
(2006) 03 MP CK 0083
In the Madhya Pradesh High Court

Commissioner of Income Tax

APPELLANT

Vs

Digvijay Singh

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Income Tax Act, 1961 — Section 147, 260A
Wealth Tax Act, 1957 — Section 17, 27A

Citation : (2007) 213 CTR 490 : (2007) 292 ITR 314

Hon'ble Judges : Subhash Samvatsar, J;A.P. Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Subhash Samvatsar, J.—This order shall govern disposal of this M.A. No. 296 of 1999 as well as Miscellaneous Appeals Nos. 297 of 1999, 298 of 1999, 300 of 2000, 301 of 1999, 302 of 1999 and 303 of 1999, which are filed u/s 27A of the Wealth-tax Act, 1957, for short, "the WT Act", challenging orders passed by the Income Tax Appellate Tribunal, Agra Bench, Camp at Delhi, in W.T.A. Nos. 434 to 430/Delhi of 1994 by order dated November 30, 1998.

2. All these miscellaneous appeals were admitted by this Court on October 18, 2000, on the following three substantial questions of law:

(a) Whether the impugned order stands vitiated in law on account of it being based on the decision in the case of Smt. Asha Digvijay Singh in W.T.A. Nos. 1253 to 1259/Delhi of 1988 of the Income Tax Appellate Tribunal, Delhi Bench "A", stood set aside vide the decision in the case. MCC No. 73 of 191 (Commissioner of Wealth-tax Vs. Smt. Asha Digvijaya Singh, decided on August 6, 1996, by this Court ?

(b) Whether the Income Tax Appellate Tribunal has erred in law in holding that there was no underassessment in terms of Section 17 of the Wealth-tax Act requiring reopening of the assessment ?

(c) Whether the finding of the Tribunal to the effect that net wealth as declared

in the relevant assessment years varied and was not on the same figure is vitiated on account of error apparent on the face of the record ?

3. The brief facts of the case are that the late Rajmata Aparna Kumari was assessed during the years 1979-80 to 1985-86 u/s 16(1) of the Wealth-tax Act. The returns filed by the assessee were accepted. Subsequently, a notice dated October 8, 1987, was served u/s 17 of the Wealth-tax Act for reopening of the assessment. As per the returns the assessee has disclosed her wealth in the return as under:

Assessment years	Value of the wealth shown in the return and assessed Rs.
1980-81	1,40,800
1981-82	1,35,100
1982-83	1,49,600
1983-84	1,85,600
1984-85	1,99,400
1985-86	1,92,400
1986-87	2,09,400

4. After service of the notice for reassessment, order annexure A-1 was passed assessing the value of the assets at Rs. 3,67,000. This order was passed on March 30, 1990. This order was challenged by the assessee by filing an appeal. The appeal was allowed by the appellate authority against which the Department preferred appeals before the Tribunal and all these appeals were dismissed by a common order dated November 30, 1998. Hence, the present appeals have been filed.

5. Counsel for the respondent raised a preliminary objection about the maintainability of the appeals. According to him the total tax effect in every appeal is around Rs. 2,000. He invited the attention of this Court to notification issued u/s 10 of the Wealth-tax Act, which provides that appeal could be preferred to the High Court in cases where a debt of wealth-tax does not exceed Rs. 25,000. He invited the attention of this Court to the judgment of the Bombay High Court in the case of Commissioner of Income Tax Vs. Zoeb Y. Topiwala, wherein the Bombay High Court has held that the directions issued by the Board dated March 27, 2000, directing the Department not to raise questions of law where the tax effect is less than Rs. 2 lakhs is binding on the Revenue. The appeal which was filed having tax effect less than Rs. 7,000 was dismissed as not maintainable by the Bombay High Court by holding that the directions issued by the Board are binding on the Department.

6. The next case relied upon by him is in the case of Commissioner of Income Tax Vs. Camco Colour Co., in which the Bombay High Court has reproduced the circular issued by the Ministry of Finance dated March 27, 2000, in which it is directed that appeals u/s 260A of the Income Tax Act with tax effect less than Rs. 2 lakhs should not be preferred. In paragraph 5 of the said circular it is mentioned that the said circular is applicable to wealth-tax, gift-tax, estate duty, etc. In that case also the appeal was dismissed by the Bombay High Court by holding the same as not maintainable. A number of other judgments were relied upon by counsel for the appellant for supporting his arguments on the said question, including CIT v. Kelvinator of India Ltd. [2002] 256 ITR 1 which is a Full Bench judgment of the Delhi High Court, UCO Bank, Calcutta Vs.

Commissioner of Income Tax, West Bengal, and The Commissioner of Income Tax Vs. Pithwa Engg. Works, (Bom). In all these cases appeals were dismissed on the ground that the tax effect involved in the appeals is very low. In the present case also the tax effect is less than Rs. 5,000 per year hence the appeals are not maintainable. However, to complete the judgment we proceed to decide other grounds.

7. Counsel for the respondent has also urged that the Department has not preferred appeal against an order passed for the assessment year 1986-87 and orders passed in the cases of two other assesseees, i.e., Asha Devi and Laxmansingh, are also not challenged. Hence, this appeal be dismissed. The contention of learned Counsel for the appellant is that these points were not raised by the appellant before the Tribunal and they cannot be decided in these appeals. We find force in the arguments of counsel for the appellant. The order for the year 1986-87 is not on record. Hence appeals cannot be dismissed on that account.

8. After perusing the questions framed by this Court in these appeals we find that question No. (a) is not correctly framed. Question No. (a) which is framed is that the decision in the case of Smt. Asha Digvijaya Singh in W.T.A. Nos. 1253 to 1259/Delhi of 1988 stood set aside by this Court in M. C.C. No. 73 of 1991. After perusing the said judgment which is reported in Commissioner of Wealth-tax Vs. Smt. Asha Digvijaya Singh, , we find that the judgment in Smt. Asha Digvijaya Singh case is not set aside by this High Court and this Court has merely formulated questions of law for reference to the High Court. It is true that once this High Court formulated the questions with a direction to the Tribunal to send a statement of fact for decision on the said questions the said judgment cannot be said to have attained finality but still it cannot be said that the judgment of the Tribunal is set aside by the High Court.

9. As regards questions Nos. (b) and (c) framed by this Court the gist of the questions is whether the proceedings u/s 17 of the Wealth-tax Act are justified. For this purpose it is necessary for this Court to first refer to Section 17 of the Wealth-tax Act. The relevant portions of the said section read as under:

17. Wealth escaping assessment.--(1) If the Assessing Officer--

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of underassessment or assessment at too low a rate or otherwise ; or

(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 the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise ;

10. Section 17 is divided in two parts, i.e. 17(1)(a) and 17(1)(b). In the present case notice does not mention the section but that itself is not sufficient to vitiate the notices. Notice even does not refer to any reason reopening the assessment, but the reasons are assigned to the respondent -assessee on his demand as has been stated in the assessment order dated March 30, 1990. The reasons which are assigned to the respondent-asses-see are two-fold. Firstly, relating to the value of ornaments. The petitioner has claimed impurity in the ornaments to the extent of 25 per cent. while in case of silver utensils at the rate of 30 per cent. According to the assessment order the ornaments being old the impurity can be allowed only to the extent of 15 per cent. for the gold ornaments and 20 per cent. for the silver utensils. Thus, the value of the ornaments disclosed by the respondent-assessee is much higher than shown in the return.

11. Another ground is that the assessee has not declared the correct value of a flat at Delhi. The assessee is a co-owner of the flat which is partly used for residential purpose and partly let out to a tenant. The assessee has 1/3rd share in the flat and has shown the value of his share at Rs. 17,737 for the assessment year 1979-80 and Rs. 23,803 for the assessment year 1986-87 and claimed exemption u/s 5(1)(iv) of the Wealth-tax Act. As per the Wealth-tax Officer the value should be worked out on the net maintainable rent/house tax divided into 16 for repairs, multiplying by 100/ 8 as per Rule 1BB and thus the property was underassessed or the assessment is too low and therefore the assessment should be reopened. It is also alleged that the assessee has 1/7th share in the Fort and the assessee has not properly valued his share in the Fort. But, this point was decided by the Wealth-tax Officer in favour of the assessee.

12. Now, the question is whether the assessee has not truly or correctly disclosed the material facts to exercise the powers u/s 17(1)(a) of the Wealth-tax Act that the Wealth-tax Officer has any information in his possession to show that the property was valued too low to escape the assessment to exercise powers u/s 17(1)(b).

13. Shri R.D. Jain, learned senior advocate, appearing for the appellant relied upon a judgment of the apex court in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, , wherein the apex court has construed the words "reasons to believe". The apex court has held that the words "reasons to believe" are based on specific, reliable and relevant information subsequently received by the Assessing Officer, which tends to expose untruthfulness or inadequacy of the material disclosed by the assessee on the basis of which the original assessment was based. There is no dispute about this proposition. The question is whether the Wealth-tax Officer has any information in his possession which tends to expose untruthfulness or inadequacy of the material disclosed. These sections are also considered by the

apex court in the case of Commissioner of Income Tax Vs. Corporation Bank Ltd., . In that case the assessee-bank has not represented the case of loan recovery and, therefore, notice u/s 147(a) of the Income Tax Act was issued. The apex court has held that the assessee has furnished particulars pertaining to amount as not recoverable and has filed the statement along with the original return disclosing full details of interest and there is no failure on the part of the assessee to disclose wholly and truly material facts.

14. In the present case the impugned order shows that the information gathered by the Wealth-tax Officer is on the basis of some audit objections. The apex court in the case of Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , has considered this aspect and held that the opinion of an audit party of the Income Tax Department cannot be regarded as "information" within the meaning of Section 147(b) of the Income Tax Act for the purpose of reopening of an assessment. Similar view is taken by this Court in the case of Lokendra Singh Rathore Vs. Wealth-tax Officer, "A" Ward and Another, , and held that Section 17(1)(a) of the Wealth-tax Act does not empower the Revenue to reopen a final assessment whereby oversight, carelessness or inefficiency on the part of the Wealth-tax Officer proper investigation was not carried out though all the primary facts which the assessee was required to place were before him.

15. In the present case the assessee has disclosed gold ornaments and silver utensils. The only ground for reassessment is that he has claimed impurity at the rate of 25 per cent. for gold ornaments and 30 per cent. for silver utensils when as per the Wealth-tax Officer it should be not more than 15 per cent. in gold ornaments and 20 per cent. in silver utensils. Thus, it cannot be said in the present case that the assessee has not truly and fully disclosed the material fact relevant for the assessment.

16. Similarly, as regards the valuation of flat is concerned, the Wealth-tax Officer while reopening has merely adopted some other system for valuation. The material facts which the assessee was required to place in his return was the details of the flat. Merely because the valuation can be arrived at by some other method does not mean that the assessee has not truly and correctly disclosed all material facts required to be disclosed by him and in such a situation the Tribunal has found by the impugned judgment that there was no further information made available to the Wealth-tax Officer for reopening of the case and there is no material on record to show that the assessee did not fully disclose the material facts which led to escapement or undervaluation of wealth or the wealth was assessed at a lower, figure.

17. This apart, the audit report could not form the basis for invoking the provisions of. Section 17(1)(b) of the Wealth-tax Act. In such situation in answer to questions Nos. (b) and (c) we hold that the Tribunal was right in dismissing the appeal filed by the Department and maintaining the order of the appellate authority.

18. We do not find any merit in these appeals. Hence, all the appeals, stated above, stand dismissed on the merits as well as on the ground of maintainability with no order as to costs.