(1998) 12 MAD CK 0024

In the Madras High Court

Case No : T.C. No''s. 502 to 504 of 1983

Commissioner of Wealth Tax APPELLANT

Vs

D.C. Kothari (DECD) and Others RESPONDENT

Date of Decision : 01-12-1998

Acts Referred:
Wealth Tax Act, 1957 — Section 17(1)(a), 17(1)(b)

Citation : (2000) 160 CTR 438

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

Bench : Division Bench

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

Judgement

R. Jayasimha 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 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 building was

required to be made as on 31-12-1970. 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 19-2-1972. The same was reopened and fresh assessment order was made on

28-7-1977 wherein the value of the building was determined as Rs. 52,61,500. On appeal to the Commissioner (Appeals), 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 (Appeals) referred to the valuation report which had been

submitted by a private valuer to the assessee in August, 1971 valuing the building 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 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 (Appeals) now wish to value of 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 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 fact fully and truly.

5. The very fact that the statute makes a distinction between cases were the under assessment is due to the assessee''s failure to fully and truly

disclose the material facts and the other cases would show that every case of underassessment cannot be attributed to 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 officer 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 officer are not alert

and allow the time to elapse and they cannot, therefore, as a matter of course, seek to justify the reopening by casting the blame on the assessee.

Assessees are expected to place before the assessing officer''s 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 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.

