

(1979) 09 AHC CK 0062
In the Allahabad High Court
Case No : Gift-tax Reference No. 862 of 1977

Commissioner of Gift-tax

APPELLANT

Vs

C.L. Serpal

RESPONDENT

Date of Decision : 26-09-1979

Acts Referred:

Gift Tax Act, 1958 — Section 16(1)

Citation : (1980) 121 ITR 786

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; R.S. Dhawan and Ashok Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

R.R. Rastogi, J.—The Income Tax Appellate Tribunal, Delhi Bench-C, has, in this reference u/s 26(1) of the. G.T. Act, 1958, referred the following questions of law for the opinion of this court :

" (i) Whether, on the facts and in the circumstances of the case, the fact that the wealth-tax assessment was made at a higher figure, constituted " information " for the purposes of reopening the assessment u/s 16(1)(b) of the Gift-tax Act, 1958 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in quashing the reassessment completed u/s 16(1)(b) of the Gift-tax Act, 1958 ? "

2. The facts which have given rise to these questions briefly stated are that the assessee, late Sri Guran Ditta Mal, an individual, had constructed a house property bearing No. F-40, Green Park, New Delhi. He made a gift of a portion of that property on March 2, 1970, in favour of his son, Chiranjiv Lal Sarpal. The value of the gifted property was shown at Rs. 47,000 and the assessee filed a return of gift on November 27, 1970, declaring the taxable gift at the aforesaid

amount. The GTO made an assessment u/s 15(1) on August 31, 1971, accepting the return. At the same time, a few days before the filing of the gift-tax return the assessee had filed his wealth-tax return for the assessment years 1968-69 and 1969-70. In these returns for 1969-70, the value of the entire property was shown at Rs. 72,000 as on March 31, 1969. The WTO, however, determined the value of that property at Rs. 1,56,000. On the basis of that assessment as modified by the AAC, the GTO issued notice u/s 16(1) of the Act in respect of the assessment under consideration, viz., 1970-71, on January 19, 1973. Pursuant to that notice the assessee filed the return showing the value of the gifted property at the figure which he had shown in the original return. The GTO, on the other hand, took the value of the property gifted at Rs. 90,500.

3. The assessee appealed to the AAC and contended that the belief of the GTO that the taxable gift had escaped assessment or had been under-assessed was merely based on a change of opinion and hence action taken u/s 16(1)(b) was invalid. The AAC did not accept that contention and confirmed the reassessment made by the GTO. There was a further appeal taken by the assessee to the Appellate Tribunal and there he succeeded. The Appellate Tribunal, accepting the assessee's contention, held that all the relevant facts were available before the GTO at the time of the original assessment and since no fresh facts had come to his knowledge subsequently, the GTO could not reopen the assessment on the basis of the wealth-tax assessment where the value of the same property had been determined only on estimate. The reassessment was accordingly set aside. Hence, his reference.

4. It was submitted before us on behalf of the revenue that the information in this case had come to the knowledge of the GTO from an external source and subsequent to the original assessment and the requirements of Section 16(1)(b) were fully complied with. The order of the AAC passed in the appeal against the wealth-tax assessment for the assessment year 1969-70 constituted a valid information and on the basis of the same the GTO could take action u/s 16(1)(b), when he was satisfied that the gift-tax had been under assessed. On the other hand, according to the assessee, there was no change at all in the facts and circumstances of the case and the action of the GTO in reopening the assessment was only as a result of change of opinion.

5. Reliance has been placed by both the sides on certain decisions to which we would advert a little later. In order to appreciate the submissions made before us, it would be necessary to refer to the relevant provisions contained in Section 16(1)(b) of the Act. Section 16(1)(b) reads as under ;

"16. (1) If the Gift-tax Officer--.....

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in Clause (a), that any taxable gift has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or

otherwise ;

he may, in cases falling under Clause (a) at any time within eight years and in cases falling under Clause (b) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 13, and may proceed to assess or reassess any taxable gift which has escaped assessment, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section. "

6. This provision is in pari materia with similar provision contained in Section 147(b) of the I.T. Act, 1961, or Section 34(1)(b) of the Indian I.T. Act, 1922. There are two conditions precedent which must be satisfied before this provision can be invoked and they are that the GTO should have reason to believe that any taxable gift has escaped assessment and it should be in consequence of information received after the original assessment that he should have such reason to believe. Both these conditions must be satisfied before an action taken under this provision can be justified.

7. The import and meaning of the word " information " came up for consideration before the Supreme Court in Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, and it was laid down (p. 7) :

" We would accordingly hold that the word " information " in Section 34(1)(b) includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions. "

8. While considering the other requirement that the income had escaped assessment the view taken was that even in a case where a return had been submitted, if the ITO erroneously failed to tax a part of the assessable income, it was a case where the said part of the income had escaped assessment.

9. In Commissioner of Income Tax, Gujarat Vs. A. Raman and Company, it was ruled that the expression " information " in the context in which it occurs must mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. It was further held that information must have come into the possession of the ITO after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record or the facts disclosed thereby or from other enquiry or research into facts or law but was not in fact obtained, the jurisdiction of the ITO is not affected. The same view was taken by the Supreme Court in R.B. Bansilal Abirchand Firm Vs. Commissioner of Income Tax, Madhya Pradesh, .

10. Learned counsel for the revenue also invited our attention to two other decisions of the Supreme Court in Commissioner of Income Tax, U.P. Vs. Gurbux Rai Harbux Rai, which was a case of the reopening of assessment under the Excess Profits Tax Act. It was laid down that the ITO would have jurisdiction to

initiate proceedings u/s 34(1)(b) of the Indian I.T. Act, 1922, which is in pari materia with Section 15 of the E.P.T. Act, 1940, if he acted on information received from the decision of the superior authorities or the court even in the assessment proceedings. The other case is The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, , where an ex parte assessment made under Rule 41(5) of the U.P. Sales Tax Rules was reopened u/s 21 of the U.P. Sales Tax Act. The expression " reason to believe " occurring in Section 21 came up for interpretation and it was observed (p. 299):

" In our opinion, these words convey that there must be some rational basis for the assessing authority to form the belief that the whole or any part of the turnover of a dealer has, for any reason, escaped assessment to tax for some year. If such a basis exists, the assessing authority can proceed in the manner laid down in the section. "

11. The view taken was that in fact there should be some reasonable grounds for the assessing authority to believe that the whole or any part of the turnover of a dealer has escaped assessment. The reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment and should not be of an extraneous character. The adequacy or the sufficiency of the grounds is not justiciable. What can be challenged is the existence of the belief and not the sufficiency of the reasons for the belief. The belief must be held in good faith and should not be a mere pretence.

12. There has been a recent decision of the Supreme Court on this question in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, . The question involved in those references was as to whether the view expressed by the internal audit party of the I.T. department on a point of law can be regarded as information for the purposes of initiating proceedings u/s 147(b) of the I.T. Act, 1961. It has been laid down that in so far as the word " information " means instruction or knowledge concerning facts or particulars there is little difficulty, the reason being that a fact has concrete existence and it does not require any further authority to make it significant. But when information is regarded as meaning instruction or knowledge as to law, the position is more complex. It has been observed (p. 1001) :

" When we speak of " law ", we ordinarily speak of norms or guiding principles having legal effect and legal consequences. To possess legal significance for that purpose, it must be enacted or declared by competent authority. The legal sanction vivifying it imparts to it its force and validity and binding nature. Law may be statutory law, or what is popularly described as, judge-made law. In the former case, it proceeds from enactment having its source in competent legislative authority. Judge-made law emanates from a declaration or exposition of the content of a legal principle or the interpretation of a statute, and may in particular cases extend to a definition of the status of a party or the legal relationship between parties, the declaration being rendered by a competent judicial or quasi-judicial authority empowered, to decide questions of law

between contending parties. The declaration or exposition is ordinarily set forth in the judgment of a court or the order of a Tribunal, Such declaration or exposition in itself bears the character of law. In every case, therefore, to be law it must be a creation by a formal source, either legislative or judicial authority. A statement by a person or body not competent to create or define the law cannot be regarded as law."

13. And further :

" In that view, therefore, when Section 147(b) of the I.T. Act is read as referring to " information " as to law, what is contemplated is information as to the law created by a formal source. It is law, we must remember, which, because it issues from a competent legislature or a competent judicial or quasi-judicial authority, influences the course of the assessment and decides any one or more of those matters which determine the assessee's tax liability."

14. Their Lordships then considered the nature and scope of the functions of the internal audit party and came to the conclusion that the audit party cannot pronounce on the law and any such opinion expressed by the audit party would not amount to an information within the meaning of Section 147(b).

15. If we apply the ratio which has been laid down by the Supreme Court in the abovementioned case, it would be clear that the information received by the GTO in the present case could constitute information for the purposes of Section 16(1) (b). This information was received by him from the appellate order made in the wealth-tax assessment of this very assessee in regard to the valuation of this very property for the immediately preceding year. That information, therefore, was from a quasi-judicial authority and being on a question of law could constitute an information within the meaning of Section 16(1)(b) and the reopening of the assessment on the basis of the same was perfectly justified.

16. In view of the foregoing discussion, it is not necessary to refer to the case law cited at the bar. Suffice it to say that the decisions of the Supreme Court in (1976) 102 ITR 287 (SC) and R.K. Malhotra, ITO, Group Circle II(1), Ahmedabad Vs. Kasturbhai Lalbhai (Huf), have not been approved by the Supreme Court in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, and hence the extended meaning given to the word "information" therein that Section 147(b) would be applicable even where escapement of income was due to oversight, inadvertence or a mistake committed by the ITO can no longer be taken to be the correct view.

17. Counsel for the department also relied on Umrao Industrial Corporation P. Ltd. Vs. Union of India (UOI) and Another, but that is not relevant for the present purpose as it was rendered u/s 147(a) of the Act,

18. On behalf of the respondent-assessee the cases to which our attention was invited are cases where reopening of assessment was as a result of change of opinion and hence they are not very relevant. They are : Commissioner of

Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited, , Bankipur Club Ltd., Patna Vs. The Commissioner of Income Tax , Bihar and Orissa, Patna, , Additional Commissioner of Income Tax, Gujarat Vs. Laxmi Agents Ltd., , Commissioner of Income Tax Vs. Coral Mills Workers Co-operative Stores Ltd., and Income Tax Officer, "C" Ward and Others Vs. Panama Private Ltd., .

19. In view of what has been discussed above, we are not inclined to agree with the view taken by the Appellate Tribunal. Our answers to the two questions referred, therefore, are that the appellate order made in the W.T. assessment for the immediately preceding year constituted an information for reopening the G.T. assessment for the year 1970-71 u/s 16(1)(b) of the Act and the Appellate Tribunal erred in quashing the reassessment,

20. Question No. 1 is thus answered in the affirmative, in favour of the department and against the assessee and question No. 2 in the negative, in favour of the department and against the assessee. The department is entitled to its costs which we assess at Rs. 200 and counsel's fee in the like amount.