Commissioner of Wealth-Tax, Bombay, and Another

Vs

Mrs. Kasturbai Walchand and Others.

Civil Appeals Nos. 88 to 93 of 1974

(CJI R. S. Pathak, Rangath Misra JJ)

28.03.1989

JUDGMENT

R. S. PATHAK C.J.I. –

1. These appeals by special leave raise the question whether the High Court is right in holding that the proviso to sub-section (1) of section 25 of the Wealth-tax Act, 1957, cannot be invoked by the Revenue on the facts of this case.

The respondent is assessed in the status of an individual under the Wealth-tax Act, 1957, and these appeals relate to the assessment years 1958-59, 1959-60 and 1960-61, for which the corresponding valuation dates are March 31, 1958, March 31, 1959, and March 31, 1960, respectively.

The respondent is a shareholder in Walchand and Co. P. Ltd. On each of the three valuation dates, she held 140 shares in the company. For the purpose of assessment under the Wealth-tax Act, the respondent adopted the valuation of the shares at their break-up value with paid-up capital and reserves as there was no market quotation for those shares. When making the assessment orders for each of the there assessment years. The Wealth-tax Officer rejected the valuation of the shares as claimed by the respondent and estimated their value on the basis of capitalisation of profits at six per cent. for the assessment year 1960-61 and on the basis of the break-up value with certain modifications for the assessment years 1958-59 and 1959-60. The respondent appealed to the Appellate Assistant Commissioner of Wealth- tax and the Appellate Assistant Commissioner determined the value of the shares on the basis of capitalisation of the investment income at six per cent. and other income at twelve and a half per cent. He allowed the appeals of the respondent in part by separate orders dated November 10, 1961. The Commissioner of Wealth-tax preferred appeals to the Appellate Tribunal on the question relating to the valuation of the shares.

The Appellate Tribunal passed a consolidated order on July 23, 1963, dismissing the appeals for the three assessment years. It observed that the valuation of the shares of the company on the relevant valuation dates determined by two valuers, on arbitration, in the case of another assessee should be taken as the valuation in the case of this assessee also. The value of the shares, the Appellate Tribunal said, worked out to an amount much less than the valuation determined by the Appellate Assistant Commissioner and, therefore, the question of enhancing the value determined by the Appellate Assistant Commissioner did not arise. The Appellate Tribunal did not reduce the values determined by the Appellate Assistant Commissioners on appeals had been filed by the respondent. Meanwhile, however, during the pendency of the appeals before the Appellate Tribunal, the respondent preferred revision applications on June 29, 1962, under sub-section (1) of section 25 to the Commissioner of Wealth-tax in respect of the aforesaid assessment years and contended that the

valuation of the shares adopted by the Appellate Assistant Commissioner was unreasonable and excessive and should be duly modified. The Commissioner made an order dated August 12, 1964, rejecting the revision applications on the ground that they were incompetent in view of clause (b) of the proviso to sub-section (1) of section 25 of the Act. Against that orders the respondent filed a writ petition in the High Court of Bombay and contended that the Commissioner had erred in dismissing the revision application as incompetent. On October 10, 11, 1966, a learned single judge of the High Court allowed the writ petition holding the revision applications to be competent and, accordingly, directed the Commissioner to entertain and dispose of the revision applications in accordance with law. The Commissioner appealed to a Division Bench of the High Court and the appeal was dismissed on January 10, 1973.

The relevant provisions of section 25 of the Wealth-tax Act reads as follows:

> "Power of Commissioner to revise orders of subordinate authorities. - (1) The Commissioner may, either of his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause sub inquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit:
>
> Provided that the Commissioner shall not revise any order under this sub-section in any case -
>
> (a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal can be made has not expired or in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal:
>
> (b) where the order is the subject of an appeal before the Appellate Assistant Commissioner or the Appellate Tribunal."

The High Court has taken the view that clause (b) of the proviso to sub-section (1) of section 25 of the Act operates as a bar to a revision application by an assessee before the Commissioner only where the assessee has also filed an appeal before the Appellate Tribunal. According to the High Court, the bar does not come into operation against an assessee where the appeal before the Appellate Tribunal has been filed by the Revenue. It seems to us that the view taken by the High Court cannot be sustained. Where an appeal is filed before the Appellate Tribunal against an order of the Appellate Assistant Commissioner, the impugned order merges in the order of the Appellate Tribunal when the appeal is disposed of on merits. If, meanwhile, a revision application had been filed before the Commissioner against the same order of the Appellate Assistant Commissioner, it will not be open to the Commissioner to pass any order in revision against the order of the Appellate Assistant Commissioner as the latter would have merged with the order of the Appellate Tribunal. It is immaterial that the appeal and the revision application have not been filed by the same party. This would be plainly so as, in the present case, the subject-matter of the appeal before the Appellate Tribunal is the same as that of the revision application before the Commissioner. Here, the subject-matter of the appeal before the Appellate Tribunal was the valuation of the shares held by the respondent. So, it was also in the revision application before the Commissioner.

In the circumstances. We are unable to agree with the reasoning adopted by the High Court. The High Court has proceeded on the view that it was open to the Commissioner to dispose of the revision application filed by the respondents. The High Court, it seems to us, omitted to consider that the appeals filed before the Tribunal had been disposed of and the impugned order of the Appellate Assistant Commissioner must be taken to have merged in the order of the Appellate Tribunal. The revision applications, in short, had become infructiuous.

What the respondent should have done, on coming to know of the filing of the appeal by the Revenue before the Appellate Tribunal, was to have withdraws the revision petitions filed before the Commissioner and filed her own appeals before the Appellate Tribunal with an application for condonation of delay under sub-section (3) of section 24, in case the period of limitation had expired and, accordingly, both the sets of appeals would have been disposed of by the Appellate Tribunal. In case the respondent came to know of the filing of the appeals by the Revenue before the Appellate Tribunal and had not yet applied in revision to the Commissioner, she should not have filed the revision application but should have preferred her own appeals before the Appellate Tribunal. It must be noted that the Appellate Tribunal is a body superior to the Commissioner, as will be clear from

sub-section (1) of section 26 which provides that an appeal will lie to the Appellate Tribunal from an order under sub-section (2) of section 25 of the Commissioner. There would have been no difficulty in the Appellate Tribunal considering the appeals of both parties and passing suitable orders in regard to the valuation of the shares. There is no difficulty now in dealing with such a situation in view of sub-section (2A) of section 24.

In the case of the other respondents, there is a similar history of proceedings with similar orders passed therein, and this judgment will be considered as disposing of the appeals filed here in those cases also.

In the result, the appeals are allowed and the impugned orders of the Division Bench and the single judge on the writ petitions are set aside and the writ petitions are dismissed. In the circumstances of the case. There is no order as to costs.

Appeals allowed.

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