(1990) 06 KL CK 0051

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 19 and 20 of 1988

P.V. Jacob APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 26-06-1990

Acts Referred:

Citation : (1991) 192 ITR 196

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : B. Krishnamoni, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of an assessee to wealth-tax, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in confirming the order of the Appellate Assistant Commissioner ?"

2. The applicant is an assessee to wealth-tax. The question of law posed herein relates to the assessment years 1974-75 and 1975-76. The relevant valuation dates are March 31, 1974 and March 31, 1975. The respondent is the Revenue. The assessee returned a net wealth of Rs. 5,28,800 and Rs. 3,86,058, respectively, for the assessment years 1974-75 and 1975-76. The assessee is a partner in M/s. Varkey Jacob and Co. with 3/5ths share. The firm had taken on lease a rubber estate. The estate was acquired by the State of Kerala under the Land Acquisition Act. The Wealth-tax Officer found that an amount of Rs. 9,25,000 was awarded to the firm towards compensation for surrendering their leasehold right in the estate. The firm had not accepted the award. It had initiated proceedings claiming additional compensation in the sum of Rs. 6,67,000 and a solatium of Rs. 1,03,000. The total additional amount so demanded by the firm in the land acquisition proceedings amounts to Rs.

7,70,000. Taking note of this, the Wealth-tax Officer determined the net wealth of the assessee by adding 3/5ths of the said amount of Rs. 7,70,000 claimed by the firm to the net wealth of the assessee, i.e., a sum of Rs. 4,62,000 for the assessment year 1974-75 and Rs. 4,75,000 for the assessment year 1975-76. The assessment orders are dated January 3, 1979. Subsequently, additional compensation was awarded by the District Judge by a judgment dated January 30, 1980. At that time, the appeals filed by the assessee were pending before the Appellate Assistant Commissioner. In the appeals, the assessee contended that the Government had objected to the enhanced compensation awarded by the District Court and that the appeal is pending in the High Court. Even so, the Appellate Assistant Commissioner, by order dated July 27, 1982, held that, according to the award already given, the assessee is entitled to the compensation as worked out by the Wealth-tax Officer. However, he held that, in case, at a later stage, the High Court reduced the compensation payable, the assessee may approach the Wealth-tax Officer for reduction of the original assessments. The assessee carried the matter by way of further appeals before the Appellate Tribunal. The assessee was not represented before the Appellate Tribunal. The Appellate Tribunal, while upholding the order of the Appellate Assistant Commissioner, held that in case of any variation by the High Court regarding the additional compensation granted, it is open to the assessee to approach the Wealth-tax Officer for suitable modification in the original assessments on the basis of the judgment of the final court. On the merits, it was held that the Wealth-tax Officer was justified in reckoning the additional amount claimed by way of compensation in determining the total assets. It is thereafter at the instance of the assessee that the question of law formulated hereinabove has been referred for the decision of this court.

3. We heard counsel. In the light of the decision of the Supreme Court in Commissioner of Income Tax, West Bengal-II, Calcutta Vs. Hindustan Housing and Land Development Trust Ltd., , on the facts of this case, the enhanced compensation accrues or arises only when the court finally accepts the claim. Till the enhanced compensation is judicially determined by the final court, the matter is in a flux. Till then, the enhanced compensation, either claimed by the assessee or awarded by the first court, which is pending in appeal in the High Court, cannot be reckoned as an asset for the purpose of wealth-tax. The contrary view taken by the Wealth-tax Officer, the Appellate Assistant Commissioner and the Appellate Tribunal is clearly erroneous.

4. However, on the facts of this case, due to subsequent events, the direction given by the Appellate Assistant Commissioner and upheld by the Appellate Tribunal will meet the ends of justice and it may not be necessary for this court to pronounce about the legality of the determination of the assets on the respective valuation dates. As stated, the enhanced compensation was awarded by the District Court by its judgment dated January 30, 1980. The State took up the matter in appeal before the High Court. It was numbered as L. A. A. No. 247 of 1980. A claim was raised based on the Land Acquisition (Amendment) Act,

1984, also. Evaluating all the contentions, this court modified the award substantially by its judgment dated January 28, 1987. We are not informed that either the assessee or the State has taken up the matter in further appeal before the Supreme Court of India.

5. In the light of the subsequent judgment of this court in L. A. A. No. 247 of 1980, all that is necessary is to hold that it is the duty of the Wealth-tax Officer to give effect to the judgment passed by this court in L. A. A. No. 247 of 1980, dated January 28, 1987, and recalculate or recompute the net wealth for the two assessment years 1974-75 and 1975-76. The assessee shall produce a copy of the judgment rendered in L. A. A. No. 247 of 1980 before the concerned Wealth-tax Officer. He shall give effect to the said judgment as directed by the Appellate Assistant Commissioner and as affirmed by the Appellate Tribunal. It is open to the assessee to raise all his pleas regarding the determination of the net wealth as on the respective valuation dates.

6. We, therefore, answer the question referred to us in a modified form. In the light of the subsequent judgment of this court in L. A. A. No. 247 of 1980 dated January 28, 1987, the Wealth-tax Officer shall amend the assessments accordingly. The direction given by the Appellate Assistant Commissioner and confirmed by the Appellate Tribunal is valid. In this perspective, we answer the question referred to us in the affirmative.

7. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.