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Dev Kumar JaIn Vs. Agricultural Valuation Officer/income-tax Officer and ors.

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Court : Allahabad

Decided On : Jul-10-1990

Reported in : [1990]186ITR297(All)

Judge : B.P. Jeevan Reddy, C.J. and ;R.A. Sharma, J.

Acts : Wealth Tax Act, 1957 - Sections 16A

Appeal No. : Civil Miscellaneous Writ Petition No. 199 of 1988

Appellant : Dev Kumar Jain

Respondent : Agricultural Valuation Officer/income-tax Officer and ors.

Advocate for Pet/Ap. : Vikram Gulati, Adv.

Judgement :

B.P. Jeevan Reddy, C.J.

1. Affidavits have been exchanged between the parties. Matter is ready and, therefore, heard finally.

2. This is a petition for issuance of an appropriate writ, order or direction quashing the notices issued under Section 16A(4) of the Wealth-tax Act, 1957, by the Agricultural Valuation Officer, Dehradun, dated November 18, 1989, December 3,

1987, and December 29, 1987.

3. The assessment year concerned herein is 1980-81. The relevant valuation date is March 31, 1980. Before the Wealth-tax Officer, two of the issues in controversy were : (i) whether, the family settlement put forward by the assessee is true and should be accepted, and (ii) what is the value of the agricultural land measuring 21 bighas, 15 biswas situate at Dara Kote Tala, Chilkana Road, Saharanpur. The Wealth-tax Officer made the assessment refusing to accept and act upon the family settlement deed. He valued the aforementioned agricultural asset at Rs. 35,12,880 applying the rate of Rs. 60 per sq. yard. Against the assessment order, the assessee filedan appeal before the Commissioner of Wealth-tax (Appeals). By an order dated August 7, 1986, the appellate authority called for a report from the Wealth-tax Officer on three points. Paragraph 7 of his order brings out the points upon which the report was asked for. Paragraph 7 read as under :

'7. Before a reasonable decision could be taken, the points with regard to the following are sent back to the Wealth-tax Officer for re-determination.

(1) He should ascertain whether the claim of the family settlement made by the appellants has been decided, and if so, what the shares of each appellant are.

(2) The value of property at Pull Khumren, Saharanpur, as referred back by the Appellate Assistant Commissioner, Dehradun, in the case of Shri Dev Kumar Jain should be determined and a reasonable value be suggested.

(3) The value of agricultural land as adopted by the Wealth-tax Officer should be reconsidered in view of the submissions made by the appellants before him.'

4. In pursuance of this report, the Wealth-tax Officer made a further inquiry. He also took into account the report of the Valuation Officer submitted in January, 1986. Be that as it may, the Wealth-tax Officer submitted his report on November 15, 1986. In this report, he valued the agricultural asset at Rs. 10,87,500 as against the earlier valuation of Rs. 35,12,880. In this report also, he refused to accept and act upon the family settlement put forward by the assessee.

5. It appears that, after hearing the appeal again, the appellate authority thought it necessary to call for a further report from the Wealth-tax Officer. This order is dated August 13, 1987. Since the existence of this order was denied by the assessee, we called upon learned standing counsel for the Revenue to produce a copy of the same which he did.

6. It would be appropriate to extract the entire order :

During the course of the appeal hearing on July 17, 1987, at Camp Saharanpur, the remand report sent by you dated November 15, 1986, was discussed with learned counsel, Shri O. P. Sapra. In support of his claim that a family partition had taken place on February 13, 1990, the original settlement was placed with a copy thereof. Since it was not complete, the appellant was requested to get it fully certified which has now been sent by counsel on July 20, 1987. Since this document was not placed before you while sending your remand report, it is necessary that this document be perused and examined by you with reference to the observations made in your remand report. You may please send your revised report after going through this document, a copy of which is sent to you. You may call farthe original from the appellant and verify the contents. You may please send your report within a month.

(Sd.) M. Lal,

Commissioner of

Income-tax (Appeals), Meerut.'

7. We shall proceed on the assumption that the order of remand dated August 13, 1987, is a valid order of remand. The question is what is the scope of the remand. In other words, the question is whether this remand is confined only to the truth and correctness of the family settlement or whether it also extends to the agricultural asset aforementioned. On a reading of the order, we are of the opinion that it is confined only to the truth and correctness of the family settlement and does not extend to the valuation of the agricultural asset. If so, the Wealth-tax Officer had no jurisdiction to direct the Valuation Officer to value the said

agricultural asset afresh. Section 16A(1) enables the Wealth-tax Officer to refer the valuation of an asset to the Valuation Officer and this power is available only during the course of assessment proceedings by him. It may also be available to him in cases like the present one where by an order of remand, he is asked to value the same. But inasmuch as the second order of remand dated August 13, 1987, does not pertain to the valuation of the asset, he had no jurisdiction to refer the question of valuation to the Valuation Officer under Section 16A. It is thus clear that any notice issued by the Valuation Officer subsequent to November 15, 1986, proposing to value of the aforesaid agricultural assets for the assessment year 1980-81 is incompetent and without jurisdiction. Even if any such valuation report is submitted by the Valuation Officer, it shall have to be ignored by the appellate authority while disposing of the appeal.

8. The writ petition is allowed in the above terms. No costs.

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