

Cwt Vs. Smt. Danka Devi Agarwala

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Court : Kolkata

Decided On : Mar-20-2002

Reported in : (2002)175CTR(Cal)133

Appeal No. : Matter No. 2027 of 1992 20 March 2002

Appellant : Cwt

Respondent : Smt. Danka Devi Agarwala

Judgement :

In the Calcutta High Court Ajoy Nath Ray & Maharaj Sinha, JJ.

ORDER

By the court

This is a wealth-tax matter and the question referred to us is as follows :

'Whether, having regard to the fact that in the absence of any registered deed of conveyance in regard to the transfer of flats at 13, Camac Street, Calcutta, the Tribunal is correct in law in holding that since the sale proceeds of flats had been accounted for as the wealth of the assessee it is only the legal interest on the said property to be calculated at 1 per cent of the sale proceeds that could be included in the total wealth of the assessee ?'

2. In the relevant assessment year the assessee had sold several flats at 13, Camac Street, Calcutta. The sale was, however, not complete by execution and registration of deeds of conveyance.

In the wealth-tax return the assessee accounted for the entire sale proceeds which was slightly above Rs. 56,00,000 and also 1 per cent of the said amount was added by way of assessment as representing the value of the legal title which still remained in the assessee.

3. On behalf of the revenue it was contended that the deeds of conveyance not being complete and the assessee still being the legal owner of all the flats, the valuation of the flats themselves should have been included in the net wealth of the assessee on account of the continued reduction of title, and not merely a token of 1 per cent of the sale proceeds.

In support of this proposition section 2(m) of the Wealth Tax Act, 1957, was placed before us. The said sub-section reads as follows :

'2(m) 'net wealth' means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets;'

Then our attention was drawn to the case of Late Nawab Sir Mir Osman Ali Khan v. CWT a decision of the Supreme Court the judgment being delivered by the Hon'ble Mr. Justice Sabyasachi Mukherjee (as his Lordship then was).

From various parts of the said judgment it was pointed out that the words 'belonging to' occurring in the said sub-section has been clearly interpreted by the Supreme Court in the above case as including legal title.

Accordingly, the net wealth should include, according to the revenue, the valuation of the flat, the assessee being still the legal owner. On behalf of the assessee it was argued that though the assessee remained the legal owner yet agreements

for sale had been admittedly entered into and the full consideration received therefor. As such the valuation of 1 per cent of the sale proceeds as the value of the legal title still then remaining in the assessee, for technical reasons, is neither unjustified nor illegal nor in any manner contrary to the judgment of the Supreme Court mentioned above.

4. We are of the opinion that this argument of the assessee is well founded. The question referred to us does not in any manner challenge the valuation of the legal title at 1 per cent of the sale proceeds as perverse. The question as framed indicates that the stand of the revenue is that the legal title being in the assessee the valuation thereof should be 100 per cent of the value of the flats notwithstanding the agreement for sale and notwithstanding receipt of the consideration price. In our opinion, the revenue is not entitled to look upon the matter in this way. Once interests in the purchases are created, the value of the legal interest remaining in the assessee mostly certainly goes down, and goes down drastically. Even in the above Supreme Court decision we find the following sentence at p. 900 :

'Even though the assessee had a mere husk of title and as against the vendee no reality of title, as against world has was still the legal owner and the real owner.'

With all due respect we say that this is the accurate summary of the situation in hand. For valuation of the mere husk of title, 1 per cent of the sale proceeds is perfectly legal.

5. Although the question does not strictly arise here for determination by us, we put a query to Mr. Khaitan as to whether the purchasers would have to include anything in their wealth-tax returns for the beneficial interest which they had obtained. We were referred to a Division Bench decision in the case of CWT v. Jugal Kishore Bhagat where the indications are that the beneficial interest would also have to be included in wealth and that the words 'belonging to' include beneficial interest just as the words includes legal interest also.

As such the Tribunal did not go wrong in law in any manner. the question is answered in the affirmative and in favour of the assessee.

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