
(2000) 07 DEL CK 0115

In the Delhi High Court

Case No : WT Ref. No's. 5 and 6 of 1981 7 July 2000 A.Y. 1969-70 and 1970-71

SOHAN LAL

APPELLANT

Vs

COMMISSIONER OF WEALTH TAX

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Citation : (2000) 162 CTR 363

Hon'ble Judges : Arijit Pasayat, C.J;D.K. Jain, J

Bench : Full Bench

Advocate : None, for the Assessee Ms. Prem Lata Bansal, for the Revenue, for the Appellant;

Judgement

Arijit Pasayat, C. J.

Since questions referred in these two reference applications are identical, this common judgment will dispose of both the references.

2. On being moved by the assessee, the Income Tax Appellate Tribunal, Delhi Bench-B (hereinafter referred to as "the Tribunal"), u/s 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"), has referred the following question for opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the order of the Commissioner of Wealth Tax was not without jurisdiction and was valid in law?"

3. The factual position, as set out in the statement of the case, is as follows :

Assessee filed returns of wealth for the assessment years 1969-70 and 1970-71 for which the corresponding valuation dates were 31-12-1968, and 31-12-1969, respectively. On these dates the assessed held shares in different companies of the values of Rs. 7,58,791 and Rs. 7,58,801, respectively. Assessment were originally completed. Subsequently, the Commissioner of Wealth Tax examined the records and formed an opinion that orders of the assessing officer for both

these years were erroneous and prejudicial to the interest of the revenue. He, Therefore, issued notices to the assessed calling upon him to show-cause why the valuation of shares should not be determined in accordance with rule 1D of the Wealth Tax Rules, 1957 (hereinafter referred to as "the Rules"). It was also pointed out that in the case of investment companies, the market value is the break-up value estimated in accordance with rule 1D or the value arrived at on the basis of maintainable profits, whichever is higher. Jurisdiction of the Commissioner of Wealth Tax to issue notice was questioned by the assessee. However, the Commissioner of Wealth Tax felt that orders passed by the Wealth Tax Officer were not only erroneous but also prejudicial to the interest of the revenue. Accordingly, orders of the Wealth Tax Officer were set aside. The matter was carried in appeals before the Tribunal. It upheld the conclusions of the Commissioner of Wealth Tax. It was specifically noted by the Tribunal that Circular No. 2(WT) of 1967 was applicable to the facts of the case. assessor's appeals were, Therefore, dismissed. On being moved by the assessee, aforesaid question has been referred for opinion of this court.

4. There is no appearance on behalf of the assessed in spite of service of notice. We have heard learned counsel for the revenue .

5. What constitutes an erroneous order which is prejudicial to the interest of the revenue has been dealt with by various courts including the Apex Court. In *Malabar Industrial Co. Ltd. v. CIT* (2000) 243 ITR 83 (SC) the matter was again examined by the Apex Court and it was observed as follows :

"The phrase "prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the assessing officer. Every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interests of the revenue. For example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the assessing officer accepting the same as such will be erroneous and prejudicial to the interests of the revenue . ""

6. The scope of interference u/s 263 is not to set aside merely unfavourable orders and bring some more revenue. The object is not to get at sheer escapement of revenue. Several factors have to be kept in view and features noticed before power u/s 263 can be exercised. In the first place, Commissioner may call for and examine records of any proceeding under the Act. This course does not require recording of reasons. The second feature is that he may consider that any order passed under the Act by the assessing officer is erroneous so far as it is prejudicial to the interest of revenue . If after calling for

and examining the records Commissioner "considers" that the order of the assessing officer is erroneous, insofar as it is prejudicial to the interest of revenue, then the third feature becomes operative. After first two administrative stages, the third stage is quasi-judicial in nature. The fourth feature is the power of the Commissioner to enhance, modify the assessment or cancel the assessment directing fresh assessment. For making a valid order, it is essential that Commissioner has to record an express finding to the effect that the order sought to be revised is erroneous as well as prejudicial to the interest of revenue . The expression "prejudicial to the interests of the revenue " has not been defined. But it means that the orders of assessment sought to be revised are such as are not in accordance with law, in consequences whereof the lawful revenue due to the state have not been realised or cannot be realised. The jurisdiction of the Commissioner to proceed u/s 263 is not dependent on the fulfillment of any condition precedent. He is not required to give any notice before assuming the jurisdiction under the provision and commencing the enquiry. All that he is required to do, before reaching his decision and not before commencing his inquiry, is to give the assessed an opportunity of being heard and make or cause to make such inquiry as he deems necessary. These requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the question of natural justice. See CIT v. Electro House (1971) 82 ITR 824 (SC).

7. Considering in the light of legal principles set out above, inevitable conclusion is that the Tribunal has rightly held the Commissioner of Wealth Tax's order to be legal and proper and, Therefore, our answer to the question referred is in the affirmative i.e., in favor of the revenue and against the assessee.