
(1999) 07 MP CK 0057

In the Madhya Pradesh High Court

Case No : Income-tax Reference No. 65 of 1996

Smt. Arunadevi Baheti

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 20-07-1999

Acts Referred:

Citation : (2000) 241 ITR 622

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Division Bench

Advocate : H.C. Sarda, for the Appellant; S.K. Pawnekar, for the Respondent

Judgement

B.A. Khan, J.—Whether the Income Tax Appellate Tribunal could entertained a new plea/ground though on the same subject-matter which did not arise out of the orders passed by the Revenue forums below, is the interesting question raised in this reference.

2. The Revenue has submitted a statement of case for the opinion of this court on the following two questions :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in entertaining the new ground which did not arise out of the order of the Appellate Assistant Commissioner and also out of the assessment order of the Wealth-tax Officer ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the Revenue to raise altogether a new point that the property consisted of two houses and not one as was accepted by the wealth-tax appellate authority ?"

3. The facts giving rise to this matter are that the assessee owned a house at No. 568, M. G. Road, Khandwa. The Wealth-tax Officer valued it at Rs. 6,58,800 for the assessment year 1984-85 for assessment of wealth-tax and declined to grant exemption u/s 7(4) of the Act, on account of a portion of it being claimed to be

self-occupied. The assessee objected to this and filed a report of the registered valuer valuing the property at Rs. 1,50,200. His objection was overruled and the Wealth-tax Officer assessed the value of the house at Rs. 6,58,800 and allowed exemption of Rs. 1 lakh u/s 5(1)(iv) of the Act.

4. The assessee took an appeal against this order and the Appellate Assistant Commissioner found him entitled to exemption u/s 7(4) and valued the remaining portion of the house at Rs, 1,38,800. The Revenue felt aggrieved by this and took an appeal before the Tribunal where it contended that the property consisted of two houses and not one which were separate and independent. On consideration of the matter the Tribunal quashed the order of the Appellate Assistant Commissioner and remanded the matter to the Wealth-tax Officer for reassessment. While doing so it observed as under :

"On consideration of the arguments of the parties and the documents on record, we are of the opinion that the tax authorities below missed the vital facts as to whether the property consisted of two separate and independent houses or is one house. Both the houses are no doubt connected by a bridge over the public road but thereby it cannot be conclusively said that they constitute one house. It is necessary to decide this point since the finding on this point will have far reaching effect, namely, whether the assessee is entitled to the benefit of Section 7(4) in respect of any accommodation in her possession for residential use in both the houses and she is entitled to exemption u/s 5(1)(iv) in respect of the houses if they are found to be quite separate and independent."

5. The assessee thereafter sought a reference of the abovestated questions and that is how we are seized of the matter.

6. The assessee's primary submission is that since the issue of property comprising two houses was not raised before the Wealth-tax Officer and the Appellate Assistant Commissioner by the Revenue, it should not have been so raised before the Tribunal and that should not have been entertained by the Tribunal. In other words, it is canvassed that the Tribunal lacked the jurisdiction to entertain the fresh plea by the Revenue resulting in remand of the matter to the Wealth-tax Officer for reassessment. Reliance in this regard is placed on Section 24(2) of the Wealth-tax Act and a Division Bench judgment of this court in *Hukumchand and Mannalal Co. Vs. Commissioner of Income Tax*, and the Full Bench judgment of the Andhra Pradesh High Court in *Commissioner of Income Tax Vs. Late Begum Noor Banu Alladin and Another*, . It was submitted by Mr. Sarda, learned counsel for the assessee that an appeal by the Revenue would lie to the Tribunal u/s 24(2) of the Act only where the Commissioner was not satisfied as to the correctness of any order passed amongst others by the Appellate Assistant Commissioner. According to him, since the issue of property comprising two houses was neither raised nor dealt with before the Assessing Officer or the Appellate Assistant Commissioner, the Commissioner could not have reached any satisfaction on this issue and could not have directed the filing of appeal against the orders passed by the Appellate Assistant Commissioner. It

was also asserted by him that the above cited judgments laid down that any plea or ground not taken or dealt with by the Revenue forums below could not be entertained by the Tribunal.

7. Mr. Sarda's submissions are wholly misconceived or misdirected. Section 24 of the Act provides for an appeal against orders passed by some Revenue forums. It is true that its Sub-section (2) says that the Commissioner may direct filing of appeal to the Appellate Tribunal in case he was not satisfied as to the correctness of any order passed by a DCA or a Commissioner (Appeals) u/s 23, but, that by no logic could be construed to mean that a new plea or ground related to the same subject-matter could not be taken before the Tribunal. This provision has nothing to do with the point in issue raised in this reference and only deals with the situation where the Commissioner could direct filing of appeal before the Tribunal if he was not satisfied as to the correctness of any order passed by the prescribed Revenue forums.

8. The reliance placed by learned counsel on the two judgments supra is equally misplaced. As a matter of fact when we read between the lines both the judgments rule that there is no hurdle against a new ground or new plea being taken before the Tribunal touching the same subject-matter. In Commissioner of Income Tax Vs. Late Begum Noor Banu Alladin and Another, , the Full Bench of the Andhra Pradesh High Court observed as under (head-note) :

"The subject-matter of appeal before the Tribunal cannot be anything different from the subject-matter before the Appellate Assistant Commissioner and necessarily it should be something which arises out of the determination made by the Appellate Assistant Commissioner. However, there is no taboo against raising a new ground or a new plea touching the same subject-matter."

9. In the other judgment rendered by a Division Bench of this court in Hukumchand and Mannalal Co. Vs. Commissioner of Income Tax, , it was observed on similar lines as under :

"The subject-matter of the appeal before the Tribunal can only be the decision express or implied of the Appellate Assistant Commissioner and the jurisdiction of the Tribunal is restricted to the subject-matter of appeal. Once the subject-matter of the appeal is determined, the Tribunal has very wide powers to deal with all questions of fact and law pertaining to that subject-matter of appeal and it can allow a new question of law to be raised in support of the same claim for relief..... It has wide powers to allow the party to add to or alter the grounds of appeal"

10. In the present case the subject-matter of appeal before the Tribunal remained the same, viz., whether valuation made by the Wealth-tax Officer and the Appellate Assistant Commissioner was justified in the facts and circumstances of the case. However, the Tribunal noticed that both the forums below had missed vital facts as to the nature of property. It may as well be that the plea of the property comprising two houses was taken for the first time

before the Tribunal but this did not constitute a separate subject-matter than the one under appeal. Therefore, even if it was to be treated as a new plea or ground, touching the subject-matter of appeal to that extent the Tribunal was justified in entertaining it and remanding the matter to the Wealth-tax Officer for reassessment. Such a course could not be said to be causing any prejudice to the assessee. Nor can it be said or held that he was taken by any surprise in the matter causing any prejudice to him in the process.

11. We accordingly hold that the Tribunal was justified in entertaining the plea/ground raised by the Revenue so long as it touched the subject-matter of appeal before it and since it did not cause any prejudice to the assessee in the process. The two questions referred are accordingly answered in the affirmative and this reference is disposed of accordingly.