

Cwt Vs. Brig. Kapil Mohan

Cwt Vs. Brig. Kapil Mohan

SooperKanoon Citation : sooperkanoon.com/697176

Court : Delhi

Decided On : Jul-10-1987

Reported in : (2001)170CTR(Del)51

Appeal No. : IT Ref. No. 118 of 1987 10 July 1987

Appellant : Cwt

Respondent : Brig. Kapil Mohan

Advocate for Pet/Ap. : R.C. Pandey and; Mrs. Prem Lata Bansal,;for the Revenue; An

Judgement :

Arijit Pasayat, C.J.

At the instance of revenue, following question has been referred for opinion of this court under section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as the Act) by the Income Tax Appellate Tribunal, Delhi Bench E (hereinafter referred to as the Tribunal) :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in taking the view that the broiler chickens etc. cannot be treated as 'animals' for the purposes of grant of exemption under section 2(e)(iii) of the Wealth Tax Act, 1957 ?'

2. Factual position in nutshell is as follows. assessed, an individual, filed his return of wealth and claimed that the value of broiler chickens, etc. cannot be included in the wealth of the assessed in view of section 2(e)(iii) of the Act. Assessing officer held that broiler chickens, etc. are not covered by the said exemption and an addition of Rs. 1,38,114 as movable property was made. Matter was carried in appeal before the Appellate Assistant Commissioner. Said authority after referring to the definition of 'animal' in the World Book Dictionary, Vol. I 1982 Edn. and the view expressed by an author held that broiler chickens are 'animals' and, therefore, their value was entitled to exemption under section 2(e)(iii). Matter was carried in appeal by the revenue before the Tribunal. It was held by the Tribunal that broiler chickens were not included in the term 'animal' as common parlance meaning attributable to it has to be preferred to any technical or far-fetched connotation. Accordingly view of the assessing officer was restored. On being moved for reference, the question as set out above has been referred for opinion of this court.

3. We have heard learned counsel for the parties. The asset with which we are concerned is covered by section 2(e)(2) of the Act. The said provision at the relevant point of time read as follows :

'2(e)(2) in relation to the assessment year commencing on the 1-4-1970 or any subsequent assessment year :

(i) animals

(ii) a right to any annuity not being an annuity purchased by the assessed or purchased by any other person in pursuance of a contract with the assessed in any case where the terms and conditions relating thereto preclude the communication of any portion thereof into a lump sum grant;

(iii) any interest in property where the interest is available to an assessed for a period not exceeding six years from the date the interest vests in the assessed.

Provided that in relation to the assessment year, commencing on the 1-4-1981, or any subsequent assessment year, this sub-clause shall have effect subject to the

modification that for item (i) thereof, the following item shall be substituted, namely :

(i)(a) agricultural land other than land comprised in any tea, coffee, rubber or cardamom plantation.,

(b) any building owned or occupied by a cultivator of, or receiver of rent or revenue out of, agricultural land other than land comprised in any tea, coffee, rubber or cardamom plantation :

Provided that the building is on or in the immediate vicinity of the land and is a building which the cultivator or the receiver of the rent or revenue by reason of his connection with the land requires as a dwelling-house or a store-house or an out-house;

(c) animals;'

The question as referred has accordingly to be modified to read :

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in taking the view that broiler chickens are not to be treated as animals for the purposes of grant of exemption under section 2(e)(2)(c) ?'

4. Animal is an organized being having life sensation and voluntary motion, typically distinguished from a plant, which is organized and has life, but apparently not sensation or voluntary motion. In the World Book Dictionary Vol. I, 1982 Edition animal has been described as follows :

'Animal (Anemel). n.,adj., n. 1 any living thing that is not a plant. Most animals can move about, while most plants cannot. Animals feed upon other animals or plants. Many animals have a cavity for digestion and a nervous system, and can inhale oxygen and exhale carbondioxide. A dog, a bird, a fish, a snake, a fly, and a worm are all animals. Animals are distinguished typically from plants by more advanced types of sensation and response to stimuli, 2. An animal other than man, brute, beast, a farm stocked with pigs, cows, geese, and various other animals. Man has always considered himself closer to God than the animals are., 3a. an animal with

four feet, quadruped, man uses animals as beasts of burden, the elephant in the jungle, the water buffalo in or near the river and marsh, the donkey in the mountains, the horse on the plains, and the camel in the desert., 3b. any mammal, as distinguished from a bird; reptile, and other lower forms; 4. a person who is like a beast in the way that he acts or thinks, brutish or degenerate person, his intellect is not replenished, he is only an animal, only sensible in the duller parts (Shakespeare). '

Adopting the technical meaning a bird is to be treated as an animal. Reference was made by the Appellate Assistant Commissioner to the views expressed by an author in the book 'Law and Practice of Gift Tax and Wealth Tax, 1984 Edn.. by C.A. Gulanikar.

5. Animals in law include any animate being, which is not human, endowed with the power of voluntary motions. It includes all living creatures not human. 'The common law divides animals having the power of locomotion exclusive of man, into three classes, namely: such as are tame animals, such as are wild animals, and such as, whether wild or tame, are of so base a nature as not to be the subject-matter of larceny. This latter class is composed out of the two former (1 Hale PC 511). In Reg v. Brown, 24 OBD 357 it was held that a domestic fowl is an animal. In White v. Fox and Dawes 48 TLR 641 it was observed that :

Animals may be divided into.

(1) Domestic animals, such as dogs, horses, cows, etc. sometimes called animals *minutiae naturae*.

(2) Animals that are naturally dangerous, i.e., wild beasts, such as lions, bears etc.

(3) Animals *ferae naturae*, but harmless, such as hares, pheasants, partridges etc.

In R.V. Sheriff 20 Cox C.C. 334 it was observed that 'Bird, beast or other animal ordinarily kept in a state of confinement' (Larceny Act, 1861, under section 21 thereof included a ferret)'.

6. Tribunal seems to have attached importance to the fact that the value of the broiler chickens was to be taken as the value of stock-in-trade and even if same related to animals, there was no scope for making a distinction. In our considered view, even in the common parlance, birds are treated as animals and the definitions of the expression animal in the dictionaries are not at variance with the common parlance meaning attributable to the expression.

7. Above being the position, Tribunal was not justified in its view. The contrary view expressed by the Appellate Assistant Commissioner is more acceptable and reasonable. Question referred and re framed has to be answered in the negative, in favor of assessed and against the revenue. Ordered accordingly.

The reference stands disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com