

(1998) 02 MAD CK 0180

In the Madras High Court

Case No : Tax Case No"s. 1232 and 1233 of 1985

Comm1Ssioner of Wealth Tax

APPELLANT

Vs

K.L. Varadarajan

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 16A, 17(1)(a), 17(1)(b), 17(10)

Citation : (1998) 149 CTR 162

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; Balafi for K. Ramagopal, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is the owner of the property at No. 3, A.V. Palaniswamy Naidu Street, Coimbatore. The property is a residential bungalow. We are concerned with the assessment years viz., 1972-73 and 1973-74. The original assessment under the WT Act for the asst. yr. 1972-73 was made on 28th Oct., 1972 on a net wealth of Rs. 4,40,700. For the asst. yr. 1973-74, the original assessment was made on 29th Jan., 1974 on a net wealth of Rs. 5,56,500. The WTO determine the value of the said property in the original assessment at Rs. 2,22,048 on the basis of the registered valuer's report. Subsequent to the completion of the original assessment for the asst. yr. 1972-73, the WTO referred the matter to the Departmental Valuation Officer under s. 16A of the Act to determine the value of the property who determined the property's value at Rs. 4,65,000. According to the Departmental Valuation Officer, the area of the property was 90 cents and on that basis, the value of the property was determined at Rs. 4,65,000. The WTO on the basis of the report of the Departmental Valuation Officer found that the area of the house as found by the Departmental Valuation Officer was 90 cents, and held that the assessee had not disclosed the full and true materials for making a proper assessment. He was also prima facie of the opinion that the assessee had not returned the correct value of the shares held by him in a company called, MIs Ajanta Textiles Ltd.

which value was shown as Rs. 35,000, at Rs. 5 per share. But, the WTO was of the view that the value of the shares was at Rs. 10 per share as quoted in the Madras Stock Exchange and if that value was taken into account, there was an underassessment in the wealth-tax assessment proceedings for both the assessment years and issued a notice of reassessment to the assessee. The WTO ultimately completed the reassessment as there was no response to the notice from the assessee, and brought to tax the difference in value.

2. The assessee, challenging the order of the WTO filed appeals before the AAC. The AAC found that the assessee at the time of original assessment filed a plan of the house wherein the assessee mentioned that the area of the site was 39,200 sq. ft. According to the AAC, one cent is equal to 435.6 sq. ft. and if that formula is taken into account, the area of the property as mentioned by the assessee in the original assessment would come to 91 cents. The AAC also found that the assessee obtained the property by a partition in the joint family and in the partition, the area of the site was mentioned as 81 cents and so, the assessee repeated the same at the time of filing of the return during the course of original assessment. He also found that as regards the valuation of shares, the assessee had furnished full particulars at the time of original assessment and after taking into account the particulars, the value of the shares was fixed at Rs. 35,000. He therefore, held that the reassessment proceedings initiated by the WTO for both the assessment years under s. 17(1)(a) of the Act were not valid and the officer has no jurisdiction to reopen the assessment under s. 17(10) of the Act. As regards the application of s. 17(1)(b) of the Act the AAC found that the proceedings under s. 17(1)(b) of the Act, were time-barred and therefore, the provisions of s. 17(1)(b) have no application to the facts of the case. In this view of the matter, he allowed the appeals preferred by the assessee.

3. The Department carried the matter on appeal before the Tribunal. The

Tribunal confirmed the finding of the AAC and the Tribunal found that the assessee cannot be stated to have omitted to disclose true and full material facts necessary for making a proper assessment before the WTO at the time of original assessment. The Tribunal also held that the provisions of s. 17(1)(a) have no application and the provisions of s. 17(1)(b) was not applied. The Tribunal also recorded a finding that the WTO made a reference to the Departmental Valuation Officer after the original assessment was completed and under the provisions of s. 16A of the Act, the WTO is not empowered to make a reference to the Valuation Officer after the completion of the assessment. The Tribunal held that the assessee cannot be said to have furnished inadequate particulars and further, the assessee had no knowledge about the area of the property and it cannot be stated that the assessee omitted to produce material particulars. Challenging the order of the Tribunal, the Department sought for a reference and the following questions of law have been referred by the Tribunal for our consideration:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the cancellation by the AAC of the reassessments made under

s. 17(1)(a) of the WT Act, 1957 for the asst. yrs. 1972-73 and 1973-74?

2. Whether the Tribunal had valid and relevant materials to hold that the assessee could not be said to have knowingly omitted or failed to disclose the correct area of the site in which the building is situate and that, therefore, the provisions of s.17(1)(a) would not give powers to the WTO to reopen the assessment?

3. Whether the Tribunal's finding that the report under s. 16A of the WT Act submitted by the Valuation Officer was in an invalid reference and that, therefore, the said report could not be made the basis for reopening the assessment under s. 17(1)(a) of the WT Act, 1957 was based on proper materials of the case?

4. Mr. C.V. Rajan, learned counsel for the Revenue, submitted that the Tribunal was not correct in holding that the reassessment was invalid as the assessee had failed to disclose the relevant material particulars at the time of original assessment. Learned counsel for the assessee, on the other hand, supported the order of the Tribunal.

5. We have carefully considered the submissions of the learned counsel. We are of the view, both the AAC and the Tribunal have given a finding of fact that the assessee had produced all relevant particulars for the purpose of a proper assessment at the time of original assessment and the assessee cannot be

stated to be guilty of producing inadequate particulars or untrue particulars at the time of original assessment. The assessee had produced the site plan along with the return at the time of original assessment showing the area as 39,200 sq. ft. When relevant particulars were available before the WTO, it is the duty of the WTO to find out the exact area and on that basis, to determine the value of the property. The assessee had furnished full and true particulars regarding the valuation of the property and that value returned by the assessee was also

supported by the report of the registered valuer. We are, therefore, of the opinion that it cannot be stated that the assessee had omitted to disclose full and true particulars at the time of original assessment.

6. In so far as the valuation of shares is concerned, the finding of the Tribunal is that there Was a full discussion as regards the valuation of the shares at the time of original assessment and after that, the WTO determined the value of the shares at Rs. 35,000 for both the assessment years. Therefore, it cannot be stated that the assessee had failed to disclose relevant particulars for the valuation of the shares at the time of original assessment. As already held, when the relevant particulars regarding the shares were before the AO, it is the duty of the AO to find out the value of the shares. We cannot put the blame on the assessee for the lapse of the AO in not determining the value of the shares. Therefore, we are of the opinion that the assessee had disclosed full and true

particulars regarding the valuation of both the items of the properties at the time

of original assessment and on that basis only the original assessment was completed. We are, therefore, of the opinion that the Tribunal committed no error in holding that the reassessment proceedings initiated for both the assessment years were not valid and the WTO had no jurisdiction to make reassessment under s. 17(1)(a) of the Act. Admittedly, it is not a case falling under s. 17(1)(b) of the Act as the proceedings under s. 17(1)(b) have become time barred at the time of initiation of proceedings, and therefore, only on the basis of s. 17(1)(b) (sic) of the Act, the question of validity of reassessment has to be determined. We hold that the provisions of s. 17(1)(a) are also not applicable to the facts of the case and the Tribunal was correct in holding that the WTO lacked the jurisdiction to make the reassessment in the instant case.

7. Though the Tribunal had made an observation regarding the action of the

AO in obtaining the valuation, report from the Departmental Valuation Officer invoking his powers under s.16A of the Act, we are of the opinion that the report will be relevant only if the reassessment proceedings were taken under s. 17(10) of the Act. Since the proceedings were initiated under s. 17(1)(a) of the Act, it is unnecessary for us to express any opinion on the correctness of the view of the Tribunal as to whether the powers under s. 16A of the Act were properly invoked by the AO.

8. Accordingly, we answer the questions of law referred to us as under.

Question 1 and 2:-They are answered in the affirmative, against the Department and in favour of the assessee.

3rd question:-We are of the opinion, it is not necessary for us to render any answer to this question as the reopening of the assessment was made under s. 17(1)(a) and since the powers under s. 17(1)(b) were not invoked, it is not necessary to render any answer to the question whether the report under s. 16A can be the basis for reopening the assessment under s. 17(1)(a) of the Act.

Hence, we are not answering the third question.

The assessee is entitled to costs of Rs. 750.