(2007) 01 AHC CK 0182

In the Allahabad High Court

Ajay Kumar Maheshwari APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143, 147, 148

Citation : (2007) 01 AHC CK 0182

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Vikram Nath, J.—Both the Writ Petitions relate to the same assessee, arising out of proceedings-for re-assessment under the provisions of Income Tax Act, 1961 (hereinafter referred to as the Income Tax Act) and the Wealth Tax Act, 1957 (hereinafter referred to as the Wealth Tax Act). Since the reasons for reopening the assessment under both the statutes is the same. both the Writ Petitions are being disposed of together by a common order.

2. The petitioner-assessee (hereinafter referred to as the assessee) is assessed under the provisions of Income Tax Act as also the Wealth Tax Act.

3. Writ Petition No. 667 of 2001 arises out of the proceedings under Income Tax Act. The assessment year in question is 1990-91. The petitioner filed his return disclosing total income of Rs. 50.770/-. An assessment order was passed u/s 143(1)(a) of the Income Tax Act on 7-2-1995. Subsequently a notice was issued on 15-3-2001. u/s 148 of the Income Tax Act for reopening the assessment of the assessment year 199.0-91. Upon request by the assessee the reasons for initiation of such proceedings was supplied by the Assessing Officer, in which it was mentioned that as the assessee had shown wealth of Rs. 46.000.00/- in the Solvency Certificate filed before the District Magistrate, as against the total wealth of Rs. 82,760/- disclosed in his wealth tax returns, it was found that the assessee had made investment of Rs. 45,17,240/- out of his income from

undisclosed sources and therefore this amount of income which was chargeable to tax had escaped assessment. The assessee prayed for quashing of the notice dated 15.3.2001 u/s 148 of the Income Tax Act in Writ Petition No. 667 of 2001.

4. Writ Petition No. 668 of 2001 arises out of the proceedings under Wealth Tax Act. The assessment year in question in this writ petition are assessment years 1990-91, 1991-92, 1992-93. In the Assessment year 1990-91 the assessee disclosed wealth of Rs. 82,760/-. For the assessment year 1991-92 he disclosed wealth of Rs. 6,24,500/- and for the assessment year 1092-93 he disclosed wealth of Rs. 2,77,030/-. The returns filed by the assessee in all the three years were accepted by the Wealth Tax Officer and assessment orders were accordingly passed on 9-8-1994, u/s 16(3) of the Wealth Tax Act for all the three years. Subsequently a show cause notice was issued by the Wealth Tax officer on 8-2-2001 calling upon the assessee to show cause why proceedings for re-assessment be not initiated u/s 17 of the Wealth Tax Act as the assessee had declared his wealth of Rs. 46.000.00/- in the Solvency Certificate filed before the Excise Department/District Magistrate. The said show cause notice was with regard to all the three assessment years referred to above. The assessee submitted his reply dated 5-3-2001 stating that in all the three assessment years the Solvency Certificate of Rs. 46,000,000/- had been subject matter of consideration by the Assessing Officer while passing assessment orders u/s 16(3) of the Wealth Fax Act and therefore, no case was made out for any escapement of income calling for re-assessment. The reply of the assessee was not accepted whereupon notice dated 29-3-2001 u/s 17 of the Wealth Tax Act was issue by the Wealth Tax Officer for all the three assessment years namely, 1990-91, 1991-92, 1992-93. Subsequently on request by the assessee the reasons recorded for issuance of such notice was also furnished by the Wealth Tax Officer which disclosed the same reason relating to filing of solvency certificate of Rs. 46,000,00/- before the District Magistrate whereas in his return under the Wealth Tax Act he had disclosed substantially lesser amount. The assessee has sought for quashing of the notices u/s 17 of the Wealth Tax Act for all the three years by filing Writ Petition No. 668 of 2001.

5. Counter and rejoinder affidavits have been exchanged in both the writ petitions.

6. We have heard Sri Rakesh Ranjan Agrawal, learned Counsel for the assessee (Petitioner) in both the Writ Petitions and Sri Shambhu Chopra, learned Standing Counsel for the Revenue.

7. With regard to the proceedings under the Wealth Tax Act, the submission of the learned Counsel for the assessee is that the Solvency Certificate of Rs. 46,000,00/- was subject matter of consideration by the Wealth Tax Officer making the assessment for the assessment years 1990-91, 1991-92, 1992-93. The learned Counsel has taken us to the assessment orders of the all the three years which has been filed as Annexures 1 & 2 collectively.

8. On the other hand, learned Standing Counsel has sought to defend the notice on the ground that the Writ Petition is not maintainable against notice and therefore, the assessee may submit his returns in response to the notice. However, he has not been able to demonstrate the wealth, other than solvency certificate which may have escaped the assessment in the regular assessment proceedings.

9. In rejoinder it has been submitted by Sri Agrawal that Writ Petition under Article 226 of the Constitution of India against notice u/s 147/148 of the Income Tax Act is maintainable. According to him the Court may not examine the sufficiency of the material inviting reopening but it may certainly examine the relevancy of the material on the basis of which reopening is being sought. In support of this contention he has relied upon the decision of this Court in the case of Arun Kumar Maheshwari v. Income Tax Officer, Bijnor reported in 2005 U.P.T.C 143.

10. Before proceeding to consider the submissions on merit we could first like to deal with the issue of maintainability of the petition. It is well settled by a catena of decisions not only of this Court and other high Courts but also of the Apex Court that High Courts have wide powers in matter of issuing writs. Exclusion of writ jurisdiction on the ground of availability of alternative remedy is a rule of discretion and not of compulsion. Similar issue had arisen in the case of Arun Kumar Maheshwari (supra) wherein this Court after dealing with a large number of cases held as follows in para 28 of the report:

Thus, it is well settled that the ''reason to believe'' u/s 147 must be held in good faith and should have a rational connection and relevant bearing on the formation of the belief and should not be extraneous or irrelevant. Further this Court in proceedings under Article 226 of the Constitution of India can scrutinize the reasons recorded by the Assessing Officer for initiating the proceedings u/s 147/148 of the Act. The sufficiency of the material cannot be gone into but relevancy, certainly be gone into. In view of the forgoing discussions, we are of the considered opinion that the writ petition under Article 226 is maintainable.

11. In view of the above discussion it is held that the present writ is maintainable against the notice u/s 148 of the Income Tax Act.

12. From a perusal of the assessment orders we find that the Assessing Officer under the Wealth Tax Act had called upon the assessee to show cause why wealth tax be not imposed taking into consideration the value of the wealth as shown in the Solvency certificate. It further recorded that the assessee had submitted its explanation that it was an inflated and excessive amount shown only for the purpose of obtaining excise licence. The Assessing Officer has recorded these facts in the assessment orders and has thereafter accepted the returns filed by the assessee ignoring the Solvency Certificate. This clearly indicates that explanation submitted by the assessee was accepted by the Assessing Officer while making the assessment orders for all the three years. The

show cause notice dated 8-2-2001 as also the reasons for issuing notice u/s 17 contained, in Annexures 4 & 7 respectively to the Writ petition clearly mention that it was only the Solvency Certificate which was being taken note of as escapement of wealth and for re-assessment. There is no other reason given for reopening of assessment on the ground that some other wealth had escaped assessment.

13. It may be recorded that in view of the scope of Section 17 of the Wealth Tax Act until and unless the net wealth chargeable to tax under the Wealth Tax Act has escaped assessment for any assessment year, no proceedings for re-assessment can be initiated. In the present case, Solvency Certificate which is said to be subject matter for re-opening the assessment, has already been considered and dealt with by the Assessing Officer after calling upon the assessee and having accepted his version, in the regular assessment proceedings u/s 16(3) of the Wealth Tax Act. In the circumstances the Solvency certificate cannot be said to have escaped the wealth of the assessee at the time of regular assessment under the Wealth Tax Act. Therefore there was no case of escapement.

14. Having considered the submissions we find force in the contention of the assessee. The submissions of the learned Standing Counsel is without merit. Apart from the solvency certificate there was no other material to draw up any inference with regard to escapement or wealth. Since the solvency certificate had been specifically dealt with while passing regular assessment orders it could not form basis for opening of the assessment. No case for initiating proceedings u/s 17 of the Wealth Tax Act is made out. Notices u/s 17 of the Wealth Tax Act for the three assessment years based upon the reasons contained in Annexure 7 cannot be sustained and are liable to be quashed. Writ Petition No. 668 of 2001, accordingly, deserves to be allowed.

15. With regard to the Writ Petition No. 667 of 2001 arising out of the proceedings under Income tax Act, the submission of the counsel for the assessee is that the Assessing Officer under the Income Tax Act and the Wealth Tax Act was the same. In the Wealth Tax Act proceedings the Solvency Certificate of Rs. 46,000.00/- had been considered while passing the orders u/s 16(3) of the Wealth Tax Act, by the Wealth Tax Officer (who was also the Assessing Authority under the Income Tax Act) and therefore there was no escapement of income under the provisions of the Income Tax Act also calling for reopening of the assessment for the year 1990-91. The counsel for the assessee has further relied upon the assessment order for the assessment year 1990-91 under the Wealth Tax Act in support of his submission. Apart from the above, no further argument has been advanced by the learned Counsel for the assessee.

16. On the other hand, learned Standing Counsel has submitted that the proceedings for assessment and re-assessment under the Income lax Act as well as the Wealth Tax Act are quite different. The scope of inquiry, and the procedure adopted for such enquiry are also quite distinct under the two Acts.

17. It is further submitted by the learned Standing Counsel that under the Wealth Tax Act the assessee is required to disclose his wealth only and the question how wealth has been formed cannot be gone into in the assessment proceedings under the Wealth Tax Act. According to him the proceedings under the two statutes are separate and therefore the assessee cannot take advantage of any assessment made under the provisions of the Wealth Tax Act. He has relied upon the decision of this Court in the case of Arun Kumar Maheshwari (supra)

18. We have considered the submissions made by the learned Counsel for the parties with regard to the validity of the proceedings under Income Tax Act and we find force in the submissions of the learned Standing Counsel for the Revenue.

19. This Court while dealing with a similar situation in the case of Arun Kumar Maheshwari (supra) has taken the view that the proceedings under the two statutes are quite different and separate and simply because the Assessing Officer under the two statutes was the same person it cannot be presumed that the material/information "available in'' the assessment proceedings under the Wealth Tax Act would be deemed to have been available in the proceedings under the Income Tax Act. The submission of the learned Counsel for the assessee therefore cannot be sustained.

20. The Division Bench of this Court held as follows in paragraph 29 of the report-

It is well settled that the proceedings under the Wealth - Tax Act and the Income Tax Act are separate and merely because the Assessing Officer under the Wealth Tax Act and the Income Tax Act is one and the same person, would not mean that the scrutiny of materials/informations/wealth under the Wealth Tax Act would debar the Assessing Authority from taking appropriate steps under the Income Tax Act. It may be mentioned here that under the Wealth Tax Act an assessee is required to disclose his wealth only. How that wealth has been formed, is not to be gone into and, therefore, the question of disclosing the gifts in the return of wealth tax and its scrutiny in the assessment under the Wealth Tax Act, is of no consequence. It may be mentioned here that, according to the own showing of the petitioners, the return filed under the Act had been processed u/s 143(1)(a) of the Act.

21. In view of the discussions made above we do not find any force in the submissions of the learned Counsel for the assessee with regard to the proceedings under the Income Tax Act. Further we do not find any reason to quash the notice u/s 148 of the Income Tax Act.

22. Accordingly, Writ Petition No. 667 of 2001 is liable to be dismissed.

23. In view of the observations made above, Writ Petition No. 667 of 2001 is dismissed and Writ Petition No. 668 of 2001 is allowed and the impugned notice dated 29-3-2001 collectively filed as Annexure 6 to the Writ Petition along with all consequential proceedings are quashed.

24. There shall, however, be no order as to costs.

