
(1985) 07 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 2635 of 1984

Commissioner of Wealth-tax

APPELLANT

Vs

E.N. Sreedhara Kamath

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

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

Citation : (1986) 160 ITR 23

Hon'ble Judges : K. Bhaskaran, C.J.;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P.G.K. Warriar, for the Respondent

Judgement

K. Bhaskaran, C.J.—Having heard the counsel for the Revenue and the counsel for the assessee, we are satisfied that there is no ground for compelling a reference u/s 27(3) of the Wealth-tax Act, 1957. The Wealth-tax Officer completed the assessment accepting the valuation furnished by the approved valuer, based on what is called by the Revenue as the land-cum-building value. Subsequently, it would appear that the Wealth-tax Officer came across an observation in the internal audit report in which it was suggested that it being a commercial building, it ought to have been valued by capitalising the rental income. The Tribunal having disagreed with this approach made by the Wealth-tax Officer, this writ petition has been filed to compel a reference of the questions of law alleged to arise out of the order of the Tribunal.

2. It is the admitted case that the building in question has been rented out from a date about 11/2 months prior to December 31, 1975, the date on which the valuation was made by the Wealth-tax Officer. That would mean that the information for computing the value either on the capitalisation method or land-cum-building value method was available with the Wealth-tax Officer at the time when he completed the assessment. In his option, he preferred the method adopted by the approved valuer. We have not been shown how any error lies in

the finding of the Tribunal that no case for reopening had been made out.

3. Section 17(1)(b) of the Wealth-tax Act reads as follows :

" 17. Wealth escaping assessment.--(1) If the Wealth-tax Officer--.....

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in Clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise."

4. The power of the Wealth-tax Officer u/s 17(1)(b) of the Act is a restricted one. It is only where in consequence of any information in his possession, he has reason to believe that the net wealth chargeable to tax had escaped assessment for any year that he would be justified in reopening the assessment. The reference to "information in his possession" is to the information which he received subsequent to the passing of the assessment order, not to such information as was available with him at or before the time of the completion of the assessment. We have already noticed that the Wealth-tax Officer was aware of what the rental income was, at the time when he computed the value of the building and completed the assessment. He, therefore, received no information which could provide the basis for the reopening of the assessment in exercise of his limited power u/s 17(1)(b) of the Act. Observations made in internal audit could not be the type of information as envisaged by Section 17(1)(b) of the Act. This position has been made abundantly clear by the decisions of the Supreme Court in *Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited*,) and *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, .

5. The counsel for the Revenue cited the decision of the Supreme Court in *State of Kerala v. P. P. Hassan Koya*, AIR 1968 SC 1201, in support of his argument that the value ought to have been computed by capitalizing the rental income, and not on the break-up value method. The decision cited related to the determination of compensation to be paid in connection with the extinguishment of the right of the land owner on compulsory acquisition of his property by the Government. In fixing the market value for the purpose of compensation under the Land Acquisition Act, the procedure to be followed and the facts and standards to guide, are as laid down in Sections 23 and 24 of that Act. We have not been shown any such statutory rule or requirement to be followed while computing the value of the property for the purpose of assessment under the Wealth-tax Act. It is also doubtful whether Parliament really intended to insist on the same degree of rigidity or to prescribe the same guideline, as for fixing the market value to compensate the person who was deprived of his property, while computing the value for the purpose of wealth-tax. The decision cited by the counsel for the Revenue, in our view, does not advance, to any extent, the case of the Revenue.

6. The questions sought to be referred to this court are the following :

" 1. Whether, on the facts and in the circumstances of the case, is the Tribunal right in holding that-

(i) the assessment has not been validly reopened ?

(ii) the reassessment has to be cancelled ?

2. Whether, on the facts and in the circumstances of the case, is the Tribunal right in holding that the note of the audit party and the valuation report could hardly be called " information " ?

3. Whether, on the facts and in the circumstances of the case and in view of the findings that the Wealth-tax Officer "himself" had "perused the records" and had "come to the conclusion" on the basis of "the alternative method", is the Tribunal right in holding that "this would only amount to a change of opinion and nothing more " ? "

7. The Revenue having failed to make out an arguable case, we hold that no question of law for reference to this court arises out of the order of the Tribunal and, in that view, the writ petition is dismissed ; we do not, however, make any order as to costs.