

Cwt Vs. Kedar Nath

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Court : Rajasthan

Decided On : Jul-03-2002

Reported in : [2002]124TAXMAN141(Raj)

Appeal No. : D.B. W.T. Reference No. 7 of 1983 3 July 2002

Appellant : Cwt

Respondent : Kedar Nath

Advocate for Pet/Ap. : R.B. Mathur, *for the Revenue* Anant Kasliwal, *for the Assessee*

Judgement :

ORDER

On an application under section 27(1) of the Wealth Tax Act, 1957 (hereinafter referred to as 'the Act'), the Tribunal has referred following questions for our opinion :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the finding of the Commissioner of Wealth Tax (Appeals) that the assessee is entitled to deduction under section 5(1)(iv) of the Wealth Tax Act, 1957 from the interest of the assessee in the immovable property held by the firm ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment of the assessee for the year under consideration is not validly reopened under section 17(1)(b) of the Wealth Tax Act, 1957 ?'

2. The assessment order relates to the year 1974-75. The original assessment was framed on 3-11-1974. In the original assessment, exemption under section 5(1)(xxxii) of the Act was allowed to the assessee, i.e., 1/3rd interest of the assets of the assessee-firm which includes land and building belonging to the firm. Thereafter, notice for reopening the assessment was issued and after considering the submissions, an assessment order was passed under section 16(3), read with section 17(1)(b) of the Act, and in the reassessment while allowing deduction under section 5(1)(xxxii), the value of land and building belonging to the firm was excluded from the assets of the firm. In appeal, the Commissioner (Appeals) has confirmed the view taken by the Wealth Tax Officer regarding validity of the reassessment following the decision of the Delhi High Court rendered in the case of Nawabganj Sugar Mills Co. Ltd. v. CIT : [1980]123ITR287(Delhi) . But on merits instead of allowing deduction under section 5(1)(xxxii), the Commissioner (Appeals) allowed deduction under section 5(1)(iv). In appeal before the Tribunal, the Tribunal has not upheld the validity of reopening of the assessment holding that mere change of opinion does not confer any right to reopen assessment under section 17(1)(b) but on merits the Tribunal upheld the view taken by the Commissioner (Appeals).

3. Mr. Mathur, the learned counsel for the revenue, submits that if re-opening is not valid under section 17(1)(b), there is no question of any deduction allowed under section 5(1)(iv) in appeal. When the original deduction was allowed under section 5(1)(xxxii), that cannot be changed into deduction under section 5(1)(iv), when reassessment is not valid. He further submits that in reopening the Wealth Tax Officer has wrongly mentioned section 17(1)(b). The reopening was under section 17(1)(a). Mere mentioning of wrong section does not vitiate reopening proceedings or the order. For that, he placed reliance on the decision rendered in the case of Lok Nath & Co. v. CWT : [1996]217ITR310(SC) . He further submits that if the finding of fact arrived at by the Supreme Court's earlier officer is wrong

when the original assessment was made, the subsequent assessing officer can reopen that assessment order under section 17(1)(b) and that constitute 'information'. He relied on the decision of the Gujarat High Court in the case of CWT v. Smt. Arundhati Balkrishna Trust : [1977]108ITR78(Guj) .

4. Mr. Kasliwal, the learned counsel for the assessee, submits that if the substantial material was there at the time of original assessment, the assessing officer on relook cannot change opinion regarding any relief under the Act on the basis of same material, that does not amount to an 'information' within the meaning of section 147(b) of the Income Tax Act, 1961, and, therefore, he cannot reopen the assessment under section 147(b). He placed reliance on the decision of the Apex Court in the case of Indian & Eastern Newspaper Society v. CIT : [1979]119ITR996(SC) .

5. On merits, Mr. Mathur submits that deduction under section 5(1)(iv) is available for the owner of the house. The land and building belongs to the firm and not belongs to the assessee, therefore, on merits also, the assessee is not entitled for any deduction under section 5(1)(iv). Mr. Kasliwal submits that firm and partner is one and same thing, therefore, the property which belongs to firm also belongs to the partner, and, partner is entitled for deduction under section 5(1)(iv).

6. In Indian & Eastern Newspaper Society's case (supra), the issue before their Lordships was whether on the same material or on audit report can the assessing officer reopen the assessment under section 147(1)(b) of the Act? Their Lordships observed as under :

'... The Income Tax Act does not contemplate such power in any internal audit organisation of the income-tax department; it recognises it in those authorities only which are specifically authorised to exercise adjudicatory functions. Nor does section 16 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, envisage such a power for the attainment of the objective incorporated therein. Neither statute supports the conclusion that an audit party can pronounce on the law, and that such pronouncement amounts to 'information' within the meaning of section 147(b) of the Income Tax Act, 1961.'

7. On relook of the same material or on audit report, the Income Tax Officer is not justified to reopen the assessment as that does not constitute 'information' within the meaning of section 147(b). Section 17(1)(b) is corresponding to section 147(b), therefore, in the same way if the assessing officer has allowed any claim, subsequently on the same material, he cannot reopen the assessment on the basis of mistake or change of opinion, as that does not constitute 'information' within the meaning of section 17(1)(b). Therefore, we agree with the view taken by the Tribunal that reopening is bad.

8. We are of the opinion that reopening is bad and the assessing officer was not justified in reopening of the assessment under section 17(1)(b). Without reopening of the assessment, there is no question of change in the relief and the Wealth Tax Officer cannot change the relief without reopening of the assessment even if that relief was wrongly allowed; when the Wealth Tax Officer has no power to reopen the assessment, he cannot change the relief. Therefore, whatever the relief has been allowed wrongly or rightly, i.e., under section 5(1)(xxxii), that remains.

9. On merits also, the assessee is not entitled to deduction under section 5(1)(iv), as assessee is not the owner of the house and building, therefore, the Commissioner (Appeals) as well as the Tribunal had committed an error in allowing the relief under section 5(1)(iv). Specially the Tribunal, which has held that reopening is bad, but even then relief under section 5(1)(iv) has been allowed which was not allowed in the original assessment.

10. In the result, we answer the question No. 1 in the negative, i.e., in favour of the revenue and against the assessee and question No. 2 in the affirmative, i.e., in favour of the assessee and against the revenue.

11. The reference so made stands disposed of accordingly.

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