(1994) 02 CAL CK 0031

In the Calcutta High Court

Case No : Matter No. 2824 of 1992

Asit Kumar Ghosh — APPELLANT

Vs

Wealth Tax Officer and Others — RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:
Wealth Tax Act, 1957 — Section 17

Citation : (1995) 124 CTR 175 : (1994) 210 ITR 855

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Advocate : D.K. Dhar, for the Appellant; R.C. Prasad, led by A.C. Moitra, for the Respondent

Judgement

Ajoy Nath Ray, J.—This is a writ application challenging a notice dated May 20, 1992, for reopening the wealth-tax assessment of the petitioner for the assessment year 1983-84, which had been completed by an order dated March 22, 1988.

2. The notice itself is in a prototype printed form and does not, as the unfortunate custom is, disclose the reason for reopening.

3. Such disclosure is, however, to come at least in the affidavit-in-opposition and it has so been put forward. It has been said that for the next assessment year, i.e., assessment year 1984-85, the valuation of real property of the writ petitioner has been made at the figure of Rs. 1.59 crores whereas the accepted valuation for the assessment year in question was of the order of Rs. 12 lakhs. This is said to be a ground (indeed it is the main ground) of reopening.

4. The affidavit-in-opposition contains serious erroneous statements in that it is alleged that the return of wealth for the assessment year 1983-84 was filed by the assessee on March 19, 1984. It is also incorrectly stated in the affidavit-in-opposition that no appeal has been preferred by the assessee from the order containing the valuation of Rs. 1.59 crores.

5. The wealth-tax return had in fact been filed for the assessment year 1983-84 on March 19, 1984, as has been stated in the affidavit-in-reply. The assessee has also been successful at least at the first appellate stage in respect of the large valuations of real property for the assessment years 1984-85 and 1985-86. The order passed in favour of the assessee by the Commissioner of Income Tax (Appeals) remands the matter for a reconsideration as to whether the vacant land in the property is appurtenant to the tenanted building already valued or it is not so appurtenant, and is separate, so as to call for a separate valuation.

6. I have been told by learned counsel appearing for the petitioner that the order of remand has itself again been challenged in second appeal before the Tribunal.

7. Be that as it may, the point before me is whether the notice of reopening is subject to such challenge by the writ petitioner as calls for its absolute quashing.

8. Since four years have passed after the date of assessment before the notice of reopening was issued, such notice has to satisfy the words of the proviso to Section 17 of the Wealth-tax Act, 1957. For our purposes, the other conditions in the proviso are not material and the reopening notice will pass the test if, and only if, the assessee has failed "to disclose fully and truly all material facts necessary for his assessment for that assessment year".

9. Is the valuation made in the subsequent assessment year of the assessee''s property, and the comparative largeness of such valuation in comparison to the valuation for the assessment year in question, a sufficient factor to bring the notice of reopening within the permissible limits of the above words ?

10. It was submitted on the part of the petitioner that it is not. The first case relied upon by the petitioner is Sohan Singh Basi Vs. Union of India and others, , and that is a Division Bench judgment of the Delhi High Court.

11. The court there came to the conclusion that an assessment cannot be reopened on the ground of valuation made on the basis of the balance-sheet of a company for its shares, even if the same is different from the face value of the shares which had been disclosed by the assessee at the time of assessment.

12. The two other cases reported respectively in Smt. Tarawati Debi Agarwal Vs. Income Tax Officer, and Commissioner of Wealth Tax Vs. S.P.C. Murthy, were also relied upon for the purpose of showing that valuation is, at least largely, a matter of opinion and can proceed upon different factual premises on the basis of the different modes of valuation that might be adopted. It was submitted that unless there is a default of the assessee in the manner contemplated in the words in the proviso quoted above, reopening of wealth-tax assessments is beyond the jurisdiction of the respondent authorities.

13. In my opinion, for such reopening to be within jurisdiction there has to be either (a) a suppression of a material fact on the part of the assessee, or (b) an erroneous representation made in regard to such a material fact by the assessee. If the assessee cannot be shown to have made either a suppression of a material

fact necessary for his assessment, or to have made an erroneous statement with regard thereto, his assessment of wealth is absolutely immune from reopening after the passage of four years, which is the case here.

14. What then is a material fact "necessary for" assessment ? In my opinion, only that material fact is necessary for an assessment, without which the assessment cannot at all be completed, in any view of the law, or on the basis of any opinion as to the mode of valuation, or on the basis of any other such subjective, or mixed subjective and objective points.

15. If an assessment has already been completed on the basis of material facts, and it is not the case of the Department that such assessment could not, in any reasonable view of the matter, have been completed because of the non-disclosure of some necessary and material fact, or such assessment has been vitiated by an erroneous disclosure about such a fact, the Department cannot reopen the matter.

16. Thus, to justify a reopening, the Department must show at least one substantial fact, which was both material and necessary for the making of the assessment, and which, though it was the duty of the assessee to disclose the same correctly, he did not disclose, or he made an erroneous disclosure about it. Otherwise the jurisdiction to reopen cannot be exercised after four years. It is not enough to point out a fact which might be only material for an assessment that it must equally be shown that the fact was also necessary for any assessment, and is not merely such a material fact as it is possible to do without, if a particular method of valuation, or course of procedure, or way of assessment is followed, which alternative is not in itself illegal or prohibited.

17. It must be understood that suppression, so as to qualify for reopening u/s 17, proviso, is of a different order from the suppression on the basis of which courts of law dismiss applications wherein ad interim orders have been obtained upon suppressed material facts. A court proceeds on an adversary system. The Income Tax and Wealth-tax Departments are inquisitorial at least partly, in nature, because the levying authority itself is the judge. If the Assessing Officer is of the opinion that a particular law should be applied, or a particular method of valuation should be applied, or a particular subjective approach is right or just or legal in the circumstances and the Department is of the further opinion at the time of assessment that the facts given by the assessee are not complete if the said method of the Department is to be followed, the Department is free to call for further materials, or proceed in accordance with law if such materials are not furnished. This is not how a court of law operates.

18. Applying to this case the above principles, no default of the present assessee-writ petitioner can be seen from the records. It is not that he has failed to give the Department prior to the completion of assessment some material and necessary fact without which the assessment could not be completed at all. In fact, the assessment was completed. Nor is it the case that the assessee has

given a material and necessary fact before the completion of assessment which has now turned out to be so erroneous as to vitiate the same.

19. Once an assessment is complete, the utmost possible finality must attach to it, and the order of reopening as against the assessee cannot be passed, save by assumption of jurisdiction within the four corners of the Act and its words as mentioned above. That has not been so done in the instant case and the writ, therefore, must succeed.

20. There shall be rule absolute in terms of prayer (b) of the petition. Steps, if any, taken under the quashed notice shall also be quashed and be of no effect. It would be an unnecessary duplication, otherwise I would have passed orders in terms of the other prayers in the writ petition also.

21. All parties and all others concerned to act first on a signed xerox copy of this dictated order on the usual undertakings and thereafter upon the rule absolute which is to be drawn up expeditiously.

