HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.T.C.No. 16 of 2000

ORDER: (Per Sri Justice Challa Kodanda Ram)

This reference application is made under Section 27(3) of the Wealth Tax Act, 1957 (in short "the Act"), by the Revenue seeking this Hon'ble Court to refer the following three questions of law said to be arising from the Order dated 23.09.1998, of the Income Tax Appellate Tribunal, Hyderabad Bench "B", Hyderabad (in short "the Tribunal") in W.T.A.No.174 to 180/Hyd/1994, for the assessment years 1985-1986 to 1991-1992.

1) "Whether on the facts and in the circumstances of the case, the ITAT was correct in law in directing that the rent capitalization method should be adopted where the property was valued by the Valuation Officer?"

2) "Whether on the facts and in the circumstances of the case, the ITAT was correct in directing that the procedure under Rule 3 of Schedule III of the Wealth-tax Act has to be adopted even when the case is covered by Rule 8 read with Rule 20(2) of the W.T. Rules?"

3) "Whether on the facts and in the circumstances of the case, the ITAT was correct in directing the Assessing Officer to adopt rent capitalization method as mentioned in Rule 3 of Schedule III of W.T. Act, where the valuation was made by the Valuation Officer, which is binding on the Assessing Officer as per Rule 16A(6) of the W.T.Act?"

2) The Assessee is one of the co-owners along with his two brothers in respect of M/s Zamrud Mahal Talkies and M/s Palace Talkies, in which the assessee is having 1/3rd and ½ shares respectively. For the assessment years 1985-86, 1990-1991 &

1991-1992, the assessee had declared the value of his asset 1/3rd share in respect of Zamrud Mahal Talkies at Rs.85,441/-. The Assessing Officer had valued each of the co-owners share at Rs.16,50,000/-, Rs.21,60,000/- and Rs.24,00,000/- on the basis of valuation report for the assessment years 1985-1986, 1990-1991 and 1991-1992. In respect of M/s Palace Talkies as well, the Assessing Officer made the valuation as per the valuation certificate of the Valuation Officer. On appeal, the Commissioner of Income Tax accepted the argument of the assessee that the Valuation Officer erred in taking into account the sale value of the year 1992 and then working out the value as on the relevant valuation dates by working out backwards is not proper and correct method and the same is away to the Act and Rules thereunder. Further, the appellate authority considering the fact that the property is being used for commercial purpose deriving income, had adopted the rent capitalization method for arriving at the value of the asset. The Tribunal confirmed the view of the first appellate authority. Aggrieved by the same, the CIT (Appeals) filed an application before the Tribunal under Section 27(1) of the Act, and sought reference of the questions stated above. The Tribunal by its order in R.A.Nos.1 to 7/H/1999, dated 31.01.2000, declared that no referable question of law arises out of the order of the Tribunal. Challenging the said order of the Tribunal in rejecting to refer the questions stated supra, the present W.T.C. filed under Section 27(3) of the Act.

3) The learned counsel for the Revenue Smt. M. Kiranmayi, who assisted Sri J.V. Prasad, learned Senior Standing Counsel for Income Tax Department, would urge that Section 7 of the Wealth Tax Act, was amended only with effect from 01.04.1989 and simultaneously Schedule III of the Act also came to be incorporated and by no stretch of imagination the amended provisions could apply to the Assessment years prior to the introduction of the said

provisions came into the Act. Learned counsel would submit that for the assessment years 1985-1986, the amended provisions would not be applicable. Further, she would also submit that in the face of the Valuation Officer's report, it is not open for the Assessing Officer to adopt any other value in view of Section 16A(6) of the Act, inasmuch as the Valuation Officer's valuation is binding on the Wealth Tax Officer.

4) We have considered the rival submissions. In our view, so far as the Question No.1, as modified by us, would be referable question of law and Questions No.2 and 3 do not require to be referred inasmuch as the Tribunal had only given effect to the amended provisions of the Act, which require that an asset of the nature involved need to be valued as per the Rule 3 of the Schedule. In that view of the matter, we decline to refer Question Nos.2 and 3 and direct the Tribunal to state the question of law as modified in this order. Modified question is as follows:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in directing that the rent capitalization method should be adopted for the assessment year 1989-1990 prior to introduction of Schedule III when the property valued by the Valuation Officer?"

5) Accordingly, the W.T.C. is disposed of. No order as to costs.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

Date:19.12.2013.
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HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.T.C.No. 16 of 2000

Date:19.12.2013.

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