

(1998) 12 MAD CK 0085

In the Madras High Court

Case No : T.C. No"s. 502 to 504 of 1983 (Reference No"s. 255 to 257 of 1983)

Commissioner of Wealth Tax

APPELLANT

Vs

D.C. Kothari and Others

RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:

Citation : (2001) 250 ITR 110

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmi, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

R. Jayastmha Babu, J.—The Tribunal has held that the assessee had disclosed all primary and material facts to the Wealth-tax Officer and that the reopening of the assessment u/s 17(1)(a) of the Wealth-tax Act, 1957, was not warranted. The asset in question is the building in which the assessee had a share. The construction of the building was completed and the same was occupied in October, 1968. The valuation of the building was required to be made as on December 31, 1970. The assessee valued the land and the building separately and for the building he adopted the cost of construction. The valuation so made had been accepted by the Wealth-tax Officer. In the return filed by the assessee, he had valued the building at Rs. 22,93,650.

2. The Wealth-tax Officer completed the original assessment on February 19, 1972. The same was reopened and a fresh assessment order was made on July 28, 1977, wherein the value of the building was determined as Rs. 52,61,500. On appeal to the Commissioner, he fixed the value at Rs. 50,00,000. On further appeal to the Tribunal, the Tribunal held that the reopening itself was not warranted.

3. The Tribunal has noticed the fact that as on the date of valuation, the assessee was not in possession of any material which showed the value different from the one declared by it. The Wealth-tax Officer and the Commissioner referred to the

valuation report which had been submitted by a private valuer to the assessee in August, 1971, valuing the building at Rs. 35,70,814. That report, however, was not a report which the assessee was required to submit at the time of the assessment. That report was not regarding the value as on the valuation date which was relevant for the purpose of assessment for 1971-72. The Wealth-tax Officer was of the view that the value furnished in the return filed by the assessee was not the correct value and it was open to him to adopt a different value. He, however, did not do so. His omission to adopt a different value cannot now be regarded as a failure on the part of the assessee to disclose the material facts fully and truly. Even in the reassessment, the value adopted is not the valuation given by the valuer in August, 1971, but much higher than that figure. The assessee cannot be held responsible for not valuing the building at the figure at which the Wealth-tax Officer and the Commissioner now wish to value the building.

4. The Tribunal has rightly stated that the assessee had disclosed all the primary and material facts. Any omission thereafter in correctly valuing the building was the omission of the Wealth-tax Officer and is not to be attributed to any failure on the part of the assessee to fully and truly disclose the relevant facts. Even after the completion of the assessment, the Wealth-tax Officer had the opportunity to reopen the assessment provided it was done within the time limit, u/s 17(1)(b) of the Act. That also he failed to do. His initiation of the proceedings, thereafter, by relying on Section 17(1)(a) of the Act cannot be upheld as there had been no failure on the part of the assessee to disclose the relevant material facts fully and truly.

5. The very fact that the statute makes a distinction between cases where the underassessment is due to the assessee's failure to fully and truly disclose the material facts and other cases would show that every case of underassessment cannot be attributed to the assessee's failure to disclose the facts fully and truly. Underassessment by itself cannot be justification to resort to Section 17(1)(a) of the Act. It is expected of all the Assessing Officers that they should be vigilant not only at the time of assessment, but also within the period prescribed for reopening of assessments, even where there has been no failure on the part of the assessee to truly and fully disclose the material facts. If the Assessing Officers are not alert and allow the time to elapse they cannot thereafter, as a matter of course, seek to justify the reopening by casting the blame on the assessee. The assessee is expected to place before the Assessing Officers all the primary facts and not suppress anything that is material. Once that is done it is for the Assessing Officer to accept it or make his own estimate of the amounts required to be considered for the purpose of assessment.

6. We do not find any error in the order of the Tribunal. The question referred to us, namely :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the provisions of Section 17(1)(a) of the

Wealth-tax Act are not attracted in this case and accordingly in cancelling the reassessment made for the year 1971-72 ?"

is answered in favour of the assessee and against the Revenue.