

(1983) 12 MAD CK 0014

In the Madras High Court

Case No : Tax Case Petition No's. 382 to 385 of 1983

Commissioner of Wealth Tax

APPELLANT

Vs

B. Nathmal Vaid

RESPONDENT

Date of Decision : 12-12-1983

Acts Referred:

Income Tax Act, 1961 — Section 125A(1)

Wealth Tax Act, 1957 — Section 17(1A), 27, 27(3), 8, 8AA

Citation : (1985) 44 CTR 213 : (1985) 154 ITR 186 : (1985) 20 TAXMAN 222

Hon'ble Judges : V. Ratnam, J; G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

Ramanujam, J.—In these reference petitions filed under s. 27(3) of the W.T. Act, 1957, the Revenue seeks a direction from this court to the

Tribunal to refer the following common question for the opinion of this court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the reassessment made by the Wealth-

tax Officer in pursuance of the proceedings initiated by the Inspecting Assistant Commissioner u/s 17(1)(a) of the Wealth-tax Act, 1957, are

invalid for the reason that there was no separate notification u/s 8AA of the Wealth-tax Act, 1957, by the Commissioner of Income Tax ?

2. The controversy in this case centers round the validity of the proceedings started u/s 17(1)(a) of the W.T. Act by the IAC, Range-II,

Coimbatore.

3. On January 27, 1977, the Commissioner of Income Tax, Coimbatore, passed an order under s. 125A(1) of the I.T. Act by which the IAC of

the Income Tax Range-II, Coimbatore, and the ITO, Ooty, were to have concurrent jurisdiction over the Income Tax case of Sri Nathmul Vaid,

the assessee herein. Some time after, on May 29, 1978, the CIT passed another order revoking his earlier order issued under s. 125A(1). This

concurrent jurisdiction of the IAC and the ITO had ceased and thereafter the powers and functions of the ITO were performed only by the ITO,

Ooty, and not concurrently by the ITO and the IAC. However, during the period from January 27, 1977, to May 29, 1978, when the notification

issued by the CIT, Coimbatore, under s. 125A(1) was operative, the IAC, Range-II who had concurrent jurisdiction with the ITO had issued a

notice under s. 17(1)(a) of the W.T. Act to the assessee for reopening the assessment. Subsequently, in pursuance of the said notice, reassessment

came to be made. The assessee questioned the validity of the initiation of the proceedings under s. 17(1)(a) of the W.T. Act on the ground that

there being no notification as contemplated under s. 8AA of the W.T. Act, the IAC had no jurisdiction to initiate proceedings under s. 17(1)(a).

This challenge was upheld by the CIT (Appeals) who held that the reassessment proceedings for all the four year were invalid.

4. Aggrieved by the decision of the appellate authority, the Revenue took the matter in appeal to the Tribunal contending that once an order under

s. 125A(1) is passed under the I.T. Act, there is virtually no difference between the IAC and the ITO and the two, for all the practical purposes,

are synonyms, that in view of the provisions of s. 8AA of the W.T. Act the IAC automatically assumed jurisdiction over the wealth-tax

assessments also, and that the IAC, once equated with the ITO by the order of the Commissioner under s. 125A(1), should be deemed to have

jurisdiction over the wealth-tax matters also of the same assessee. The Tribunal, however, did not accept the stand taken by the Revenue. It held

that the notification issued under s. 125A(1) by the CIT can only relate to the functions of the ITO under the I.T. Act and it cannot relate to the

powers exercisable by the WTO under the W.T. Act, that s. 8AA also makes it clear that the Commissioner of Wealth-tax may confer powers of

the WTO on the IAC, which indicate that the powers exercisable under the W.T. Act by the WTO cannot be dealt under s. 125A(1), as

otherwise, s. 8AA will become redundant, that the I.T. Act and the W.T. Act being two separate statutes, the notification issued under the I.T. Act

will not avail so far as the W.T. Act is concerned and, that, therefore, the IAC, in this case, had no jurisdiction to initiate proceedings under s.

17(1)(a) of the W.T. Act, based on the powers conferred on him under the notification under s. 125A(1) of the I.T. Act. Aggrieved by the said

decision of the Tribunal, the question set out above is sought to be referred for the opinion of this court.

5. The learned counsel for the Revenue particularly puts forwards the same contentions as those which were raised before the Tribunal. According

to the learned counsel, once the IAC has been authorised to act concurrently with the ITO by the issue of a notification under s. 125A(1), he

automatically becomes the ITO and by virtue of s. 8, he is authorised to perform the functions of a WTO under the W.T. Act in respect of the

same individual and, therefore, no separate notification under s. 8AA of the W.T. Act is necessary. The learned counsel also contends that s. 8AA

is intended to cover cases where a particular individual, a HUF or a company is not assessable under the I.T. Act, but is assessable under the

W.T. Act. Thus the learned counsel for the Revenue wants to give wider interpretation to s. 8 and curtail the scope of the provision in s. 8AA.

6. We are not inclined to agree with the interpretation placed by the learned counsel for the Revenue on s. 8 as also on s. 8AA. The notification

issued under s. 125A(1) is only for the authorising the IAC to have concurrent jurisdiction with the ITO so far as the powers exercisable under the

I.T. Act are concerned. The notification cannot be taken to include the powers exercisable under the W.T. Act. If s. 8 is understood as having a

wide amplitude as suggested by the learned counsel for the Revenue, it will mean that the notification issued under one statute will also operate in

respect of matters covered by the another statute. Normally such a thing is not possible. A notification issued under a particular Act can be taken

to be operative only in respect of that Act and it cannot be taken to apply with reference to matters arising under another statute. If the Legislature

intended to apply the notification passed under one statute so as to cover matters covered by another statute, then the Legislature would have

specifically referred to such notification and stated that the notification issued under one statute will operate with reference to matter under another

statute. It is no doubt true, the I.T. Act and the W.T. Act are administered by the same officers. But that will not mean that a notification issued

under the I.T. Act can be taken to be operative for the W.T. Act also. Apart from this, the Legislature in enacting s. 8AA has made its intention

clear. Section 8AA enables the CIT to enable the IAC to have concurrent jurisdiction with the WTO in respect of any area or cases or class of

cases or persons or class of persons. If really the notification issued under s. 125A(1) will serve the purpose, as contended by the learned counsel

for the Revenue, there is no necessity for making a provision like s. 8AA authorising the Commissioner to issue a notification enabling the IAC to

function concurrently, along with the WTO. Therefore, the legislative intention seems to be that the concurrent power under the W.T. Act has to be

conferred on the IAC, by a separate notification issued under s. 8AA of the W.T. Act. We are also not inclined to agree with the learned

counsel for the Revenue that s. 8AA is intended to apply only to individuals, HUFs and companies who are not assesses under the I.T. Act but

who happened to be assesses under the W.T. Act.

7. In this view of the matter, we are not in a position to disagree with the view taken by the Tribunal in this case. We, therefore, see no justification

for directing a reference in these cases.