
(1999) 11 MAD CK 0085

In the Madras High Court

Case No : Tax Cases No's. 1077 to 1080 of 1985 (References No's. 584 to 587 of 1985)

Commissioner of Wealth-tax

APPELLANT

Vs

C. Seshachalam Chetty (Decd) (by executor V.R. Bakthavatchalam)

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Income Tax Act, 1961 — Section 17, 17(1)
Wealth Tax Act, 1957 — Section 17

Citation : (2000) 243 ITR 531

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janathana Raja, for the Respondent

Judgement

P. Thangavel, J.—As per the order of this court in T. C. P. Nos. 466 to 469 of 1984, dated March 19, 1984, the following common questions of law were referred to this court by the Income Tax Appellate Tribunal, Madras Bench "A", for our opinion u/s 27(2) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no material or information for the Wealth-tax Officer for reopening the assessment u/s 17 of the Wealth-tax Act and in cancelling the assessment as not valid in law ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding and had valid materials to hold that the lands belonging to the assessee and situated at Taylors Road, Kilpauk, Madras, were only agricultural lands on the relevant dates ?"

2. The assessments relating to the late C. Seshachalam Chetty by an executor V. R. Bakthavatsalam, 97, Wallajah Road, Madras-2, for the assessment years

1965-66 to 1968-69 were reopened to include the value of 89 grounds owned by the assessee at Taylors Road, Kilpauk, Madras, u/s 7 of the Act on the basis of the alleged information furnished by the internal audit party. The abovesaid property was mentioned in the wealth-tax returns of the assessee for the earlier assessment years as agricultural land, which was acquired for the construction of staff quarters for the Telephone Department on December 29, 1969. Compensation of Rs. 11,22,273 was given to the assessee. The assessee who had executed a will on August 23, 1969, has referred to the abovesaid land as vacant site in the said will and filed a petition claiming Rs. 27,000 as value per ground. A notification u/s 9 of the Madras Urban Land Tax Act was published in the Gazette dated September 30, 1964, with regard to Egmore Village, in which the land in dispute bearing S. No. 156 was described as residential area and subjected to assessment of urban land tax from 1963.

3. Though the assessee had shown the income from the abovesaid land at Rs. 300 or Rs. 400 per annum, treating it as agricultural land, a certificate u/s 230A has been filed on March 14, 1969, showing the value of the said land at Rs. 22,50,000. As there was no proof of agricultural operation in the abovesaid land, the same was treated as non-agricultural land and included for wealth-tax. On the basis of the compensation of Rs. 13,500 received per ground, the value of the land was fixed at Rs. 14,000 per ground for wealth-tax assessment. Including the value of the abovesaid land worked out at Rs. 12,46,000 with the net wealth of Rs. 7,65,165 originally assessed, the net taxable wealth was determined as Rs. 20,11,165 for the assessment year 1965-66, Rs. 20,04,700 for the assessment year 1966-67, Rs. 20,69,100 for the assessment year 1967-68 and Rs. 28,38,600 for the assessment year 1968-69. Accordingly, wealth-tax of Rs. 51,048, Rs. 43,588, Rs. 84,044 and Rs. 12,070 were demanded from the assessee for the assessment years 1965-66, 1966-67, 1967-68 and 1968-69, respectively u/s 16(3) read with Section 17 of the Act.

4. Aggrieved by the order of the Assessing Officer in assessing the net wealth of the assessee at Rs. 7,94,165, Rs. 7,53,684, Rs. 8,23,125 and Rs. 15,92,566 for the assessment years 1965-66 to 1968-69, respectively, the assessee had preferred appeals to the Commissioner of Wealth-tax (Appeals)-III, Madras.

5. The appellate authority, after considering the rival submissions made by the assessee and the Department found that the assessment for the abovesaid assessment years of the assessee was reopened only on the information furnished by the internal audit party and not on the ground of failure on the part of the assessee to furnish the return or on the ground of failure to disclose fully or truly all the material facts relevant to the assessment years in the returns of wealth filed by the assessee. Therefore, the appellate authority was of the view that the reopening of the assessment was one u/s 17(1)(b) of the Act and not u/s 17(1)(a) of the Act. The appellate authority had also found that notice for reopening the assessment has to be served within four years of the end of the particular assessment year u/s 17(1)(b) of the Act, that four years would expire

on March 31, 1970, in respect of the assessment year 1965-66, on March 31, 1971, in respect of the assessment year 1966-67 and on March 31, 1972, in respect of the assessment year 1967-68, that notice was issued by the Wealth-tax Officer to the assessee only on March 16, 1975, and served on the executor on March 21, 1975, and, therefore, initiation of proceedings u/s 17(1)(b) of the Act with regard to the abovesaid assessment years by the Assessing Officer was without jurisdiction. In respect of the assessment year 1968-69, the appellate authority was of the view that the proceedings initiated by the Wealth-tax Officer were within time. The appellate authority was of the further view that the Wealth-tax Officer has not independently applied his mind to find out as to whether the information that the land was not agricultural land was correct on the facts of the case or otherwise and, therefore, the Assessing Officer had no reason to believe, in view of the abovesaid information in his possession that the wealth had escaped assessment. The appellate authority was of the further view that the view expressed by the internal audit party that the lands are non-agricultural is the opinion of the audit party and does not amount to drawing the attention of the Wealth-tax Officer to the law. Taking into consideration the settled legal position by the apex court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, the appellate authority held that the reopening of the assessment for the abovesaid assessment years to comply with the instructions of the internal audit party was invalid in law. The appellate authority had not only considered the submissions made by the assessee up to the assessment year 1964-65, treating the demised property as agricultural land, which was accepted by the Wealth-tax Officer, but also had taken into consideration the submissions made by the assessee with regard to the income derived from the abovesaid property at Rs. 300 to Rs. 400 per annum, treating the same as agricultural land, to the Income Tax authorities and the wealth-tax return submitted to the Wealth-tax Officer for the assessment years 1965-66 to 1968-69, in coming to the conclusion that the demised land is only agricultural land, for which there was no need to include in the wealth-tax return during the abovesaid assessment years. The appellate authority had also taken into consideration the report of the Special Deputy Tahsildar as well as the Special Deputy Collector for Land Acquisition, wherein it was specifically mentioned that the demised property is a "full field", wherein garden cultivation and also standing crops like paddy, vegetable plants, garden produce, coconut, plamyrah and other trees like date, tamarind, murungai, mango, arinelli, kichili, sathukudi, papaya, etc., were raised, apart from the existence of a well with a 13 feet diameter for the irrigation of the land. In view of the reasons mentioned above, the appellate authority had come to the conclusion that the assessment made for wealth-tax u/s 17 of the Act by the Assessing Officer on the basis of the internal audit report, cannot be sustained and accordingly set aside the order of assessment.

6. Aggrieved at the abovesaid order of the appellate authority, the Department preferred appeals before the Income Tax Appellate Tribunal, Madras. The Tribunal

after considering the reasons assigned by the appellate authority for setting aside the order of assessment, held that there was no fault on the part of the assessee in disclosing his assets during the relevant assessment years, that the Assessing Officer cannot rely on Section 17(1)(a) of the Act, that if Section 17(1)(b) of the Act is applied, the assessments for the first three years are barred by time, that the Wealth-tax Officer will have no information to reopen the assessment for the assessment year 1968-69 as the internal audit report cannot be termed to be information, within the meaning of Section 17(1)(b) of the Act in the light of *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, and accordingly confirmed the order of the appellate authority, thereby dismissing the appeals preferred by the Department. It is only under the abovesaid circumstances, these tax case references have been made for the opinion of this court.

7. The rival submissions made by the Department as well as the assessee were considered in depth in the light of the material evidence available on record. The fact remains that the late C. Seshachalam Chetty was owning 89 grounds in S. No. 156 of Egmore Village at Taylors Road, Madras, apart from the other properties owned by him. Admittedly, the assessee was submitting wealth-tax returns up to 1963-64 on the ground that the above-said 89 grounds were agricultural lands, used for agricultural purposes and the said returns were accepted by the Wealth-tax Officer. Admittedly, the assessee has not stated anything with regard to the abovesaid land in the wealth-tax returns submitted for the subsequent years, but had submitted Income Tax returns stating that the assessee was getting income to an extent of Rs. 300 to Rs. 400 per annum during each of the abovesaid assessment years, commencing from 1965-66 to 1968-69. Admittedly, the abovesaid Income Tax returns were accepted by the Income Tax Officer.

8. The assessee created a charitable trust with a nucleus of Rs. 2,500 by a registered deed of trust dated February 29, 1968, and the said trust was recognised by the Commissioner of Income Tax for the purpose of Sections 11 and 80G of the Income Tax Act, 1961, in the proceedings in C. No. 212 (80) of 1968, dated February 21, 1969. The assessee, under the abovesaid trust deed transferred the entire 89 grounds of land in dispute in favour of the trust in February, 1969, and informed the Collector of Revenue Department, Madras, on February 27, 1969, about the dedication of the abovesaid land for charitable purposes by the assessee. The assessee had also written a letter to the Secretary to the Revenue Department on March 1, 1969, requesting exemption from stamp duty, stating the dedication of the abovesaid land for charitable purposes. A circular letter to the public about the dedication of the abovesaid land for charitable purposes was also made in March, 1969.

9. Acquisition proceeding was initiated for acquiring the abovesaid 89 grounds of land by issuing Notification on May 11, 1967, for construction of quarters for the staff of the Telephone Department. Therefore, the Collector of Revenue

Department made an order u/s 12(2) of the Land Acquisition Act on December 29, 1969, granting compensation of Rs. 11,22,273 and recognised the trust as the owner of the abovesaid land. Accordingly, the compensation amount was received by the trust on December 24, 1970, from the Revenue Department. It is relevant to point out that the late Seshachalam Chetty died on November 22, 1969, after creation of the abovesaid trust. Therefore, it is evident that the charitable trust created by him became entitled to the demised land and in fact had received the compensation amount from the Revenue authorities.

10. A perusal of the records would disclose that the internal audit report was communicated to the Wealth-tax Officer stating that the late Seshachalam Chetty had claimed the abovesaid 89 grounds of land as agricultural land in the wealth-tax returns submitted up to 1964-65, that there is no mention about the abovesaid property in the wealth-tax returns submitted thereafter that the assessee had claimed the income from the abovesaid lands as Rs. 400, Rs. 400, Rs. 350 and Rs. 600, for the assessment years ending with March 13, 1968, March 31, 1967, March 31, 1966 and March 31, 1965, respectively with a view to avoid wealth-tax liability, that the assessee himself had described the abovesaid land as vacant site in the abovesaid trust deed and that therefore, the wealth-tax assessment of the assessee should be reopened for five years from 1964-65 to 1968-69 and the abovesaid land has to be assessed to wealth-tax at the appropriate value in the light of the award in the land acquisition proceedings and also in the light of the higher claim made by the assessee before the City Civil Court, Madras.

11. Based on the abovesaid communication, the Assessing Officer ordered issue of notice u/s 17 of the Act for the assessment years 1964-65 to 1968-69 on March 9, 1973, and the said notice was served on the executor nominated in the will on March 21, 1973. After considering the reply submitted by the assessee for the abovesaid notice on May 18, 1973, the Assessing Officer finalised the assessments for the abovesaid assessment years on March 31, 1979, by fixing the value of the said 89 grounds for wealth-tax assessment at Rs. 12,46,000 in each of the said assessment years.

12. It is evident from the perusal of the order of the appellate authority that the Assessing Officer had reopened the assessment only on the internal audit report and ordered issue of notice u/s 17 of the Act. This will disclose that the assessment was reopened only on the basis of the information furnished by the internal audit report and not on any other information including the ground of not disclosing fully and truly all material and relevant facts during the abovesaid assessment years or on the ground of concealment of particulars of the wealth of the assessee. It is not in dispute that an assessee had to disclose the total value of immovable property located in India other than agricultural lands and buildings in the immediate vicinity of such lands, used for agricultural purposes. As already stated, the assessee who had disclosed the demised land as agricultural land up to the assessment year 1964-65 in the wealth-tax returns,

had not disclosed so during the subsequent assessment years which are the subject-matter of consideration in these references. It has to be taken into consideration that the returns submitted by the assessee treating the demised land as agricultural land up to 1964-65 have been accepted by the Assessing Officer. It is also relevant to point out that the assessee had submitted Income Tax returns disclosing the income from the abovesaid land at Rs. 300 to Rs. 400 per annum during the assessment years in question and the abovesaid returns were also accepted by the Income Tax Officer. The Assessing Officer, who had failed to get the abovesaid particulars from the Income Tax Officer, during the abovesaid assessment years to consider the wealth-tax returns submitted by the assessee, wherein the assessee had not made mention about the land in dispute on the ground that there was no need to disclose anything with regard to the agricultural lands and buildings in the immediate vicinity of such lands used for agricultural purposes, cannot turn round and say that the assessee had not fully and truly disclosed about the demised property during the abovesaid assessment years or concealed particulars of his wealth in respect of the above-said property. Therefore, the Appellate Tribunal was justified in coming to the conclusion that the Assessing Officer has no right to reopen the assessment u/s 17(1)(a) of the Act.

13. The Appellate Tribunal had considered as to whether such reopening of assessment can be made u/s 17(1)(b) of the Act. It is not in dispute that the assessment can be reopened by issue of notice u/s 17(1)(b) of the Act only within a period of four years from the end of the particular assessment year and not beyond that period. The fact remains that four years period ended on March 31, 1970, in respect of the assessment year 1965-66 on March 31, 1971, in respect of the assessment year 1966-67 and on March 31, 1972, in respect of the assessment year 1967-68. Admittedly notice was issued by the Assessing Officer on March 6, 1975, regarding the reopening of the abovesaid assessment and the same was served on the executor of the will on March 21, 1975. Therefore, the Appellate Tribunal was correct in coming to the conclusion that the Assessing Officer had acted without jurisdiction in reopening the assessment for the assessment years in question u/s 17(1)(b) of the Act.

14. The Appellate Tribunal had also considered the question as to whether the Assessing Officer was justified in reopening the assessment for the assessment year 1968-69. The fact remains that the assessee was treating the demised land as agricultural land and submitting wealth-tax returns on that basis up to the assessment year 1964-65. The assessee had also shown the income from the abovesaid property, treating the same as agricultural land only at Rs. 300 to Rs. 400 per annum during the relevant assessment years and the same was accepted by the Income Tax Officer. Though the assessee had described the demised land as vacant site in the trust deed referred to above and obtained a certificate u/s 230A on March 14, 1968, the abovesaid land was acquired for construction of staff quarters of the Telephone Department by issuing notification under the Land Acquisition Act on December 29, 1969. In the report of the

Special Deputy Tahsildar for Land Acquisition and also in the report of the Special Duty Collector for Land Acquisition, the land in question was described as "vacant ground and garden cultivation", apart from describing the same as "full field". It is also evident from the report of the above said officers that there was a big well of 13 feet diameter and standing crops like paddy, vegetable plants, coconut, palmyrah and other trees like date, tamarind, murungai, mango, arinelli, kichili, sathukudi, papaya, etc. If the abovesaid reports are also taken into consideration in the light of the returns submitted earlier to the Assessing Officer and also the Income Tax returns submitted to the Income Tax Officer during the relevant assessment years, it is evident that the Appellate Tribunal had rightly concluded that the appellate authority had come to the correct conclusion that the demised land was agricultural land at the time of acquisition and the same was acquired for construction of staff quarters as stated supra.

15. The appellate authority had rightly decided that the Assessing Officer had reopened the assessment during the years in dispute, based only on the internal audit report without application of mind, while doing so. While sustaining such conclusion, the Appellate Tribunal has rightly held that the internal audit report referred to above was a note on a question of law or on an interpretation of law and, therefore, the same cannot be an information within the meaning of Section 17(1)(b) of the Act in view of the decision of the apex court (Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi,). Therefore, the Appellate Tribunal was also right in coming to the conclusion that the Assessing Officer was not justified in reopening the assessment for the abovesaid assessment years since the internal audit report will not amount to information even for the assessment year 1968-69.

16 Learned counsel for the Revenue brought to the notice of this court the decision of the apex court in Smt. Sarifabibi Mohmed Ibrahim and others Vs. Commissioner of Income Tax, Gujarat, , wherein it was held as follows (page 637) :

"Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this court and the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The court has to answer the question on a consideration of all of them--a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts."

17. In Commissioner of Income Tax, Madras Vs. M/s. Gemini Pictures Circuit Private Limited, , the apex court was pleased to hold that the question whether a particular land is agricultural land has to be decided on a totality of the relevant facts and circumstances, that there may be circumstances for and against, that they have to be weighed together and a reasonable decision arrived at, that one has to take a realistic view and see how the persons selling and purchasing it

understood it, that the tests evolved by the courts are in the nature of guidelines and that no hard and fast rules can be laid down in the matter, for the reason that it is essentially a question of fact.

18. Considering the facts and circumstances of the cases cited supra, the apex court was pleased to decide that the lands involved in the abovesaid cases were not agricultural lands. But, if the facts stated supra in this case are taken into consideration in the light of the principles laid down by the apex court in the decisions cited above, it is quite clear that the Assessing Officer was not justified in reopening the assessment for the abovesaid assessment years, based on the internal audit report, which we consider to be an interpretation of law and not an information to reopen the assessment for the abovesaid assessment years, treating the land in question as non-agricultural land.

19. Accordingly, the common questions of law referred to us are answered in the affirmative and against the Revenue. In the circumstances of the case, there will be no order as to costs.