THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.T.C. No.17 of 2000 and W.T.A. No.1 OF 2001

COMMON ORDER:- (per The Hon'ble the Acting Chief Justice Dilip B. Bhosale)

W.T.C. No.17 of 2000 is filed by the Assessee under Section 27(3) of the Wealth Tax Act, 1957 (in short "the Act") raising three questions of law said to be arising from the orders of the Income Tax Appellate Tribunal, Bench 'A', Hyderabad (in short "the Tribunal") in disposing of the appeal in W.T.A.No.203/Hyd/94, dated 27.01.1998. R.A.No.50/Vizag/98 was filed by the assessee raising three questions of law, as set out below, to be referred to the opinion of the High Court. The said order in R.A.No.50/Vizag/1998 was passed on 14.06.2000. The three questions which are sought to be referred are:

a) Whether on the facts and in the circumstances of the case, the Tribunal have inherent powers to recall the appeal heard and disposed-off by its order dated 4.6.1996 in W.T.A.No.148/Hyd/94?

b) Whether the facts and in the circumstances of the case, the Tribunal have inherent powers to review its earlier judgment dated 4.6.1996 in W.T.A.No.148/Hyd/94 and reverse its stand subsequently by reopening and clubbing it with the departmental appeal in W.T.A.No.203/Hyd/94 of the same appellant and for the same year?

c) Whether on the facts and circumstances of the case, the Tribunal is right in holding that the hoardings are assets as per Section 2(e) of Wealth Tax Act in W.T.A.No.203/Hyd/94 against the judgment rendered in W.T.A.No.148/Hyd/94, dated 4.6.1996 of the same Bench wherein it was held as not 'Asset' for the purpose of Wealth Tax Act applying the ratio of Supreme Court in the case of Commissioner of Wealth Tax Vs. Smt. R.A.Muthurishan Ammal (72 ITR 801) and the Allahabad High Court in the case of F.S.Gandhi Vs. Commissioner of Wealth Tax (184 ITR 35)?

2) W.T.A.No.1 of 2001 is filed questioning the order of the Tribunal dated 14.06.2000 passed in M.P.No.26/Vizag/98 in W.T.A.No.203/Hyd/94. The three questions of law said to be arising from the orders of the Tribunal have

been raised in the appeal. The questions of law are as set out above in para No.1.

3) Initially, the matters, W.T.C.No.17 of 2000 and W.T.A.No.1 of 2001, were listed before a Division Bench of this Court consisting of L. Narasimha Reddy, J and one of us (Challa Kodanda Ram, J). Both the learned Judges had allowed W.T.A. No.1 of 2001 and did not find it necessary for answering questions in W.T.C. No.1 of 2001. L.Narasimha Reddy, J, however, by his separate judgment summarised the issue to be considered by raising a question –

> "Whether the Income Tax Appellate Tribunal has the power to recall and review its own order, which assumed finality and rehear the appeal?"

4) The learned Judge allowed the appeal stating as follows:

> "Therefore, W.T.A.No.1 of 2001 is allowed and the order under appeal is set aside. M.P.No.26 of 1998 shall stand allowed and as a result, the common order, dated 27.01.1998 in so far as it relates to W.T.A.No.148/Hyd/94 shall stand set aside. The order, dated 04.06.1996 passed in W.T.A.No.148/Hyd/94 shall hold good, and W.T.A.No.203 of 1994, shall be treated as infructuous.
>
> In view of the nature of disposal given to W.T.A.No.1 of 2001, there does not exist any necessity to answer the question referred to in W.T.C.No.17 of 2000."

5) On the other hand Challa Kodanda Ram, J noticing the amended provision Section 27A of the Act and noticing the questions raised in W.T.C. and W.T.A. are identical, reframed the questions in W.T.A.No.1 of 2001 in exercise of the power under Section 27A of the Act. The reframed questions are as follows:

i) Whether in the facts and circumstances of the case the Tribunal has power under Section 35 of the Act to rectify the order dated 27.01.1998 and eschew the discussion relating to W.T.A.No.148/Hyd/94?

ii) Whether in the circumstances of the case, the Tribunal was right in refusing to rectify the order dated 27.01.1998 and confining the same to only W.T.A.No.203/Hyd/94?

iii) Whether in the facts and circumstances of the case, the Tribunal was bound to eschew the order dated 27.01.1998 and confine the same to W.T.A.No.203/Hyd/94 by eschewing the discussion and decision relating to whether the boardings were assets for the purpose of the Wealth Tax Act?

6) The reframed question Nos.1 and 3 were answered in the affirmative and question No.2 was answered in the negative. Challa Kodanda Ram, J also, in view of answering the questions in W.T.A.No.1 of 2001, did not find it necessary to call for reference of the questions of law which were sought to be referred in W.T.C.No.17 of 2000. In view of the difference of opinion, the matters were referred to the third Judge. The third Judge (Ramesh Ranganathan, J) having analysed both the opinions of L. Narasimha Reddy, J and Challa Kodanda Ram, J finally came to the conclusion that both had allowed the W.T.A.No.1 of 2001 and directed the papers to be placed before the Division Bench for passing final orders. Thus, the matters are listed before this Bench.

6) A perusal of the opinions of the three learned Judges reveal that four questions were considered by the Court in W.T.A.No.1 of 2001. Those are –

i) Whether the Income Tax Appellate Tribunal has the power to recall and review its own order, which assumed finality and rehear the appeal? (As framed by LNR,J)

ii) Whether in the facts and circumstances of the case the Tribunal has power under Section 35 of the Act to rectify the order dated 27.01.1998 and eschew the discussion relating to W.T.A.No.148/Hyd/94?

iii) Whether in the circumstances of the case, the Tribunal was right in refusing to rectify the order dated 27.01.1998 and confining the same to only W.T.A.No.203/Hyd/94?

iv) Whether in the facts and circumstances of the case, the Tribunal was bound to eschew the order dated 27.01.1998 and confine the same to W.T.A.No.203/Hyd/94 by eschewing the discussion and decision relating to whether the boardings were assets for the purpose of the Wealth Tax Act? (As framed by CKR,J)

7) Inasmuch as, Ramesh Ranganathan, J had concurred with the opinion of both the learned Judges, the questions of law, which have been raised above, in our opinion, are required to be answered as follows: Question Nos.1, 2 and 4 are in the affirmative and Question No.3 is in the negative.

8) In the light of the discussion in para No.3, the questions in W.T.C.No.17 of 2000 are not answered and the questions in W.T.A. No.1 of 2001 are answered in terms of para No.7 above. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

DILIP B. BHOSALE, ACJ

CHALLA KODANDA RAM, J

Date:18.09.2015
ssv

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
-
-
-
-
-
-
-
-
-
-
-

-

-

-

-

-

-

-

-

-

-

W.T.C. No.17 of 2000 and W.T.A. No.1 OF 2001

(per The Hon'ble the Acting Chief Justice Dilip B. Bhosale)

-

Date:18.09.2015

ssv