

PETITIONER:
SIRPUR PAPER MILL LTD.

Vs.

RESPONDENT:
THE COMMISSIONER OF WEALTH TAX, HYDERABAD

DATE OF JUDGMENT:
20/04/1970

BENCH:
SHAH, J.C.
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SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 1520 1971 SCR (1) 304
1970 SCC (3) 795

ACT:
Wealth Tax Act, 1957, s' 25-Scope of-commissioner disposing of revision application according to direction of Board of Revenue-If proper, exercise of his power in Revision.

HEADNOTE:
The Appellate Assistant Commissioner of Wealth Tax confirmed an order- Passed by the Wealth Tax Officer as regards the method adopted by the latter in dealing with a claim for depreciation allowance made by the appellant company in the course of its assessment to wealth tax. The appellant company thereafter moved revision applications before the Commissioner under s. 25 of the Wealth Tax Act and the Commissioner rejected these applications on the basis of certain directions issued by the Board of Revenue. On appeal to this Court by special Leave,
HELD : The order passed by the Commissioner must be set aside and the revision applications must be heard and disposed of according to law and uninfluenced by any instructions or directions given by the Board of Revenue. [307 G-H]

It was clear, on the facts, that from the inception of the proceedings, the Commissioner put himself in communication with the Board of Central Revenue and sought instructions from that authority as to how the revision applications filed before him should be decided. He had exercised no independent judgment. The Commissioner appeared to have misapprehended the true character of the jurisdiction with which he is by the Act entrusted and surrendered his judgment to the directions of the Board of Revenue. [306 F-G; 307 E-G]

The power conferred by s. 25 is not administrative : it is quasi-judicial. In exercise of this power the Commissioner must bring to bear an unbiased mind. He must consider impartially the objections raised by the aggrieved party and decide the dispute according to procedure consistent with the principles of natural justice; he cannot permit his judgement to be influenced by matters not disclosed to the assessee, nor by dictation of another authority. Any orders or instructions given by the Board and required to be

followed under s. 13 by officers employed in the, execution of the Act may control the exercise of their power in matters administrative but not quasi-judicial. Although the proviso to s. 13, which is somewhat obscure in its import, enacts that no orders shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions, it does not thereby imply that the Board may give such orders to the Wealth Tax Officer or to the Commissioner in exercise of his quasi-judicial function, Such an interpretation would be plainly contrary to the scheme of the Act and the nature of the power conferred upon the authorities invested with quasijudicial power. [306 B-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2269 and 2270 of 1966.

Appeals by special leave from the judgment and order dated May 17, 1966 of the Commissioner of Wealth Tax, Andhra Pradesh in J. No. Wt. 3(4) and 3(5) of 1959-60.

A. K. Sen, B. P. Maheshwari and N. R. Kaitan, for the appellant (in both the appeals).

S. Mitra, G. Das, R. N. Sachthey and B. D. Sharma, for the respondent (in both the appeals).

The Judgement of the Court was delivered by Shah, J. In proceedings for determination of wealth tax for the assesment years 1957-58 and 1958-59 the appellant Company claimed depreciation allowance on plant, building and machinery at the rates prescribed under the Income Tax Act and the Rules framed thereunder. The Wealth Tax Officer adopted the method prescribed by s. 7 sub-s. (2) of the Wealth Tax Act and admitted the value of the assets as shown in the certified balance sheets on the respective valuation dates. In appeal, the Appellate Assistant Commissioner of Wealth Tax confirmed the order passed by the Wealth Tax Officer. The Company then moved revision applications before the Commissioner of Wealth Tax under S. 25 of the Wealth Tax Act. Against the order passed by the Commissioner of Wealth Tax rejecting the applications, - the Company has filed these appeals under Art. 136 of the Constitution.

Against the orders of the Appellate Assistant Commissioner appeals lay to the Income-tax Appellate Tribunal, but the Company preferred revision applications before the Commissioner.

We do not ordinarily encourage an aggrieved party to appeal directly to this-Court against the order of a Tribunal exercising judicial functions under a taxing statute, and thereby to bypass the normal procedure of appeal and reference to the High Court, but in the present case, it appears to us that a question of principle of great importance arises. We have entertained these appeals because in our judgment the, Commissioner of Wealth Tax has surrendered his authority and judgment to the Board of Revenue in deciding the questions which were sought to be raised by the Company in its revision applications.

Section 25 of the Wealth Tax Act provides insofar as it is, material

"(1) The Commissioner may, either of his own notion or on application made by an assessee in this

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behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such inquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being order prejudicial to the assessee, as the Commissioner thinks fit

The power conferred by S. 25 is not administrative it is quasi-judicial. The expression "may make such inquiry and pass such order thereon" does not confer any absolute discretion on the Commissioner. In exercise of the power the Commissioner must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party, and decide the dispute according to procedure consistent with the principles of natural justice : he cannot permit his judgment to be influenced by matters not disclosed to the assessee, nor by dictation of another authority. Section 13 of the Wealth Tax Act provides that all officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board. These instructions may control the exercise of the power of the officers of the Department in matters administrative but not quasi-judicial. The proviso to s. 13 is somewhat obscure in its import. It enacts that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Wealth Tax in the exercise of his appellate functions. It does not, however, imply that the Board may give any directions or instructions to the Wealth Tax Officer or to the Commissioner in exercise of his quasi-judicial function. Such an interpretation would be plainly contrary to the scheme of the Act and the nature of the power conferred upon the authorities 'invested with quasi-judicial power.

The Commissioner appears, in our judgment, to have wholly misapprehended the true character of the jurisdiction with which he is by the Act entrusted and has surrendered his judgment to the directions of the Board of Revenue. The order sheet of the Commissioner (at pp. 10-36 of the printed Paper Book) bears eloquent testimony to the manner in which the Commissioner has merely carried out the directions of the Board of Revenue, instead of deciding the case according to his own judgment.

In entry dated December 31, 1959, there is a reference to the instructions contained in the Board's Circular No. 7-D (WT) of 59 dated November 12, 1959 received on November 30, 1959.

Under entry dated April 28, 1960 there is again a reference to the Board's Circular No. 7-D of 1959 suggesting the manner in

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which depreciation has to be worked out for the purpose of determining wealth-tax.

Again in the entry dated June 17, 1960 under item No. 4 it is stated that the Board's instructions were, "specific on the point that no adjustment to depreciation relating to the period prior to March 31, 1957 should be made while determining the total wealth of an assessee on the basis of global valuation'.

Under entry dated August 7, 1963, recorded by the Inspector, it is stated that "upon reference to the Board for instructions, it was recommended that the petitions be kept pending decision of the matter till" it was decided by the High Court in which the same question was raised. When on

January 27, 1966, the Company requested that the applications be kept pending till the disposal of the reference application by the High Court for the assessment year 1959-60 in which a similar point was involved, the Commissioner was of the view that 'the application need not be kept pending, but still directed "write to the Board'. A letter was written to the Board and the Commissioner acted according to the directions of the Board, There is another entry dated March 14, 1966 which refers to the letter of the Board agreeing that the revision applications for the two years may be rejected, It is unnecessary to refer to any more entries made in the case sheet maintained by the Commissioner of Wealth Tax. From the inception of the proceedings the Commissioner of Wealth Tax put himself in communication with the Board of Central Revenue and sought instructions from that authority as to how the revision applications filed before him should be decided. He exercised no independent judgment. The Commissioner also recorded that the case did not require a personal hearing but since the Director of the Company had made a personal request for an interview it was "thought desirable" from "the point of view of public relations to give an interview." Here also the Commissioner misconceived the nature and extent of his jurisdiction. Counsel appearing on behalf of the Commissioner of Wealth Tax in these appeals has not attempted to support the order under appeal. We set aside the order passed by the Commissioner and direct that the revision applications be heard and disposed of according to law and uninfluenced by any instructions or directions given by the Board of Revenue. The Company will get its costs in this Court. One hearing fee.

R.K.P.S.

Appeal allowed.

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