
(2000) 11 MAD CK 0087

In the Madras High Court

Case No : T.C. No's. 1124 to 1126 of 1990 (Reference No's. 562 to 564 of 1990)

Commissioner of Wealth-tax

APPELLANT

Vs

A.K. Thanga Pillai

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 147, 154

Citation : (2001) 252 ITR 260

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; V. Ramakrishnan, for the Respondent

Judgement

R. Jayasimha Babu, J.—At the instance of the Revenue, two questions have been referred to us. They are, (i) whether the order of the

Commissioner of Wealth-tax u/s 25(2) of the Wealth-tax Act, 1957, in respect of the assessment years 1975-76, 1976-77 and 1977-78 are

barred by limitation as held by the Tribunal ; and (ii) whether the Tribunal was correct in law in holding that the limitation is not to be calculated

from the date of the order of reassessment, but has to be calculated from the date of the order of the original assessment.

2. The brief facts relevant for the purpose of deciding this case, though simple, had to be ascertained by spending considerable judicial time in view

of the inadequate records produced by the Revenue, and the fact that the statement of the case does not contain all the material papers as

annexures. The material facts are that the assessee, Thanga Pillai, was assessed to wealth-tax for the year 1975-76 on January 28, 1980.

Assessments were made for the assessment years 1976-77 and 1977-78 on

March 21, 1981, and March 31, 1981, respectively. The value of the agricultural lands possessed by the assessee being an extent of 43.64 acres was increased to Rs. 3,00,000 in those assessments. The assessee also had non-agricultural properties and the value of those properties was fixed on the basis of the valuation made by the Departmental valuer at Rs. 48.55 lakhs.

3. The assessee being aggrieved by the valuation of the non-agricultural properties preferred appeals to the Commissioner and those appeals were allowed on July 26, 1982. On further appeal to the Tribunal the orders were set aside on the sole ground that the Departmental Valuation Officer had not been heard by the Commissioner. The Departmental Valuation Officer, was thereafter, heard by the Commissioner and the Commissioner by his order on February 23, 1985, once again allowed the appeals.

4. During the pendency of the appeals there was a search in the premises of the assessee on February 11, 1982. As a consequence, notice was given to the assessee u/s 17 of the Wealth-tax Act, 1957, on the ground that assessable wealth had escaped assessment. A similar notice had also been issued u/s 147 of the Income Tax Act, 1961, in respect of the assessment made under that Act. The Wealth-tax Officer thereafter made the order of reassessment on February 26, 1987. In addition to the assets in respect of which he had assessed the assessee to tax in his original order, the Wealth-tax Officer also assessed the assessee for the suppressed wealth in the form of available profits accumulated in earlier years, which had not been disclosed by the assessee. In the order of re-assessment, the assets in respect of which assessment had been made, originally remained undisturbed.

5. The Commissioner of Wealth-tax, thereafter, invoked his jurisdiction u/s 25(2) of the Wealth-tax Act, 1957, to revise the order made by the Wealth-tax Officer on reassessment, and proceeded to hold that the valuation of the agricultural lands set out by the Wealth-tax Officer which was merely the value that had been set out in the original order of assessment, was erroneous and was prejudicial to the Revenue. He overruled the objection that was raised by the assessee that the Commissioner could not in law proceed to revise the valuation of the agricultural lands which had been accepted by the Wealth-tax Officer in the original order of assessment,

which order had not been revised by the Commissioner within the time allowed by law--the period of limitation for exercising the powers of revision u/s 25(2) being the period of two years from the end of the financial year in which the order sought to be revised was passed, as provided u/s 25(3).

6. Learned counsel for the Revenue submitted that in view of the plain language employed in Sections 25(2) and 25(3), the period of limitation is to be calculated from the end of the financial year in which the order sought to be revised was passed, and in this case the order sought to be revised being the order of reassessment even though it had incorporated the figures as set out in the original order of assessment so far as agricultural lands are concerned, the order of reassessment was clearly one which was capable of being revised as the revisional power was exercised within two years from the date of the order of reassessment.

7. Learned counsel relied upon the case of the Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . That case dealt with the right, if any, of the assessee to reagitate matters dealt with in the original assessment, after reassessment was made even though the matters sought to be so agitated were not refixed or reassessed, the reassessment being confined to escaped and underassessed income. The apex court held that Section 147 of the Income Tax Act is a machinery provision, that it is made for the benefit of the Revenue, that it is aimed at bringing to tax the escaped income of an assessee, and the same cannot be allowed to be converted as revision or review proceedings at the instance of the assessee thereby, making the machinery unworkable. The assessee, it was held, cannot be permitted to convert the reassessment proceedings into an appeal or revision in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to ""escaped income"".

8. Learned counsel for the assessee contended that the order made by the Commissioner u/s 25(2) was one which could not have been made in law, as the Commissioner had not revised the valuation of agricultural lands as set out in the original assessment orders when those assessment orders were made, within the period of two years from the end of the financial year in which they were made as being erroneous and prejudicial to

the Revenue, and that the Commissioner cannot take advantage of the order made by way of reassessment of escaped wealth which did not

concern agricultural lands or the value thereof, to revise the value of the agricultural lands which had been determined over seven years prior to the

date of the order of the Commissioner u/s 25(2).

9. Counsel also placed reliance on the decision of the Bench of this court in the case of Mettur Chemical and Industrial Corporation Ltd. Vs.

Commissioner of Income Tax, . In that case, the Income Tax Officer had initiated rectification proceedings u/s 154 to rectify items of deduction

which had been allowed in the order of assessment made under the Income Tax Act. The court held that though proceedings for reassessment had

been completed u/s 147, it could not be held that the entire order of assessment, originally passed by the officer ceased to exist, and that the only

order that remained in force is the reassessment order. The limitation for initiation of proceedings u/s 154 was, therefore, held to be required to be

reckoned from the date of the original assessment order and as the order of rectification in that case for the assessment year 1959-60 was found to

have been passed on February 25, 1965, after a period of four years from the date of the original assessment order which had been made on May

27, 1960, the same was barred by limitation.

10. u/s 17 of the Wealth-tax Act, 1957, even as it is u/s 147 of the Income Tax Act, proceedings for reassessment can be initiated when what is

assessable to tax has escaped assessment for any assessment year. The power to deal with underassessment and the scope of reassessment

proceedings as explained by the Supreme Court in the case of Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , is in

relation to that which has escaped assessment, and does not extend to reopening the entire assessment for the purpose or redoing the same de

novo. An assessee cannot agitate in any such reassessment proceedings matters forming part of the original assessment which are not required to

be dealt with for the purpose of levying tax on that which had escaped tax earlier. Cases of underassessment are also treated as instances of

escaped assessment.

11. The order of reassessment is one which deals with the assessment already made in respect of items which are not required to be reopened, as

also matters which are required to be dealt with in order to bring what had escaped in the earlier order of assessment, to assessment. An assessee who has failed to file an appeal against the original order of assessment cannot utilise the reassessment proceedings as an occasion for seeking revision or review of what had been assessed earlier. He may only question the extent of the reassessment in so far as the escaped assessment is concerned.

12. The Revenue is similarly bound. Though a fresh order is made as a consequence of proceedings initiated for reassessment, that order is not an entirely new order, but is a composite of the order made earlier in respect of the matters which are not the subject-matter of proceedings aimed at bringing the escaped wealth or income to tax and a fresh order bringing the escaped wealth or income to tax. To the extent the Revenue fails or neglects to revise the original order of assessment within the period of limitation allowed by law, it cannot in the guise of revising the order of reassessment made several years after the original assessment, proceed to revise items which had been accepted in the original order of assessment.

13. Though the revisional power given to the Commissioner is for the purpose of protecting the Revenue, that is a power which is required to be exercised within the period of limitation prescribed by law. The limitation so prescribed is intended to protect the assessee.

14. The Revenue in this case had more than one opportunity to question the correctness of the valuation of the agricultural land by the Wealth-tax Officer in the original order of assessment. It could have questioned the same in the appeal which the assessee had filed in respect of some other items as the entire assessment was open before the appellate authority. It did not do so. The Revenue could have revised that order of assessment within the period of limitation notwithstanding the fact that the assessee had filed an appeal in respect of some other items such revision could have been effected in respect of items which were not before the appellate authority. The Revenue failed to exercise that revisional power at that time.

15. Had the reassessment proceedings not taken place, it is clear beyond any doubt that any attempt made by the Commissioner in the year 1988, to revise the orders made in 1981, would be clearly barred by time. That bar

continues to operate in respect of the items which do not relate to escaped wealth in the assessment proceedings.

16. The order referred to u/s 25(2) and also u/s 25(3) therefore has to be, in cases of reassessment, understood as referring to the order of reassessment made in respect of or relating to the items which had escaped assessment.

17. We, therefore, answer the question referred to us in favour of the assessee and against the Revenue. The assessee shall be entitled to costs in the sum of Rs. 3,000.