(1980) 09 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 22 of 1980

Onkarji Kasturchand (HUF) APPELLANT

Vs

Wealth Tax Officer, "D" Ward and Others RESPONDENT

Date of Decision : 20-09-1980

Acts Referred:
Wealth Tax Act, 1957 — Section 14(2), 16A(1)

Citation : (1982) 135 ITR 188 : (1981) 5 TAXMAN 229

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : M.S. Choudhary, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

Sohani, J.—This is a petition under Article 226 of the Constitution.

2. The material facts giving rise to this petition briefly are as follows : The petitioner is an HUF and is an assessee under the W.T. Act, 1957, hereinafter called the Act. For the assessment year 1975-76, the assessee filed its return of net wealth on 13th March, 1979, but before the filing of that return a reference was made by the WTO on 12th December, 1977, u/s 16A of the Act, regarding the valuation of "Smriti Talkies" owned by the assessee. The petitioner contends that on the date when the reference was made, the petitioner had not filed its return for the assessment year 1975-76, nor any notice was served on the petitioner to file a return for that year, and as no assessment of the petitioner for the assessment year 1975-76 was pending when reference to the Valuation Officer was made by the WTO, the reference was premature and the reference as well as the subsequent proceedings before the Valuation Officer deserve to be quashed.

3. In the return filed on behalf of the respondents, the fact that the return of wealth for the assessment year 1975-76 was filed by the petitioner on 13th March, 1979, is not denied. It is also not denied that the assessment of the petitioner for the assessment year 1975-76 was not pending when the reference

was made by the WTO to the Valuation Officer. It was, however, contended that the reference to the Valuation Officer in the instant case was under the provisions of Section 16A(1)(b)(ii)of the Act and hence it was not necessary that the assessment should have been pending when the WTO proceeded to make a reference to the Valuation Officer.

4. The short question for consideration in the case is whether a valid reference can be made to the Valuation Officer by the WTO if the assessee''s assessment for the year in question is not pending at the time when the reference is made. The relevant provisions of Section 16A of the Act, dealing with reference to a Valuation Officer, read as under :

"16A. (2) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth-tax Officer may refer the valuation of any asset to a Valuation Officer.

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Wealth-tax Officer, is of opinion--

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do."

5. A bare reading of the aforesaid provision is sufficient to indicate that the jurisdiction to make a reference to a Valuation Officer is conferred on a WTO "for the purpose of making an assessment". The provisions of Clause (b)(ii) of Section 16A(1) of the Act are also governed by the opening words of Section 16A(1) of the Act--"For the purpose of making an assessment". Proceedings for making an assessment under the Act commence when a return is made or a person fails to make a return in response to a notice u/s 14(2) of the Act. When the assessment of the petitioner for the year 1975-76 was admittedly not pending before the WTO, he had no jurisdiction to make a reference to the Valuation Officer, and the reference and the subsequent proceedings before the Valuation Officer must be held to be without jurisdiction and are liable to be quashed on this ground. In this view of the matter, it is not necessary to consider the further question raised in the petition as to whether the valuation made by the Valuation Officer was or was not in accordance with law and the principles of natural justice. "We refrain from expressing any opinion in that behalf. We would also like to make it clear that the WTO shall be at liberty to make a reference to the Valuation Officer afresh, in accordance with law, for the purpose of making an assessment on the petitioner for the assessment year 1975-76.

6. For all these reasons, this petition is allowed with costs. The order of reference dated 12th December, 1977 (annex. R/l), the subsequent proceedings before the Valuation Officer and the order dated 17th November, 1979, passed by the Valuation Officer (annex. R/2) are all quashed. Counsel''s fee Rs. 200 (two hundred), if certified. The outstanding amount of security deposit shall be refunded to the petitioner.