

(1983) 09 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 7650 and 7651 of 1977

Amrut Talkies

APPELLANT

Vs

Second Income Tax Officer

RESPONDENT

Date of Decision : 07-09-1983

Acts Referred:

Income Tax Act, 1961 — Section 147 (b), 55 A
Wealth Tax Act, 1957 — Section 16 A, 17 (1) (b)

Citation : (1984) 150 ITR 386 : (1984) 17 TAXMAN 341

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Puttaswamy, J.—M/s. Amrut Talkies, Hubli, common petitioner in these petitions, is a registered partnership firm and is engaged in the business of running a cinema theatre in the city of Hubli. The petitioner is an assessee under the I.T. Act, 1961 (hereinafter referred to as "the Act"), on the file of the Second Income Tax Officer, Hubli Circle, Hubli (hereinafter referred to as "the ITO").

2. For the assessment years 1974-75 and 1975-76 (relevant to the periods ending on October 26, 1973, and November 13, 1974, respectively, the petitioner filed its returns before the ITO, inter alia, disclosing that it had constructed a permanent theatre at a cost of Rs. 4,79,050 or so supported by a valuation report of a registered valuer (Exhibit A) in support of the cost of construction of the theatre. On an examination of the returns filed by the petitioner, the ITO by his assessment orders dated March 31, 1975, and June 1, 1976 (Exhibits B and C) completed the assessments for the aforesaid years accepting the cost of construction as estimated by the registered valuer.

3. On a reference made by the ITO on December 18, 1965, the official Valuation Officer of the Department by his report dated September 26, 1976 (Exhibit E) reported that the cost of the construction of the theatre was Rs. 6,12,000 as against Rs. 4,79,050 as stated by the petitioner and supported by the registered

valuer. On the basis of that report of the official valuer, the ITO treating the same as an information as to a fact, has issued notices on November 22, 1976, under s. 147(b) of the Act to the petitioner for reopening the concluded assessments and has called upon it to file its returns within the stipulated time, the validity of which are challenged by the petitioner in these petitions under art. 226 of the Constitution.

4. Both sides are agreed that the impugned notices are issued on the basis of the report dated September 26, 1976, and no other materials, though they disagree on the question whether the same would constitute an information as to a fact.

5. Sri G. Sarangan, the learned counsel for the petitioner, has contended that the later report of the official valuer on the cost of construction of a building, having regard to the fact that the same varies from person to person from time to time, place and from valuer to valuer, does not constitute an information as to a fact to justify the reopening of the concluded assessments. In support of his contention, Sri Sarangan has strongly relied on the ruling of the Bombay High Court in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, and "From our Reporter at the Supreme Court" reported in (1983) 141 ITR 47 (D. R. Chawla WTO v. Ram Das Kilachand) to the effect that the Supreme Court has dismissed SLP (Civil) No. 5663 of 1980 under the heading "Reassessment : Departmental valuer's report : Whether constitutes 'information'."

6. Sri. K. Srinivasan, the learned senior standing counsel appearing for the Revenue, in justifying the impugned show-cause notices, urged that the report of the official valuer was an information as to a fact within the meaning of that expression occurring in s. 147(b) of the Act. In support of his contention Sri Srinivasan strongly relied on an unreported decision rendered by me in *K. G. Kempur v. Second WTO* (Writ Petition Nos., 6098 of 1977 and connected cases decided on May 30, 1973)-since reported in *K.G. Kemptur Vs. Second Wealth Tax Officer*,

7. The term "in consequence of information" found in s. 147(b) of the Act was also found in s. 34(1)(b) of the Indian Act, 1922 (hereinafter referred to as the "1922 Act"), which stands repealed and replaced by the 1961 Act. The true scope and ambit of these sections have been explained by the Supreme Court in a large number of cases and it is enough to notice three leading cases on the aspect.

8. In *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, the Supreme Court interpreted the word "information" occurring in s. 34(1)(b) of the 1922 Act as to mean "that it includes not only facts or factual material but to include also the information as to the true and correct state of the law". In *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, the Supreme Court reiterating its earlier ruling in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, , interpreted the term "information occurring in s. 147(b) of the Act as "instruction or knowledge

derived from an external source concerning facts or particulars or as to law, relating to a matter bearing on the assessment". In *Indian and Eastern Newspaper Society v. CIT* (1977) 119 ITR 996, the Supreme Court while examining whether the opinion expressed by internal audit party of the Income Tax Department would constitute information as to law or fact, reiterated the principles stated in *Maharaj Kumar Kamal Singh's* and *Raman's* cases and expressed thus (p. 1001) :

"That definition has been reaffirmed in subsequent cases, and with it as the point of departure, we shall now proceed.

In so far as the word "information" means instruction or knowledge concerning facts or particulars, there is little difficulty. By its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstances of its relevance. It requires no further authority to make it significant. Its quintessential value lies in its definitive vitality".

9. Bearing these principles, it is now necessary to examine the contention urged for the petitioner.

10. The cost of construction would vary from person to person, from place to place, from time to time and the reports of valuers also would vary from valuer to valuer; that the official valuer's report can be obtained on the "fair market value" for determining the capital gains under Chapter IV-E. Capital gains is not the same as the cost of construction that is relevant to determine the income in completing an assessment of income, can hardly be disputed. Likewise, when an assessment of income is pending, that it is open to the ITO to collect all information on the cost of construction furnished but the assessee from all sources including the official valuer under s. 55A of the Act and complete that assessment in conformity with law, is also rightly not disputed by Sri Sarangan. But the serious objection urged is that on the completion of the assessment, the subsequent report furnished by the official valuer does not constitute an information as to a fact to justify the reopening of the assessment.

11. In *Tulsidas Kilachand Vs. D.R. Chawla and Others*, *Pendse J.* was dealing with a case of reopening of a completed assessment under s. 17 of the W.T. Act, 1957. But, applying the principles enunciated by the Supreme Court under s. 147 of the Act, His Lordship expressed that (p. 460) :

"It was urged that, in view of the decisions of the Supreme Court in *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, and in *Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited*, the mere change of opinion of the officer does not confer jurisdiction to reopen the assessment. In my judgment the submission is sound and must be upheld. It is now well-settled that the jurisdiction to reopen the assessment orders which have become final can be exercised provided the officer has reason to believe from information in his possession that the earlier orders escaped the net wealth chargeable to tax. Mere change of opinion of the

succeeding officer is not enough and especially when before passing the assessment order, the officer could have easily ascertained the correctness of the statements made in his return. In the present case, the only information available with respondent No. 1 is a valuation report dated July 12, 1972. The mere fact that the two valuers have given conflicting reports about the true value of the properties is not sufficient to reopen the assessment under s. 17(1)(b) of the W.T. Act. In my judgment, the action of respondent No. 1 in the present case is totally erroneous and respondent No. 1 has assumed jurisdiction illegally and irregularly. The two interim notices dated March 26, 1973, and February 4, 1974, require to be struck down."

12. On this opinion so expressed by Pendse J., I expressed thus in Kemptur's case (146 ITR 616) :

"The one and the only reason given by His Lordship in this case is that mere change of opinion of the succeeding officer was not enough to reopen the assessment. If that is so, which is also the settled legal position, that is undoubtedly correct. But that is not the position in the present case. In these cases, the WTO has proposed to reopen the assessments on the basis of an information as to a fact of the Valuation Officer u/s 16A of the Act, which I have earlier examined and held was an information as to a fact within the meaning of that term occurring in section 17(1)(b) of the Act. In this view, the ratio in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, does not bear on the point."

13. Let me assume that the facts of these cases and the question that arises is similar to *Tulsidas Kilachand Vs. D.R. Chawla and Others*, , and examine the same on that basis.

14. Earlier I have held that the rulings of the Supreme Court in *Simon Corner's* case (1975) 105 ITR 212 , does not bear on the point. What I have said in *Simon Carves's* case (1975) 105 ITR 212 , is also true of *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, But, still Pendse J. has held that the ratio in those cases concluded the contentions urged in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, With great respect to His Lordship, this does not appear to be correct.

15. The very reasoning on which I have held that the report of the Valuation Officer would constitute information as to a fact should also apply to hold that the later report of the Executive Engineer that was not available and had not been considered would also constitute information as to a fact. In this view also, with respect, I find it difficult to subscribe to the view expressed by Pendse J.

16. Every one of the reasons I have given in *K.G. Kemptur Vs. Second Wealth Tax Officer*, to dissent from the view expressed by Pendse J. in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, , applies with greater force for reopening an assessment under s. 147(b) of the Act.

17. The fact that the official valuer's report under the W.T. Act is binding on the

WTO and a party has an opportunity to challenge the same hardly make any difference to take a different view in the case of a completed assessment under the Act.

18. As pointed out by me in K.G. Kemptur Vs. Second Wealth Tax Officer, , the subsequent report of the valuer, though that was the opinion of that officer, would be a fact within the meaning of that term occurring in s. 3 of the Indian Evidence Act and would thus be information as to a fact to confer jurisdiction under s. 147(b) of the Act.

19. On the above discussion, it follows that the subsequent report of the valuation officer would constitute information as to a fact and it was open to the ITO to reopen the assessment and issue the impugned notices.

20. Now, the only question that remains to be considered is whether the Supreme Court has affirmed the view of the Bombay High Court in Tulsidas Kilachand Vs. D.R. Chawla and Others, and has laid down a binding principle under art. 141 of the Constitution.

21. The report APPLICANT bearing in (1983) 141 ITR 7 reads thus :

"Reassessment : Departmental valuer's report : Whether constitutes "information".

30.3.1983 : Their Lordships P.N. BHAGWATI AND SABYASACHI MUKHARJI JJ. dismissed a SLP by the Department against the judgment of Bombay High Court dated 10-1-1980 in C.A. No.447 of 1979, whereby the High court dismissed in limine the Department's appeal against the judgment of a single judge allowing the assessee's writ petition on the point whether the WTO having completed the assessment accepting the assessee's valuation, can reopen the assessment on the basis of the departmental valuer's report, and whether the departmental valuer's valuation report constitutes "information" within the meaning of s. 17(1) (b) of the W.T. Act, 1957 : D. R. CHAWLA, WTO v. RAM DAS KILACHAND : SLP (Civil) No. 5663 of 1980".

22. From this report it is difficult to hold that the Supreme Court has affirmed the ruling in Tulsidas Kilachand Vs. D.R. Chawla and Others, and laid down a binding principle to be followed. On this short ground, I hold that there are no grounds for me to follow the principles stated by the Bombay High Court in Tulsidas Kilachand's case.

23. But, more important than the above reason, as pointed out by the Supreme Court in Daryao and Others Vs. The State of U.P. and Others, the dismissal of a SLP by the Supreme Court at the admission stage without giving reasons, for a variety of reasons, does not lay down any binding principle under art. 141 of the Constitution to be followed by the High Courts. For these reasons, I do not find any ground to reconsider the views expressed by me in K.G. Kemptur Vs. Second Wealth Tax Officer, and take a different view.

24. On the above discussion, it follows that the impugned notices issued by the ITO do not suffer from an error of jurisdiction or manifest error of law to justify this Court's interference before the proceedings are completed. Even otherwise, the impugned notices do not finally determine the rights of the petitioner. In answer to the notices, the petitioner while filing his returns can undoubtedly show that its earlier valuation was correct and the valuation made by the official valuer was an incorrect valuation and, therefore, the proceedings should be dropped, which the ITO is bound to examine and decide the same. On such examination, what view the ITO will take cannot be predicated before the reassessment proceedings are completed by him. On this ground alone it would be proper for this Court to decline to interfere with the impugned at this stage.

25. Assuming that the ITO holds against the petitioner, it is undoubtedly open to it to work out its remedies under the Act, as pointed out by the Supreme Court in its latest ruling in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, . In this view also, this is not a fit case in which this Court should interfere with the impugned notices.

26. In the light of my above discussion, I hold that these writ petition are liable to be dismissed. I, therefore, dismiss these writ petitions and discharge the rule issued in the cases with no order as to costs. But the petitioner is granted 30 days" time from this day for filing its returns and objections before the ITO, if not already filed.

27. Let this order be communicated to the respondent within 10 days from this day. Let a copy of this order be also furnished to Sri K. Srinivasan, senior standing counsel for the Income Tax Department, within the same time.