(1991) 02 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 622 of 1980

V. K. JAIN APPELLANT

Vs

WEALTH-TAX OFFICER AND ANOTHER. RESPONDENT

Date of Decision : 06-02-1991

Acts Referred:

Citation : (1992) 193 ITR 89 : (1992) 60 TAXMAN 69

Hon'ble Judges : B. P. Jeevan Reddy, C.J;B. P. Jeevan Reddy C. J., J

Bench : Division Bench

Final Decision : Allowed

Judgement

The judgement of the court was delivered by

B. P. JEEVAN REDDY C. J. - This writ petition is directed against a notice issued u/s 16A(2) of the Wealth-tax Act by the Valuation Officer, Circle I, Income Tax Department, Kanpur, to the petitioner. The petitioner says that he has not been served with a copy of the order made by the Wealth-tax Officer under sub-section (1) of section 16A, and that all that he has been served with is the aforesaid notice from the Valuation Officer. The impugned notice proposes to determine the market value of the assets, mentioned therein as on March 31, 1969, to March 31, 1978, except March 31, 1973.

In this writ petition, we are concerned with five assessment years, namely, 1969-70, 1974-75, 1975-76, 1977-78 and 1978-79. The valuation dates for all these five assessment years are clearly covered by the notice aforesaid. The ground on which the petitioner challenges the said notice is that (i) for the first three assessment proceedings were concluded long ago, (ii) with respect to the subsequent two assessment years, he did not file a return not were any proceedings taken either u/s 14, section 17 or any other provision of the Act. He, therefore, says that reference to the Valuation Officer under sub-section 16A(1) or the notice issued by the Valuation Officer under sub-section (2) of section 16A is totally without jurisdiction, the Wealth-tax Officer has issued a notice u/s 17 of the Act assessment years concerned herein.

Sub-section (1) and (2) of section 16A read as follows at the relevant time :

"(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, where under the provisions of section 7 read with the rule made under this Act or, as the case may be, the rules in Schedule iii, the market value of any asset is to be taken into account in such assessment, the Assessing Officer may refer the Valuation Officer :

(a) in a case were the value of the asset as returned is in accordance with the estimate made by the registered valuer, if the Assessing Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Assessing Officer is of opinion -

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances. It is necessary so to do.

(2) For the purpose of estimating the value of any asset in pursuance of a reference under sub-section (1), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require."

A reading of sub-section (1) shows that a reference to the valuation Officer can be made only for the purpose of making an assessment. One there is no assessment proceeding pending before the Wealth-tax Officer, there is no power to make such a reference. Since it is admitted in the counter-affidavit that no assessment proceedings were pending for these five assessment years on the date of reference to the Valuation Officer u/s 16A(1) or on the date the Valuation Officer issued the impugned notice, both the reference u/s 16A(1) and the impugned notice issued by the Valuation Officer under sub-section (2) must be held to be incompetent and invalid. They are, accordingly, quashed.

The writ petition is accordingly allowed. No costs.

