

(1981) 07 GUJ CK 0010
In the Gujarat High Court
Case No : WT Reference No. 7 of 1977

Commissioner of Wealth Tax

APPELLANT

Vs

Chhatrashal Sinhji D. Zala

RESPONDENT

Date of Decision : 20-07-1981

Acts Referred:

Income Tax Act, 1961 — Section 17, 17(1)(a), 17(1)(b)

Wealth Tax Act, 1957 — Section 16(3), 17, 17(1)(a), 17(1)(b), 27(1)

Citation : (1982) 8 TAXMAN 205

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Advocate : S.N. Shelat and R.P. Bhatt, for the Appellant; K.C. Patel, for the Respondent

Judgement

Mankad J.

1. The assessee, among other assets, owned a palace known as "Dig Vijay" palace. He declared the value of his palace at Rs. 1,00,000 in his returns of wealth for each of the assessment years from 1961-62 to 1967-68. All the seven assessments were completed by the WTO accepting this valuation. The assessee got the palace valued by the valuer in connection with the wealth-tax assessment for the assessment year 1968-69 and returned the market value of the palace at Rs. 3,77,200 on the basis of the valuation report. In view of this valuation made by the valuers, the WTO reopened the wealth-tax assessments for the assessment years 1961-62 to 1967-68 and reassessed the net wealth of the assessee. He completed the wealth-tax assessments for these years after taking into account the enhanced valuation of the palace. The market value of the palace was taken at Rs. 2,25,000 for the assessment year 1961-62 and Rs. 3,77,200 for the assessment year 1967-68. The market value for the remaining assessment years varied between these two amounts. In the appeals preferred by the assessee, the AAC held that there was no justification to reopen the assessment in any of the aforesaid years. In the result, he quashed the

assessment orders for all the seven years passed by the WTO after reopening the assessments. The revenue went in appeal before the income tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). It was contended before the Tribunal that the WTO was justified in reopening the assessments u/s 17(1)(a) of the Wealth-tax Act, inasmuch as the assessee had failed or omitted to disclose fully and truly all material facts necessary for assessment of his net wealth, and as a result of such failure, the net wealth chargeable to tax had escaped assessment. In the alternative, it was urged that, in any case, so far as the last two years, namely, assessment years 1966-67 and 1967-68, were concerned, reopening of assessments was justified under s. 17(1)(b) of the Wealth-tax Act, 1957 (hereinafter referred to as the "Act"). It was contended that the valuer's report submitted by the assessee himself for the assessment year 1968-69 constituted information on the basis of which assessments could be reopened u/s 17(1)(b). The Tribunal held that the assessee had disclosed the asset, namely, the palace, in his returns and an estimated value thereof was also mentioned. In view of the disclosure made by the assessee, it could not be said that the assessee had omitted or failed to disclose fully and truly all basic facts. The assessee's case, therefore, did not fall within the mischief of section 17(1)(a). So far as the revenue's alternative plea for the assessment years 1966-67 and 1967-68 was concerned, the Tribunal held that the WTO having initiated the proceedings u/s 17(1)(b), it was not open to the revenue to contend that, on the facts on record, the reopening of the assessment was justified u/s 17(1)(b) of the Act. In the result, the Tribunal did not consider the question whether the reopening of assessments was justified u/s 17(1)(b). On the above facts and in the circumstances of the case, the following questions have been referred to us for our opinion u/s 27(1) of the Act:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Wealth-tax Officer was not justified in reopening the assessment orders for the assessment years 1961-62 to 1967-68 u/s 17(1)(a) of the Wealth-tax Act, 1957?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in dismissing the alternative contention of the revenue that assessments for the years 1966-67 and 1967-68 were reopened u/s 17(1)(b) of the Wealth-tax Act?

3. If the answer to question No. 2 is in the negative whether the Tribunal was justified in dismissing the revenue's appeals for assessment years 1966-67 and 1967-68?

2. So far as question No. 1 is concerned, the view taken by the Tribunal is correct. The assessee had in his returns for the assessment years under reference disclosed the palace as one of his assets and offered its estimated value for wealth-tax. The WTO accepted the wealth returned by the assessee. Under these circumstances, it cannot be said that the assessee had omitted or failed to disclose fully and truly all material facts necessary for the assessment of

his net wealth. It is true that in his return for the assessment year 1968-69, the assessee returned the market value of the palace at Rs. 3,77,200 on the basis of the valuer's report, but that by itself is not sufficient to establish that he omitted or failed to disclose fully and truly all material facts necessary for the assessment of his net wealth. The WTO was not bound to accept the value of the palace estimated by the assessee. He, however, chose to accept the value returned by the assessee. Under the circumstances, we agree with the view taken by the Tribunal that the assessee's case does not fall u/s 17(1)(a) of the Act. We, therefore, answer question No. 1 in the affirmative and against the revenue.

3. The Tribunal, however, was not right in holding that it was not open to the revenue to justify the action of the WTO in reopening the assessment for the assessment years 1966-67 and 1967-68 u/s 17(1)(b) of the Act. The notice under which the assessments were reopened did not mention whether the reopening was u/s 17(1)(a) or u/s 17(1)(b). However, in his assessment orders passed after the reopening of the assessments, it was stated that the assessments were made u/s 16(3) read with section 17(1)(a) of the Act. It was, therefore, urged on behalf of the assessee that the reopening of assessments for the years under reference was u/s 17(1)(a). Clauses (a) and (b) of sub-section (1) of section 17 contemplate different situations for the exercise of jurisdiction but it would appear that the same set of facts might be the basis for an inference u/s 17(1)(a) and may also constitute information u/s 17(1)(b). In such a case, even if there were no omission or failure on the part of the assessee to disclose fully and truly all material facts, action could be taken u/s 17(1)(b). The Full Bench of the Calcutta High Court in *Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, , has held that it is possible for the WTO to have alternate beliefs. He may on the same set of facts believe that there was an omission or failure to disclose fully and truly all material facts and even if there was no such omission or failure, the new facts constituted an information in his possession which called for a reassessment of escaped wealth. Further, there is no bar to a notice which does not specify whether it was being issued under one or the other clause being treated as a notice under clause (b). The practical consequence is only a question of the period within which the notice in either case has to be issued. Section 17(1)(b) requires notice to be served within four years of the end of the assessment year. The Full Bench of the Calcutta High Court approved the view taken by the Division Bench of the same High Court in *Mriganka Mohan Sur Vs. Commissioner of Income Tax*, , rendered in the context of section 34(1) of the Indian income tax Act, 1922. In *Mriganka Mohan Sur Vs. Commissioner of Income Tax*, , the Calcutta High Court took the view that where the reassessment made u/s 34(1)(a) of the Indian income tax Act, 1922, is set aside by the Appellate Tribunal, it is open to the Tribunal to treat the reassessment as one properly made u/s 34(1)(b) provided that on the materials on record all the necessary conditions u/s 34(1)(b) are satisfied. The Calcutta High Court distinguished the decision of the Supreme Court in *Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax*, rendered in the context of

section 34(1)(a) of the Indian income tax Act which was in altogether different terms. Therein two conditions precedent to the exercise of power u/s 34(1)(a) were engrafted by the legislature, viz., (1) recording of reasons, and (2) obtaining of sanction of Central Board and/or Commissioner. The provision with which we are concerned, viz., section 17(1)(b) of the income tax Act of 1961, does away with these two pre-conditions, which are now omitted. This vital factor makes a world of difference and the decision becomes inapplicable on that account. We fully agree with the view taken by the Calcutta High Court to the aforesaid extent and adopt its reasons given in the decision of the Full Bench of the said court in *Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, . The decision of the Supreme Court in *Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax*, , on which strong reliance was placed by the learned counsel for the assessee is thus rightly distinguished by the Calcutta High Court. The Supreme Court in the case of *Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax*, was dealing with a different situation. That was a case where notice u/s 34(1)(b) had been issued and it was sought to be justified by the Tribunal under clause (a) of sub-section (1) of section 34. As pointed out by the Calcutta High Court non-satisfaction of the two conditions would create a hurdle in the way of doing so. As observed above, we fully agree with the reasoning and the view taken by the Calcutta High Court. We, therefore, hold that a set of facts might be the basis for an inference u/s 17(1)(a) and also u/s 17(1)(b). It is, therefore, immaterial whether a notice for reopening an assessment was issued under clause (a) or clause (b) of sub-section (1) of section 17. If, on the facts on record, the requirement of clause (b) of sub-section (1) of section 17 is satisfied, the action of the WTO in reopening the assessment can be justified. If the facts on record constitute information, which call for a reassessment of the assessee's assets and wealth, the action of reopening the assessment can be justified u/s 17(1)(b) of the Act. Similar view has been taken by the Delhi High Court in *Avtar Singh Sandhu Vs. Wealth Tax Officer* and another, . The Tribunal, in our opinion, therefore, was not right in rejecting the contention of the revenue. Answer to question No. 2 must, therefore, be in the negative and against the assessee. Once this question is answered in the negative, it must follow as a necessary corollary that the Tribunal was not justified in dismissing the revenue's appeals for the assessment years 1966-67 and 1967-68. We, therefore, answer question No. 3 also in the negative and against the assessee. Reference answered accordingly with no order as to costs.