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(1987) 63 CTR 156 : (1987) 168 ITR 82 : (1987) 34 TAXMAN 364

Madhya Pradesh High Court

Case No: M.C.C. No. 300 of 1984

M.	APPELLANT
Vs	
KIBE v.	
COMMISSIONER OF WEALTH-TAX.	RESPONDENT

Date of Decision: March 13, 1987

Citation: (1987) 63 CTR 156 : (1987) 168 ITR 82 : (1987) 34 TAXMAN 364

Hon'ble Judges: Sohani, J

Bench: Division Bench

Judgement

SOHANI J. - By this reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion.

"Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the appellate Assistant Commissioner had jurisdiction to direct the Wealth-tax Officer to refer the matter to the Valuation Officer as provided by section 16A of the Wealth-tax Act, 1957 ?"

The material facts giving rise to this reference, briefly, are as follows :

The assessee is a Hindu undivided family and the assessment years in question are 1975-76 and 1976-77. Partly aggrieved by the orders of assessment passed by the Wealth-tax Officer, the assessee preferred appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner set aside the orders of assessment passed by the Wealth-tax Officer and remanded the matter to the Wealth-tax officer for making a fresh assessment. The Wealth-tax officer was also directed to refer the valuation of the immovable property to the Valuation Officer before framing the assessment afresh. Aggrieved by that order, the assessee preferred an appeal before the Appellate Tribunal. It was urged before the Tribunal on behalf of the assessee that the

Appellate Assistant Commissioner erred in giving direction to the Wealth-tax Officer to refer the question of valuation to the Valuation Officer. This contention was not upheld by the Tribunal which dismissed the appeal. Hence, at the instance of the assessee, the aforesaid question of law has been referred by the Tribunal to this court for its opinion.

Shri Chaphekar, learned counsel for the assessee, contended that though the Appellate Assistant Commissioner had jurisdiction to remand the matter to the Wealth-tax Officer for making a fresh assessment, no direction could be given to the Wealth-tax Officer by the Appellate Assistant Commissioner to refer the question of valuation of the property in question to the Valuation Officer u/s 16A of the Act. It was contended that in making an order of assessment, the Wealth-tax Officer was required to discharge quasi-judicial functions, that for making reference to the Valuation Officer u/s 16A of the Act, the Wealth-tax Officer had to form the requisite opinion as required by that provision and that the Appellate Assistant commissioner could not direct the Wealth-tax Officer to form the requisite opinion.

In reply, Shri, Mukati, learned counsel for the Revenue, contended that the powers of the Appellate Assistant Commissioner u/s 23(5) of the Act were very wide, that he could pass any order that he thought fit and that the Tribunal was, therefore, justified in holding that the Appellate Assistant Commissioner had jurisdiction to direct the wealth-tax Officer to refer the matter of valuation to the Valuation officer as provided by section 16A of the Act.

Before we proceed to appreciate the contentions advanced on behalf of the parties, it would be useful to refer to the relevant provisions of the Act. Section 7 of the Act lays down that the value of any asset, other than cash, for the purposes of the Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. Section 16A of the Act provides for a reference to the Valuation Officer. Sub-section (1) of section 16A of the Act reads as under :

"16A. Reference to Valuation Office. - (1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of the coming into force of this section) under this Act, the Wealth-tax officer may refer the valuation of any asset to a Valuation officer -

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

(b) in any other case, if the Wealth-tax 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."

Section 23 of the Act deals with appeals from the orders of the Wealth-tax Officer. The relevant provisions of section 23 of the Act for purposes of this reference are sub-sections (4) and (5) which read as under :

"(4) The Appellate Assistant Commissioner or, as the case may be, the Commissioner (appeals) may -

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal, not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Wealth-tax Officer or, as the case may be, the Valuation Officer.

(5) In disposing of an appeal, the Appellate Assistant commissioner or, as the case may be, the Commissioner (Appeals) may pass such order as he thinks fit which may include an order enhancing the assessment or penalty :

Provided that no order enhancing the assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement."

From a perusal of the aforesaid provisions, it is clear that the discretion as to whether the matter of valuation should or should not be referred to the Valuation Officer vests in the Wealth-tax Officer. The question as to whether the question valuation should or should not be referred to the Valuation officer has to be decoded in each case by the Wealth-tax Officer on the formation of the opinion that the value returned by the assessee is less than its fair market value. But in the absence of formation of an opinion by the wealth-tax Officer as provided by section 16A of the Act, no reference to the Valuation Officer can be made by the Wealth-tax Officer.

Now, it is well settled that while framing an order of assessment under a taxation law, the assessing authority exercises quasi-judicial functions. Where discretion is conferred on an authority exercising quasi-judicial functions, that authority to exercise or not to exercise that discretion. For the purpose of making a reference to the Valuation Officer u/s 16A of the Act, the Wealth-tax Officer has to form the requisite opinion as required by section 16A. That he should form such an opinion cannot be dictated to him by the appellate authority. Our attention was invited by learned counsel for the Revenue to the provisions of sub-section(4) of section 23 of the Act. It is true that the Appellate Assistant Commissioner could have caused further inquiry to be made by the Valuation Officer in case an inquiry was earlier made by him on reference by the Wealth-tax Officer. But when no such enquiry was earlier made by the Valuation Officer as no reference was

made to him u/s 16A of the Act by the Wealth-tax Officer, sub-section (4) of section 23 of the Act cannot be pressed into service. On the facts and in the circumstances of the case, the Tribunal, in our opinion, was not justified in holding that the Appellate Assistant Commissioner had jurisdiction to refer the matter to the Valuation Officer as provided by section 16A of the Act.

For all these reasons, our answer to the question referred to this court is in the negative and in favour of the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.