

(1980) 04 DEL CK 0032

In the Delhi High Court

Avtar Singh Sandhu

APPELLANT

Vs

Wealth Tax Officer and another

RESPONDENT

Date of Decision : 30-04-1980

Acts Referred:

Citation : (1981) 129 ITR 531 : (1981) 7 TAXMAN 116

Hon'ble Judges : S. Ranganathan, J; Leila Seth, J

Bench : Division Bench

Judgement

Leila Seth, J.—The petitioner is challenging by way of petitions under arts. 226 and 227 of the Constitution of India, the legality and validity of notices issued by the WTO, respondent No. 1, under s. 17 of the Wealth-tax Act, 1957 (to be referred to in brief as "the Act"). These seven notices pertaining to assessment years 1968-69 to 1974-75 were all issued on 25th August, 1975, and served on the petitioner on 2nd September, 1975.

2. Since the point involved is the same, we propose to deal with all the seven writ petitions by a common judgment and order. The facts of Civil Writ Petition No. 1264 of 1975 are being set out.

3. The petitioner, an individual, is being assessed to wealth-tax since the assessment year 1957-58. He filed his return for the assessment year 1968-69 and indicated his net wealth at Rs. 5,77,408. This figure included the value of two immovable properties, one situated at 18, Tilak Marg (earlier known as 18, Harding Avenue), New Delhi, and the other at C-Block, Connaught Place, New Delhi. The value of these properties was shown as Rs. 4,56,906. In these writ petitions, we are concerned only with the property situated at 18, Tilak Marg, New Delhi, the value of which was indicated at Rs. 1,19,406 in the return. This value was duly supported by the report of an approved valuer dated 25th February, 1969. The WTO completed the assessment for 1968-69 on 20th November, 1969, and accepted the value of the said property, as above indicated.

4. Sometime in April, 1975, the petitioner applied for a tax clearance certificate

under s. 230A(1) of the I. T. Act, 1961, with a view to effecting sale of the said property. A certificate was issued on 25th June, 1975, by the ITO after directing the petitioner to furnish a bank guarantee to the tune of Rs. 1,50,000 to cover the tax in respect of capital gains that might arise on the proposed sale of the property.

5. On 2nd September, 1975, the petitioner received notices issued by the WTO under s. 17 of the Act dated 25th August, 1975, proposing to start reassessment proceedings. A request was also made in the said notices, to file within 35 days of receipt, a return in the attached form of net wealth chargeable to tax. These are the impugned notices.

6. Before the sale could be effected, the WTO respondent No. 1, sent a letter dated 2nd September, 1975, to the Registrar requiring him not to act on the tax clearance certificate. The petitioner thereafter contacted respondent No. 1 and the IAC of wealth-tax regard to this unusual action. He was then informed that there was a proposal to revise the value of the properties owned by him. The notices, as above-mentioned, under s. 17 of the Act had already been served for the relevant assessment years 1968-69 to 1974-75. In consequence of this, certain additional wealth-tax demands and penalties were likely to arise and the petitioner would be required to arrange for further security. The petitioner, then, met the Commissioner who required him to furnish security to the extent of Rs.4,40,000 over and above the security of Rs. 1,50,000 already furnished. This information was conveyed to the petitioner through a letter dated 23rd September, 1975, by respondent No. 1. This letter also indicated that supplementary assessment of wealth-tax were to be framed in terms of notices under s. 17(1)(a) of the Act for the years 1968-69 to 1974-75.

7. An affidavit in reply was filed by Mr. S. N. Tandon, WTO, Company Circle IV, New Delhi, affirmed on 8th April, 1976. There was a general assertion that the petitioner had not disclosed fully and truly all material facts and the WTO did not have an opportunity to examine and scrutinize the full facts of the case in all its aspects before passing the original orders of assessment.

8. It was also asserted that though the petitioner had earlier been declaring the value of the said property at Rs. 1,25,000 and from 1968-69 to 1974-75 at Rs. 1,19,406, in the return filed for the assessment year 1975-76 on 2nd July, 1975, the petitioner had himself declared the value of the said property at Rs. 3,00,000. Further, in the application for the tax clearance certificate dated 2nd April, 1975, under s. 230A(1) of the I. T. Act, 1961, the proposed sale price, to the Iranian Embassy, was shown at Rs. 27,65,825 though it was also indicated in the said application, that out of the said consideration, a sum of Rs. 22,65,825 was to be paid to the Land and Development Officer of the Government as unearned income.

9. As a result, it was felt that the petitioner would surely be getting a net value of Rs. 5,00,000 for the property. As the petitioner was contesting the demand of

the Land and Development Officer, it was submitted that the amount might even be larger. If the value of the property on or about 2nd April, 1975, was at least Rs.5,00,000 then it could not be so low as Rs. 1,25,000 or Rs. 1,19,406 as declared or finally determined for the assessment years 1968-69 to 1974-75.

10. It was also stated in the said affidavit that the property was located opposite the Supreme Court Building and could not have had such an extremely low market value. Further, the adjoining property at 6, Tilak Marg, New Delhi, had been sold for Rs. 14,42,895 on 18th December, 1970. In the course of the proceedings under s. 230A(1) of the I. T. Act, 1961, the assessed had claimed the market value of the property to be Rs. 2,00,000 as on 1st January, 1954, for the purpose of working out the estimated capital gains. He had estimated the capital gains at Rs. 1,00,000 as, according to the sale deed, he was to get Rs. 5,00,000 if property was vacant or Rs.3,00,000 otherwise, if the property was tenanted.

11. It was further stated that before issuing the notice on 25th August, 1975, the WTO had recorded his reasons. There are as follows :

"The value of 18 Tilak Marg property was shown and assessed at Rs. 1,19,406 for the years ended 31-3-1968 to 31-3-1974. The assessed considered no increase in it for all these number of years. This property was agreed to be sold to the Iranian Embassy as per s. 230A(1) application on 2-4-1975 in the I. T. C. C. cover for Rs. 27,65,825. This quotation is indication of the fact that the market value as on 31-3-1974 and other dates was not Rs. 1,19,406. assessed's wealth chargeable to tax as on 31-3-1974, 31-3-1973, 31-3-1972, 31-3-1971 and other earlier dates owing to this immovable property escaped assessment. Issue notice u/s. 17 of the Wealth-tax Act for 1968-69 to 1974-75 assessments."

12. Mr.D. S. Randhawa, learned counsel for the assessed, has urged that the notices and proceedings were initiated under s. 17(1)(a) and are without jurisdiction, as there was no omission or failure to disclose fully and truly all material facts.

13. The impugned notices dated 25th August, 1975, appear to have been issued under s. 17 of the Act. They do not indicate whether they are under sub-s. (1) (a) or (1) (b). They are all issued at one and the same time. But as more than four years had elapsed, at least with regard to the assessment years 1968-69, 1969-70 and 1970-71, it would appear that the intention was to act under s. 17(1)(a). This is also apparent from the letter of 23rd September, 1975, and the affidavit of respondent No. 1, above-mentioned.

14. There does not appear to have been any failure to disclose fully and truly all material facts. The petitioner had filed a valuation report, as above noticed, in respect of the concerned property at 18, Tilak Marg, New Delhi, and this had been duly accepted by the WTO as is apparent from the assessment order dated 20th November, 1969. Further, this property had been assessed in 1958-59 at Rs. 7,00,000 by the WTO against the value declared in the return of Rs.

1,25,000. But, on appeal, the AAC had accepted the declared value of Rs. 1,25,000 and this had been confirmed by the Income Tax Appellate Tribunal. Similarly, for the subsequent years 1959-60, 1960-61 and 1961-62, though the WTO adopted a value of Rs. 5,10,000 as against the declared value of Rs. 1,25,000, on appeal, it was reduced to Rs. 1,25,000. For the assessment year 1962-63, the WTO adopted the value of the property at Rs. 1,50,000 as against the declared value of Rs. 1,25,000. Once again, on appeal, the AAC reduced it to Rs. 1,25,000, i.e., the value as declared in the return. Thereafter, for the assessment years 1964-65 to 1967-68, the value declared in the return, i.e., Rs. 1,25,000, was duly accepted by the WTO.

15. It is clear from the reasons recorded by respondent No. 1, before issuing the notice, that the main reason for issuing the notice was because of the agreement to sell the property to the Iranian Embassy at Rs. 27,65,825. This fact, though material, came into existence some time in early 1975. It was an agreement for a proposed sale and was not a fact known or contemplated by the petitioner at the time of the original assessments. At the relevant time, it did not exist. That there cannot be omission or failure to disclose a non-existent fact is a proposition too obvious to be stated.

16. The question next posed is whether the fact of the agreement to sell to the Iranian Embassy amounts to an information which would come within the ambit of s. 17(1)(b) of the Act.

17. It would appear that the agreement to sell to the Iranian Embassy is information in the possession of the WTO. The WTO under s. 8 of the Act is the ITO having jurisdiction or exercising powers in respect of the particular individual. This information came to his knowledge by virtue of the application for an Income Tax clearance certificate under s. 230A(1) made by petitioner. One of the requirements of the application is that particulars of existing tax liabilities as also assessments made for Income Tax, wealth-tax, expenditure-tax and gift-tax purposes be indicated. In this view of the matter, it is apparent that the information which was in the possession of the ITO was also in the possession of the WTO. Further, it is patent that this information came to his possession subsequent to his making the original assessments.

18. It is, Therefore, necessary to examine whether the notices for the assessment years 1971-72, 1972-73, 1973-74 and 1974-75 can be treated as notices under s. 17(1)(b) of the Act.

19. As above noticed, the statutory notices dated 25th August, 1975, are silent as to whether they are under s. 17(1)(a) or s. 17(1)(b) of the Act. The subsequent letter of 23rd September, 1975, tends to indicate the intention of respondent No. 1, but this is not conclusive. Clauses (a) and (b) of sub-s. (1) of s. 17 contemplate different situations for the exercise of jurisdiction but it would appear to us that the same set of facts might be the basis for an inference under s. 17(1)(a) and may also constitute information under s. 17(1)(b). In such a

case, even if these were no omission or failure on the part of the assessed to disclose fully and truly all material facts, action could be taken under s. 17(1)(b).

20. The Full Bench of the Calcutta High Court in *Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, has held that it is possible for the WTO to have alternate beliefs. He may on the same set of facts believe that there was an omission or failure to disclose fully and truly all material facts and even if there was no such omission or failure, the new facts constituted an information in his possession which called for reassessment of escaped wealth. Further, there is no bar to a notice which does not specify whether it is being issued under one or the other clause being treated as a notice under clause (b). The practical consequence is only a question of the period within which the notice in either case has to be issued.

21. Since s. 17(1)(b) requires the notices to be served within four years of the end of the assessment year, we hold that the notices for the assessment years 1971-72 to 1974-75 can be treated as notices under s. 17(1)(b) of the Act.

22. It was next contended by learned counsel for the petitioner, that no net wealth chargeable to tax has escaped assessment. He submits that the land and building method was adopted by the valuer whose report was placed before the WTO in the particular years. It was stated therein that the land under the master plan fell within the institutional area and as such had a lower value than that of residential or commercial areas. The market price of the land was, Therefore, valued at Rs. 1,50,000 per acre and the amount of Rs. 3,75,000 was indicated for 2.5 acres. As 75 per cent. of the difference in the present price of the land over the original premium paid of Rs. 875 would have to be given to the Government, this was estimated at Rs. 2,80,594 and a net balance of Rs. 94,406 resulted. With regard to the value of the building on the said land, it was indicated that this was in a very dilapidated condition due to lack of maintenance and it had been built in 1927. Therefore, only the salvage value could be taken. Further, the building was occupied by tenants and the Rent Controller had fixed the rent at Rs. 250 per month, and as such the salvage value of the building was indicated at Rs. 25,000. Thus, the total value of the land and building was Rs. 1,19,406.

23. Further, the AAC had for earlier years reduced the valuation of the property to Rs. 1,25,000, which was the value declared in the return, despite the value adopted by the WTO of Rs. 7,00,000 as above noticed. While doing so the AAC had noticed that the assessed's valuation of the property was about 42 times the annual value and the income could not be considered too low. The Tribunal had confirmed the order of the AAC.

24. It was, Therefore, urged that the subsequent event of the sale agreement with the Iranian Embassy should not affect the earlier assessment. This information, according to learned counsel for the petitioner, was not relevant material, and in any case the sale did not take place till 1977. In fact, when the

notices were issued, there was only a contemplated sale which may not have fructified.

25. The question whether actual escapement has resulted, and to what extent, is a matter to be examined in the reassessment proceedings. At this stage, when we are dealing with the question of jurisdiction only, all that has to be seen is whether the WTO had reason to believe in consequence of information in his possession, that the net wealth chargeable to tax had escaped assessment. We are not to adjudicate on the sufficiency of the material on the basis of which the belief had been formed. The material in this case is certainly relevant and the WTO had clearly reason to believe that there had been escapement of net wealth as on 2nd April, 1975; the value of the property is indicated by the petitioner himself as more than double the value of the property is indicated by the petitioner himself as more than double the value returned as on 31st March, 1974, the petitioner having indicated that the tenanted property would sell for Rs. 3,00,000 net. There is, Therefore, no question about the lack of jurisdiction to issue the notices under s. 17(1)(b) of the Act.

26. In the result, for the reasons outlined above, the notices dated 25th August, 1975, for the years 1968-69, 1969-70 and 1970-71 have to be quashed. Civil Writ Petitions Nos. 1264, 1265 and 1266 of 1975 are allowed. But Civil Writ Petitions Nos. 1267, 1268, 1269 and 1270 of 1975 are dismissed. There will, however, be no order as to costs.