

(2004) 03 CAL CK 0001

Calcutta High Court

Case No: C. A. No. 306 of 2004 and A. W. T. No. 6 of 2003 with C. A. No. 307 of 2004 and A. W. T. No. 8 of 2003 and C. A. No. 304 of 2004 and A. W. T. No. 7 of 2003 11 March 2004.

Bhabi Properties (P) Ltd.

APPELLANT

Vs

Dy. Commissioner of Income Tax
and Others

RESPONDENT

Date of Decision: March 11, 2004

Acts Referred:

- Wealth Tax Act, 1957 - Section 18(1)(c)

Citation: (2004) 267 ITR 583 : (2004) 141 TAXMAN 64

Hon'ble Judges: Soumitra Pal, J; M.H.S. Ansari, J; M. H. S. Ansari, J

Bench: Full Bench

Advocate: Majumdar, for the assessee, for the Appellant;

Judgement

Soumitra Pal J.

Heard. Mr. Majumdar, the learned advocate for the applicant/assessee.

Since the issue involved is same, it is disposed of by a common order.

2. The assessee has filed applications for a stay of the penalty proceedings u/s 18(1)(c) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"), for the assessment years 1990-91, 1991-92 and 1992-93 initiated by the assessing officer and communicated to the assessee by letter dated December 8, 2003/January 15, 2004, being annexure P10 to the applications.

3. Mr. Majumdar submitted that the High Court admitted the appeals preferred by the assessee u/s 27A of the said Act against the order dated June 27, 2003, passed by the Tribunal for the assessment years 1990-91, 199192 and 1992-93, since it found that there were substantial questions of law arising out of the said orders of the Tribunal and the penalty proceedings initiated were relating to the same assessment years. It was submitted that since the said appeals are pending, penalty

proceedings initiated should be stayed pending hearing of the appeals. Reliance was placed on the judgments of the Apex Court in Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, ; Jaswant Rai and Another Vs. Central Board of Direct Taxes and Revenue and Others, and J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another,

4. We are of the view that the submissions of the learned advocate for the applicant are not tenable as the penalty proceedings initiated are distinct and separate from the regular proceedings under the said Act. Separate procedure for penalty has been laid down under the said Act. The " appeals pending on the file of this court are with respect to the questions of law arising out of the order of the Tribunal. The scope of the appeals is, therefore, limited to the determination of those questions of law arising out of the order of the Tribunal. The applications filed for stay of the penalty proceedings which do not arise or form part of the order of the Tribunal are, in our view, therefore, not maintainable. The judgments cited by learned counsel do not deal with this aspect of the matter and therefore have no relevance in the facts and circumstances of the case. Hence, the applications are dismissed as not maintainable.

5. This order shall not preclude the petitioner from taking such proceedings as are open to him in law and as he may be advised with respect to the said penalty proceedings.

However, in the facts and circumstances of the case, there shall be no order as to costs.

M. H. S. Ansari J.-I agree.

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