(1996) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : MCC No. 422 of 1990

SMT. ANGADBAI — APPELLANT

Vs

COMMISSIONER OF WEALTH TAX. — RESPONDENT

Date of Decision : 22-03-1996

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 27(1)

Citation : (1997) 141 CTR 256 : (1996) 89 TAXMAN 611

Judgement

This is a reference under s. 27(1) of the WT Act at the instance of the assessee and following questions of law have been referred by the Tribunal for answer by this Court :

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the issue in question for fresh adjudication ?

(2) Without prejudice to the foregoing whether setting aside by the Tribunal of the matter for fresh determination by the WTO amounted to interference by the Tribunal in the discretion vested on the WTO by s. 16A of the WT Act ?

2. Brief facts which are necessary for answering this reference are that the assessee had 11.315 acres of land out of which she sold 0.43 acres for a sum of Rs. 53,050 in the asst. yr. 1977-78 and thus the balance remained with her was 10.785 acres. Out of this balance the assessee further sold 0.175 acres in the asst. yr. 1978-79 for Rs. 18,500 and the balance was 10.61 acres out of which she again sold 0.80 acres for Rs. 70,150 and the balance in the asst. yr. 1979-80 remained with the assessee was 9.81 acres. The WTO estimated the value of the land in each of the four years at rupees nine lacs.

3. In appeal, the CWT(A) determined the value of land at Rs. 1,25,000 in the asst. yr. 1977-78, at Rs. 1,75,000 in the asst. yr. 1978-79, Rs. 2,00,000 in the asst. yr. 1979-80 and Rs. 2,75,000 in the asst. yr. 1980-81 as against the valuation made by the WTO at Rs. 9,00,000. The Department filed appeal before the Tribunal and the Tribunal set aside the orders of the lower authorities and

restored the matter to the file of the WTO for making fresh assessments and to redetermine the value of the land in accordance with law. Thereafter the assessee approached the Tribunal for making a reference and hence, the aforesaid two questions of law have been referred for answer by this Court.

4. We have gone through the order of the Tribunal. The Tribunal has nowhere impinged on the discretion of the WTO conferred under s. 16A. It is the discretion of the WTO to call for the valuation report from the Valuation Officer; but it is a pure discretion and the Tribunal was conscious of the discretion of the WTO and it examined the matter in detail and found that on question of facts, the matter needs to be reexamined by the WTO. While directing remand, the Tribunal has directed that any observations made by it shall not mean to be directions to the WTO to call for the report of the Valuation Officer. It has been directed as under :

"It may be made clear that he may not influence in his opinion by any of our observations for making reference to the Valuation Officer for determining the value of the land and may form his own opinion to determine if it is necessary to make the reference to the Valuation Officer."

5. Shri Nema, learned counsel for the assessee contended that under s. 16A(1)(a) of the Act, the Tribunal could not have directed the WTO, how to exercise his discretion. It is true that in the matter of discretion of the concerned authority, no one else can regulate the discretion but if the discretion has not been properly exercised, there is no prohibition to the appellate authority to set aside the order and remand the case to the concerned authority for reconsidering the same in accordance with law. The appellate authority has full power to set aside the order or to remand the case, to reduce or enhance the tax liability. There is no dispute about the powers of the appellate authority. In the present case, the appellate authority has exercised the power and remanded the case to the WTO to re-determine the value of the property, and we are of the opinion that the view taken by the Tribunal is justified. Hence, both the questions are answered against the assessee and in favour of Revenue.