authority shows that it has not been included in the wealth of the assessee. That question

 

will arise after the Commissioner of Wealth-tax (Appeals) decides the issues remanded to him. This question cannot, therefore, be referred.

4. So far as question No. 4 is concerned, we are of the opinion that this question of law does arise from the order or the Tribunal and it ought to be referred to this court.

5. We see no substance in question No. 5 inasmuch as the property first came into the hands of the assessee and then several years later it was sold.

6. Question No. 6 is covered by question No. 4 and need not be referred separately. Same is the position with respect to question No. 7. Question No. 8 is consequential to the answer to question No. 4 and may be referred.

7. Question No. 9 cannot be said to arise from the order of the Tribunal because no such contention appears to have been raised before the Tribunal.

8. Question No. 10 does not really arise in respect of the assessment year 1977-78 and subsequent years inasmuch as the Tribunal has directed that the value of the said property may be excluded from the net wealth of the assessee on the basis that this property was gifted in January, 1975. At the same time, this property has not been excluded in the year 1976-77. Hence, question No. 10 is referred but confined to the assessment year 1976-77. So far as questions Nos. 11 and 12 are concerned, they cannot be treated as questions of law arising from the order of the Tribunal. There is no occasion, therefore, to refer the said question.

9. In the result, these applications are allowed in part. Questions Nos. 4, 8 and 10 as mentioned above are directed to be stated u/s 27(3) of the Wealth-tax Act. In other respects, the applications are dismissed.

 