

(1983) 11 BOM CK 0024

In the Bombay High Court

Case No : Miscellaneous Petition No. 2078 of 1979

Rukminidevi Jalan

APPELLANT

Vs

Wealth Tax Officer, Circle-IX (Central), Bombay and another

RESPONDENT

Date of Decision : 23-11-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 25(1)

Citation : (1984) 39 CTR 141 : (1985) 153 ITR 223 : (1984) 17 TAXMAN 62

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filed under article 226 of the Constitution of India, the petitioner is challenging the legality of the order dated February 28, 1979, passed by the Commissioner of Wealth- tax, Central-I, Bombay, in exercise of the powers under s. 25(1) of the W.T. Act, 1957.

2. The facts leading to the passing of the impugned order are as follows : The petitioner is assessed as an individual, both under the I.T. Act, 1961, as well as W.T. Act, 1957, for the last number of years. The petitioner became a partner in M/s. Ramkumar Jalan after the death of her husband, the Late Gajanand Jalan, in September, 1953. The petitioner filed returns under the W.T. Act for the assessment years 1957-58 to 1962-63 and in the said wealth-tax returns, the petitioner showed her interest in M/s. Ramkumar Jalan, as a partner. The WTO, while assessing the petitioner under W.T. Act, included a sum of Rs. 26,39,427 in the assets of M/s. Ramkumar Jalan, being the amount of disclosed income of the partners of M/s. Ramkumar Jalan for the years 1940 to 1946. The WTO also included the interest amount credited by Narayan Hosiery Private Limited in their books of account to the account of M/s. Ramchandra Ramkumar on the relevant valuation date. The assessment orders were completed in respect of the assessment years on July 18, 1975. The petitioner, feeling aggrieved, preferred appeal before the AAC. The AAC by an order dated July 2, 1976, allowed the appeals in part. The AAC, however, rejected the contention of the petitioner that

the principal amount of Rs. 26,39,427 and interest amount of Rs. 16,96,445.76 were wrongly added by the WTO to the assets of M/s. Ramkumar Jalan while computing the petitioner's share in the firm. The AAC, while reaching this conclusion, followed the order of the Income Tax Appellate Tribunal, in the case of Tolaram Jalan, another partner of M/s. Ramkumar Jalan.

3. The petitioner, feeling aggrieved by the order of the AAC, filed an application under s. 25(1) of the W.T. Act on June 22, 1977, before the Commissioner of Wealth-tax (Central), Bombay, claiming that the sum of Rs. 26,39,427 and Rs. 16,96,445.76 be deleted for the purposes of computing the value of the share of the petitioner as partner in the firm of M/s. Ramkumar Jalan. The petitioner, in the alternative, prayed that the amount of Rs. 15,70,547, being the amount of Income Tax paid on the sum of Rs. 26,39,427, be allowed as a deduction up to the date of payment of the said taxes. It was also claimed that the amount of Rs. 26,39,427 was not properly apportioned between the partners inasmuch as it was done according to the partnership deed in existence on the date of valuation. By the impugned order, the Commissioner of Income Tax, Central-I, Bombay, rejected all the petitions in respect of the relevant assessment years by a consolidated order, and that order is under challenge.

4. Shri Dwarkadas, learned counsel appearing in supported of the petition, reiterated the same contentions urged before the officer exercising power under s. 25(1) of the W.T. Act. It was urged that the amount of Rs. 19,33,841 should not have been included in the wealth of the assessee in the assessment years 1957-58 to 1962-63, as it does not form part of the wealth. The Commissioner has pointed out that the same contention was advanced before the Income Tax Tribunal in the case of another partner, that is, Tolaram Jalan, and the Tribunal rejected the contentions by an order dated May 31, 1976. The Tribunal included that amount in the wealth of that assessee for the assessment years" 1957-58 to 1962-63, and the Commissioner accepted the reasoning and the conclusion recorded by the Tribunal. Shri Joshi, learned counsel appearing on behalf of the Revenue, submits, and in my judgment with considerable merit, that it is not permissible to disturb the order of the Commissioner under s. 25(1) of the W.T. Act, in exercise of the writ jurisdiction.

5. Shri Dwarkadas also urged that although interest was duly allowed in Narayan Hosiery Limited on the sum of Rs. 19,33,841, this was not entered in the books of M/s. Ramkumar Jalan, and, further, the interest amount was also disallowed in the hands of Narayan Hosiery Limited. The learned counsel submitted that there was a settlement with the Department and the assessment of M/s. Ramkumar Jalan was reopened, and it was agreed that the interest may be disallowed in the hands of Narayan Hosiery Limited but should not be taxed in the hands of Ramkumar Jalan. It was urged that the WTO should not have added 1/7th share of interest while computing the wealth of that assessee for the relevant year. The Commissioner point out that the Tribunal, while deciding the case of Tolaram Jalan, has turned down the contention and rightly so.

6. Shri Dwarkadas also submitted that against the order of the Tribunal in Tolaram Jalan's case, miscellaneous applications were filed to rectify the order of the Tribunal on the ground that it suffers from a mistake apparent on the face of record, but the application was turned down on the ground that there was no merit in the application. Shri Dwarkadas urged that the Commissioner, in the present case, declined to apply his own mind to the contentions urged before him but has merely followed the order passed by the Tribunal in the case of Tolaram Jalan, and, therefore, the order of the Commissioner suffers from serious infirmity. In my judgment, the submissions urged in this petition are entirely devoid of any merit. In exercise of jurisdiction under article 226 of the Constitution of India, it must be remembered that this court is not sitting as an appellate authority, and it is not open for this court to disturb the impugned order and its own conclusion. In my judgment, the Commissioner did not blindly follow the order of the Tribunal but accepted the reasoning and the conclusions recorded by the Tribunal as correct. The order passed by the Commissioner under s. 25(1) of the W.T. Act is not applicable, and, in my judgment, it is not permissible to disturb the same in these proceedings.

7. Accordingly, the petition fails and the rule is discharged with costs.