

(1986) 12 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 19318 and 19319 of 1980

Abdul Qadar Adam and Abdul Razak Adam

APPELLANT

Vs

Wealth Tax Officer

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Voluntary Disclosure of Income and Wealth Act, 1976 — Section 13

Wealth Tax Act, 1957 — Section 17, 17 (1) (a), 17 (1) (b)

Citation : (1987) 62 CTR 1 : (1987) 168 ITR 420 : (1987) 31 TAXMAN 119

Hon'ble Judges : S.R. Rajashekhara Murthy, J

Bench : Single Bench

Advocate : K.S. Ramabhadran, for the Appellant; K. Srinivasan, for the Respondent

Judgement

S.R. Rajasekhara Murthy, J.—These petitions, under article 226 of the Constitution, are filed by two brothers challenging the assessments made under the Wealth-tax Act, 1957 (the "Act" for short), for the assessment year 1972-73. The facts and contentions being common, they are heard and disposed of by this order.

2. In the wealth-tax statements relevant to the assessment year 1971-72, the petitioners had stated the value of property at No. 12, Miller Road, Bangalore, at Rs. 1,80,000 and the half share of each brother at Rs. 90,000.

3. The Wealth-tax Officer did not accept this value and determined the value of the property at Rs. 4,27,625 and took half share of each of the petitioners at Rs. 2,13,812 and completed the assessments on December 5, 1972.

4. This property was sold by the petitioners under three sale deeds executed on March 30, 1973, July 27, 1973, and July 30, 1973, for a total consideration of Rs. 8,00,998. In the assessment to capital gains tax for the assessment years 1973-74 and 1974-75, this value was not disclosed by the petitioners, but a lesser value had been returned.

5. However, taking advantage of the Voluntary Disclosure Scheme, 1975, the petitioners disclosed Rs. 6,50,000 as the total consideration received and offered to be assessed to capital gains on that value. The assessments were accordingly reopened and completed on the basis of the disclosure made.

6. Thereafter, on the basis of the voluntary disclosure made by the petitioners on August 24, 1978, the Wealth-tax Officer issued notice u/s 17 of the Act on August 26, 1980, seeking to reopen the assessment for 1972-73 in each of the petitioner's cases. These notices are challenged in these petitions on several grounds.

7. It is contended by Sri K. S. Ramabhadran, learned counsel for the petitioners, that the notice which is purported to be a notice u/s 17(1)(a) of the Act, on the assumption that the petitioners had failed to return the true and correct value of the property in question for the assessment year 1972-73 is not sustainable, both in law and on facts and, therefore, should be quashed. It is argued by learned counsel that the Wealth-tax Officer had determined the value of the property in the relevant assessment year, rejecting the value returned by the assessee. It is also argued that the property having been sold towards the end of the year 1973, it cannot be said that there was failure on the part of the assessee-petitioners in not disclosing a higher value of the property for the assessment year 1972-73, keeping in view the price it may fetch in a sale which took place subsequent to the assessment. He has also urged that the fact of sale was within the knowledge of the Department since the petitioners were assessed to capital gains during the relevant years and the action taken to reopen the assessment for 1972-73 is barred both u/s 17(1)(a) and 17(1)(b) of the Act.

8. Sri K. Srinivasan, learned senior standing counsel for the Department, has produced the relevant assessment records of the Wealth-tax Officer in which the reasons for reopening are recorded in each of the petitioner's files. The order sheet dated August 25, 1980, reads as follows.

"Note : In the assessment order made on February 7, 1973, the value of the Miller Road property (the assessee's half share being 50%) is taken at Rs. 2,13,812 as against the assessee's declared value of Rs. 90,000. As per the voluntary disclosure made by the assessee, the property was sold in the year ending March 31, 1973 and 1974. the total consideration for the property received by the assessee comes to Rs. 8,00,998. Thus, the assessee's half share of the property comes to Rs. 4,00,499. The assessee has not disclosed the value correctly and truly in the return of wealth filed by the assessee. Wealth has escaped assessment. Issue notice u/s 17.

Sd/ -

W. T. O.

August 26, 1980. Notice u/s 17 of Wealth-tax Act put up."

9. It is argued by learned counsel for the Revenue that the disclosure made

under the Voluntary Disclosure Scheme could be a legitimate ground to reopen the assessment u/s 17(1)(a) of the Act, since the assessee had suppressed the true and correct value of the property in the statement of wealth filed along with the return for the assessment year 1972-73 and that, therefore, the notice issued to reopen the assessment is valid in law and should be upheld. It is also urged by Sri K. Srinivasan that the question of limitation is a matter to be urged by petitioner before the Assessing Officer in the assessment proceedings and this court has no jurisdiction to interfere under article 226 with the notice at this stage. He, therefore, submits that the writ petitions are liable to be dismissed.

10. The points that arise for consideration are :

(i) Whether there was failure on the part of the petitioners in not disclosing the true and correct value of the property at No. 12, Miller Road, Bangalore, for the assessment year 1972-73 ?

(ii) Whether the initiation of the proceedings u/s 17 of the Wealth-tax Act for the assessment year 1972-73, by notice dated August 26, 1980, in each of the petitioner's cases, is valid in law ? and

(iii) Whether this court has jurisdiction to interfere and quash the said notice in exercise of its powers under article 226 of the Constitution ?

11. Learned counsel for the petitioners has relied upon the following decisions in support of his contentions :

1. Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,

2. S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore,

3. Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, and

4. Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta,

12. The gist of the principles laid down by the Supreme Court in the above decisions cited by Sri Ramabhadran starting from Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, is that the High Court can, in exercise of its discretion under article 226 of the Constitution, interfere with a notice issued to reopen an assessment in order to find out whether the conditions for reopening are satisfied in a given case.

13. Such an investigation, it is held by the Supreme Court, would be called for and justified in order to decide whether the Income Tax Officer had jurisdiction to reopen an assessment on the basis of the evidence in his possession and whether the material relied upon was relevant for forming such a belief.

14. The Supreme Court has also held that the High Court can always examine these aspects, though the declaration of the sufficiency of the reasons for the belief is not a matter for the court to investigate.

15. Certain passages from the Supreme Court decisions cited by Sri Ramabhadran may usefully be extracted herein.

(1) In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, the Supreme Court, dealing with the jurisdiction of the Income Tax Officer under the Act, stated thus (at page 199) :

"To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year, two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to Income Tax have been under-assessed. The second is that he must have also reason to believe that such "under-assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income u/s 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years, but within the period of eight years, from the end of the year in question."

Repelling the contention of Sri Sastri for the Department that both the aspects, whether there was non-disclosure of material facts and whether notices had been issued within the limitation period should properly be raised in the assessment proceedings, the Supreme Court observed thus (at page 207) :

"It is wholly incorrect however to suppose that this is a question of limitation only not touching the question of jurisdiction. The scheme of the law clearly is that where the Income Tax Officer has reason to believe that an under-assessment has resulted from non-disclosure, he shall have jurisdiction to start proceedings for reassessment within a period of 8 years; and where he has reason to believe that an underassessment has resulted from other causes, he shall have jurisdiction to start proceedings for reassessment within 4 years. Both the conditions, (i) the Income Tax Officer having reason to believe that there has been under-assessment, and (ii) his having reason to believe that such under-assessment has resulted from non-disclosure of material facts, must co-exist before the Income Tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the court ought not to investigate the existence of one of these conditions, viz., that the Income Tax Officer has reason to believe that under-assessment has resulted from non-disclosure of material facts, cannot, therefore, be accepted."

Dealing with the High Court's jurisdiction to issue an appropriate writ in such cases, the Supreme Court held (at pages 207 and 208) :

"It is well-settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction."

Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well-settled, will issue appropriate orders or directions to prevent such consequences.... The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action..... When the Constitution confers on the High Courts the power to give relief, it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons."

(2) In *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, , the Supreme Court reiterated what was laid down in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , that the two conditions had to be satisfied in order to confer jurisdiction on the Income Tax Officer to issue the notice u/s 34 of the 1922 Act. The Supreme Court further held (at pages 221 and 222) thus :

"Both these conditions are conditions precedent to be satisfied before the Income Tax Officer acquires jurisdiction to issue a notice under the section. But the legal position is that if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notice u/s 34. Whether these grounds are adequate or not is not a matter for the court to investigate. In other words, the sufficiency of the grounds which induced the Income Tax Officer to act is not a justiciable issue. It is of course open for the assessee to contend that the Income Tax officer did not hold the belief that there had been such non-disclosure. In other words, the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief. Again, the expression "reason to believe" in section 34 of the Income Tax Act does not mean a purely subjective satisfaction on the part of Income Tax Officer. The belief must be held in good faith : it cannot be merely a pretence. To put it differently, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings u/s 34 of the Act is open to challenge in a court of law."

16. In *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, , the Supreme Court was dealing with the scope of section 147(b) in so far as it related to "information" which is a condition precedent to the exercise of the jurisdiction of the Income Tax Officer.

17. Defining the jurisdiction of the High Court to issue writs in such cases, the Supreme Court observed (at pages 15 and 16) :

"The High Court exercising jurisdiction under article 226 of the Constitution has power to set aside a notice issued u/s 147 of the Income Tax Act, 1961, if the condition precedent to the exercise of the jurisdiction does not exist. The court may, in exercise of its powers, ascertain whether the Income Tax Officer had in his possession any information : the court may also determine whether from that information the Income Tax Officer may have reason to believe that income chargeable to tax had escaped assessment. But the jurisdiction of the court extends no further. Whether on the information in his possession he should commence a proceeding for assessment or reassessment must be decided by the Income Tax Officer and not by the High Court. The Income Tax Officer alone is entrusted with the power to administer the Act : if he has information from which it may be said, prima facie, that he had reason to believe that income chargeable to tax had escaped assessment, it is not open to the High Court, exercising powers under article 226 of the Constitution, to set aside or vacate the notice for reassessment on a reappraisal of the evidence."

18. Lastly, in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, the Supreme Court elaborated the connotation of the expression "reason to believe" and observed (p. 153) :

"The words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court."

19. These principles are reiterated and applied by a Division Bench of this court in T.T. Pvt. Ltd. Vs. Income Tax Officer, Company Circle-III, Bangalore, . This court, on a review of several cases decided by the Supreme Court, held that it is open to the High Court to issue under article 226, any appropriate order or direction restraining the continuance of an illegal proceeding if, on merits, the case required to do so.

20. Sri K. Srinivasan, learned counsel for the Revenue, has, in support of his argument, that the High Court has no jurisdiction to interfere and quash the impugned notice, relied upon the following decisions :

(1) Lalji Haridas Vs. Income Tax Officer and Another, (2) Lalji Haridas Vs. R.H. Bhatt and Another, , (3) Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, and (4) Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala,

(1) Taking the first decision, namely, Lalji Haridas Vs. Income Tax Officer and Another, , cited by Sri Srinivasan, the question involved in that case was whether the action initiated u/s 34(3) of the Indian Income Tax Act, 1922, was barred by

limitation.

21. The Supreme Court observed in the course of its order that the question as to limitation ought to be raised by the assessee before the Income Tax Officer. This observation of the Supreme Court is sought to be relied upon by learned counsel for the Revenue in opposing the issue of a writ in the present case.

22. It was a case of proceedings taken to assess two persons as a result of an order of remand made by the Appellate Assistant Commissioner in appeal. The point that arose on the facts of that case was, who was the person, whether "A" or "B", that had received the income and assessable to tax thereon.

23. In the light of the contentions put forward on behalf of the appellants before the Supreme Court that the assessment proceeding commenced against the appellant was barred by limitation, the Supreme Court observed that this point, among others, ought to be raised by the assessee before the Income Tax Officer in the course of the assessment proceedings.

24. Section 34(3) of the Income Tax Act prohibited reopening of assessment or reassessment beyond a period of four years from the end of the year in which the income, profits or gains was first assessable. The proviso to the said section also provides for exemption from the application of the limitation to cases where action is taken to assess or reassess in order to give effect to any finding or direction given by the Appellate Assistant Commissioner or other authority.

25. The notices impugned before the High Court and in the appeal before the Supreme Court were issued by the Income Tax Officer after the assessments were set aside by the Appellate Assistant Commissioner in appeal and remanded to the Income Tax Officer for fresh assessment.

26. The observation made by the Supreme Court while dismissing the appeals filed by the assessee, therefore, cannot be made applicable to the present case.

(ii) The next case relied upon by learned counsel is Lalji Haridas Vs. R.H. Bhatt and Another, . The point that arose in that case was, whether in respect of the transaction in question, the assessee was liable to tax or other persons. The nature of the proceedings in question were protective assessments.

The Supreme Court held, in those circumstances, that the question ought to have been raised before the Income Tax Officer and cannot be allowed to be urged before the High Court under article 226 of the Constitution and it was a matter which the authorities must consider to the merits in the light of the relevant evidence.

The appellant was not allowed to urge the question of limitation before the Supreme Court, since it was also a case of remand by the Appellate Assistant Commissioner in appeal.

(iii) The other decision relied upon by learned counsel for the Department is Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, . The

observations at page 15 in the said judgment are sought to be relied upon by learned counsel. The Supreme Court has observed that the High Court can, in exercise of its powers under article 226, ascertain whether the Income Tax Officer had in his possession any information to reopen the assessment.

The Supreme Court also ruled that the jurisdiction of the court extends no further and that it was not open to the High Court exercising powers under article 226 to set aside or vacate the notice for reassessment on a reappraisal of the evidence.

This decision, therefore, helps both the petitioners and the Department, but the principle laid down does help the assessee in this case so far as the enquiry by the High Court as to the existence of the condition precedent to the exercise of jurisdiction by the Income Tax Officer is concerned.

(iv) Lastly, the decision of the Gujarat High Court in Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, , proceeded entirely on an different set of facts which warranted interference by the High Court. The assessing officer had, in that case, initiated action to reopen the assessment on the basis of the valuer's report produced by the assessee in a subsequent assessment. The court upheld that this would constitute information for reopening the assessment for the earlier years u/s 17(1)(b) of the Wealth-tax Act.

27. Keeping in view the principles laid down by the Supreme Court in various decisions referred to above, I now proceed to examine whether, in the present case, the proceedings to reopen the assessment warrants interference in exercise of the power vested under article 226 of the Constitution. The decisions starting from Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, downwards reiterate the principle that a High Court can, in exercise of its power under article 226, quash the notice to reopen an assessment if the conditions precedent to the exercise of jurisdiction by the Income Tax Officer do not exist.

28. The conditions which invest the Income Tax Officer with jurisdiction are :

(i) that the Income Tax Officer has reason to believe that the income exigible to tax had escaped assessment on account of the failure of the assessee to disclose fully and truly all the particulars necessary for the assessment;

(ii) that in consequence of information which the Income Tax Officer has in his possession, he has reason to believe so;

(iii) the limitation within which such a notice to reopen either under condition (i) or (ii) is issued.

29. The court has jurisdiction further to examine whether the reason for the belief has a rational connection or a relevant bearing on the formation of the belief and is not extraneous or irrelevant to the issue of notice to reopen.

30. Coming back to the facts of the present cases, it is necessary to advert to

the chronology of events, namely, the date of assessment for the year 1972-73, which was completed on February 22, 1973, the dates of sale of the property in question, viz., March 30, 1973, July 27, 1973, and July 30, 1973, and the declaration made in the Voluntary Disclosure Scheme on August 24, 1978, I am of the opinion that the assessee cannot be imputed with the knowledge of the price the property would fetch at a later point of time and after the relevant year for the assessment year 1972-73 was over. On the other hand, I find the Wealth-tax Officer himself determined the value of the property after rejecting the value returned by the assessee for the assessment year 1972-73.

31. The Wealth-tax Officer's action in reopening the assessment for the year 1972-73 on the basis of the information gathered from the declaration filed by the petitioners on August 24, 1978, cannot, therefore, form a legal basis for reopening the assessment.

32. The petitioners have also claimed exemption from wealth-tax in respect of the assessment to wealth-tax for the year 1972-73. In the light of their disclosure made under the Voluntary Disclosure Scheme, 1975, that there is immunity to assess the wealth for all the previous years relevant to the date of the declaration, is available to the petitioners u/s 13 of the Voluntary Disclosure Scheme cannot be disputed.

33. So far as invoking section 17(1)(b) of the Act is concerned, the Department admittedly came to know about the sales when the petitioners filed their declarations under the Voluntary Disclosure Scheme on August 24, 1978. On the strength of the voluntary disclosure made, the assessment for the year 1972-73 was sought to be reopened. This is clear from the reasons recorded by the Wealth-tax Officer in the order sheet dated August 25, 1980, in the assessment records. If that is so, the next question that arises for consideration is, whether the action to reopen the assessment is within time u/s 17(1)(b) of the Act, and if so, whether this court can interfere and quash the said notice in exercise of its powers under article 226 of the Constitution ?

34. On a careful consideration of the facts of the case, the arguments advanced and the decisions cited, the conclusions that should follow are :

(i) that the petitioners had the benefit of immunity u/s 13 of the Voluntary Disclosure Scheme, so far as the previous assessment years were concerned, and any information disclosed in the said declaration could not be made use of to reopen the earlier assessment;

(ii) that this was not a case of failure on the part of the assessee to disclose the true and correct value of the property in question as was relevant for the assessment year 1972-73;

(iii) that the Wealth-tax Officer who issued the impugned notices did not have any material before him to form an opinion that the petitioner had failed to disclose the true and correct value of the property in question for the assessment

year 1972-73;

(iv) that the disclosure made by the assessee under the Voluntary Disclosure Scheme was "information" for the purpose of reopening for the assessment year 1972-73 and that, therefore, the proceeding initiated to reopen the assessment, beyond the period of 4 years, was barred by limitation.

35. For the reasons stated above, the writ petitions are allowed and the notices impugned in the two writ petitions, annexure "E", in each case are hereby quashed.