

**Commissioner of Wealth-tax Vs. Arun Kumar**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Jun-28-1985

**Reported in :** (1985)13ITD750(Delhi)

**Judge :** G Krishnamurthy, S Vice, S Kapur, Rajendra

**Appellant :** Commissioner of Wealth-tax

**Respondent :** Arun Kumar

**Judgement :**

1. By this reference application, presented on 21-11-1983 and made under Sub-section (1) of Section 27 of the Wealth-tax Act, 1957 (the Act), the Commissioner requires the Tribunal to draw up a statement of the case and refer to the Honble Delhi High Court for its esteemed opinion, the following question claimed to be a question of law and said to arise out of order dated 1-9-1983 made by the Tribunal, Delhi Bench 'B' in WT Appeal No. 1607 (Delhi) of 1982 in relation to the assessment year 1976-77, on appeal by the revenue : Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the WTO to revalue the property at 15-B, Friends Colony, in accordance with Rule 1BB of the Wealth-tax (Amendment) Rules by holding that though it came into existence with effect from 1-4-1979, yet it had retrospective operation 2. Qua, the reasoning contained in order dated 23-8-1983, made in the case of CWT v. D.G. Bhagat [1983] 17 TTJ 460 (Delhi). We decline to draw up the statement of the case inasmuch as in our opinion, the answer to the question is self-evident.

3. We like to add here that although in making our order dated 1-9-1983, we have followed the order of the Special Bench of the Tribunal in the case of Biju Patnaik v. WTO [1982] 1 SOT 623 (Delhi) and a reference application by the revenue against the said order of the Special Bench has been allowed, but in that case the revenue has come up with many questions since that order of the Special Bench gave rise to many questions whereas in the present reference application, the revenue has asked for one question as mentioned in paragraph No. 1 above and this question as sought for in this reference application does not merit to be referred to the Hon'ble High Court for the reasoning as contained in our order in D.G. Bhagat's case (supra).

Reference application stands rejected.

1. I am unable to agree with my learned brother. As he has himself noted in the instant case, the Bench followed the Special Bench decision in Biju Patnaik's case (supra) and in the said case in RA Nos.

555 to 564 (Delhi) of 1981, question No. 3 was referred by the Special Bench by order dated 7-8-1982 as under : Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rule 1BB framed by the Central Board of Direct Taxes under powers available to it under Section 46 of the Wealth-tax Act, 1957, which was enacted with effect from 1-4-1979, has retrospective operation The other Benches at Delhi have similarly been referring to the High Court the question regarding the retrospective operation of Rule 1BB of the Wealth-tax Rules, 1957 ('the Rules'). I have been a party to a number of such references.

2. The learned Judicial Member, however, sitting in Delhi Bench 'A' with brother Bishan Lal, declined to refer this question by order in CWT v. Ram Prasad [1983] Taxation 71(6)-47. Thereafter, similar view was taken by the learned Judicial Member sitting with brother V.Dongzathang in Delhi Bench 'E' in CWT v. Mohd. Haroon Japanwala [RA Nos. 558 and 559 of 1983] and in D.G. Bhagat's case (supra).

3. In view of the said divergence of opinion between different Benches at Delhi, the Tribunal 'A' Bench in CWT v. Smt. Razia Begum [1985] 21 Taxman 67 made reference on 6-10-1983 to the President of the Tribunal to constitute a Special Bench to determine whether referable question of law arose on the question of retrospective operation of Rule 1BB. The President has since referred the matter to a Special Bench. In my opinion, the question raised in this reference is a referable question of law and following so, I fall in line with the preponderant decisions of Delhi and the other Benches on this point. I, therefore, refer the following question for the opinion of the Delhi High Court : Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that Rule 1BB (framed by the Central Board of Direct Taxes under powers available to it under Section 46) which was enacted with effect from 1-4-1979 has retrospective operation

REFERENCE TO A THIRD MEMBER UNDER SECTION 255(4) OF THE Income-tax ACT, 1968 As per Bench - Since we have differed in the above matter, the following agreed question is being referred to the, Hon'ble President under Section 24(11) of the 1957 Act read with Section 255(4) of the Income-tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the question sought for by the revenue in this reference application does not merit to be referred to the Hon'ble High Court 1. This is a matter referred to me as a Third Member by the President under Section 24(11) to resolve the following point of difference of opinion : Whether, on the facts and in the circumstances of the case, the question sought for by the revenue in this reference application does not merit to be referred to the Hon'ble High Court

On hearing the reference application, the learned Judicial Member was of the opinion that no referable question of law arose out of the order of the Tribunal in WT Appeal No. 1607 of 1982. According to him, the question of law need not be referred to the High Court for the reasons given in another case of D.G. Bhagat (supra). In other words, on the ground that in another case, no question of law was referred to the High Court, he held that no question of law could be said to arise out of the order of the Tribunal in the above-cited order. The learned Accountant Member, on the other hand, felt that since the Bench which heard the appeal allowed the assessee's point, following the Special Bench decision in the case of Biju Patnaik (supra) and as in the said case, a question of law was held to arise and was referred to the High Court in RA Nos.

555 to 564 (Delhi) of 1981, a question of law did arise out of the order of the Tribunal in this case also. He also made a reference to the constitution of a larger Bench in Smt. Razia Begum's case (supra) to resolve an identical issue, namely, whether a referable question of law arose out of the order passed by the Tribunal in following the Special Bench decision in the case of Biju Patnaik (supra) and held that same being the facts, a question did arise out of the order.

2. My task is now made very much easier for the very simple reason that the Special Bench to which the learned Accountant Member made reference in his order has since decided that a referable question of law arises out of the order of the Tribunal. The question whether the operation of Rule 1BB is retrospective in its operation or prospective is definitely a question of law and is not a question of fact. It involves the interpretation of the rules.

3. I am, therefore, of the opinion that a question of law does arise out of the order of the Tribunal. Now the matter will go to the regular Bench for disposal of the reference application in accordance with the majority view.

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