
(2008) 01 BOM CK 0013
In the Bombay High Court
Case No : WT Appeal No. 896 of 2007

Commissioner of Wealth Tax	Vs	APPELLANT
Jaykumar B. Patil		RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Wealth Tax Act, 1957 — Section 14, 16(3), 17, 17(1), 17(1A)

Citation : (2008) 218 CTR 145

Hon'ble Judges : R.S. Mohite, J; F.I. Rebello, J

Bench : Division Bench

Advocate : B.M. Chatterji, P.P. Bhosale and P.S. Sahadevan, for the Appellant;
S.N. Inamdar and A.K. Jasani, for the Respondent

Final Decision : Dismissed

Judgement

1. Revenue has preferred this appeal against the order passed by the Tribunal. The Tribunal relied on its own order dt. 27th Oct., 2005 passed in WTA Nos. 313 to 316/Pn/1992 for the asst. yrs. 1976-77 to 1979-80 and WTA Nos. 16 to 20/Pn/1996 for the asst. yrs. 1976-77 to 1980-81. Revenue had issued a notice u/s 17 of the WT Act. Admittedly the reopening was sought to be done after four years and consequently there has to be compliance with the requirements of the proviso to Section 17 of the WT Act. The notice was dt. 28th May, 1984. The relevant portion of Section 17 as it then stood reads as under:

If the AO

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for the year, whether by reason of under assessment or assessment at too low a rate or

otherwise;

Section 17(1A) reads as under:

No notice under Sub-section (1) shall be issued for the relevant assessment year-

(a) In a case where an assessment under Sub-section (3) of Section 16 in Sub-section (1) of this section has been made for the relevant assessment year, no notice shall be issued under sub-section (by an AO, who is below the rank of Asstt. CIT or Dy. CIT unless the (Jt.) CIT is satisfied, on the reasons recorded by the AO aforesaid, that it is a fit case for the issue of such notice.

(i) if five years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees ten lakhs or more for the year;

(b) in any other case-

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under Sub-clause (ii) or Sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year which has escaped assessment amounts to or is likely to amount to rupees two lakhs and fifty thousand or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year.

2. It will be thus clear that the AO must have reason to believe that there has been omission or failure by the assessee to disclose fully or truly all material facts necessary for assessment of his net wealth. In the instant case the respondent was assessed. The Revenue sought to reopen the assessment after four years. These facts were taken into consideration by the Tribunal while considering the issue which was for their consideration. The Tribunal noted that the AO rejected the contentions raised by the assessee regarding the validity of the notice u/s 17(1) for the following reason: "I am therefore not able to agree with the assessee's stand with respect of the reopening u/s 17(1)(a) as the assessee's disclosure cannot be taken as full and true, if the properties were so undervalued, in the present case. He did not make arrangement to get the

properties revalued for 12 to 13 years, merely because, the Department has accepted the value year after year does not necessarily absolve him of the responsibility to give correct valuation."

The Tribunal then noted that the firm in which the assessee was the partner, the net assets were available before the Department, nothing could therefore be said that the assessee omitted or failed to disclose the assets. The Tribunal noted that the value of the Immovable property generally appreciates over a period of time and that was known to the assessee as much as to the Department. There is nothing on record to show that there was any material fact which was necessary for the assessment of the net wealth of the assessee and which was in the exclusive knowledge of the assessee and which the assessee omitted or failed to fully and truly disclose. The Tribunal therefore, hold that the notice was not validly issued and needs to be quashed. There were other grounds also which were considered and decided.

3. The appeal by Revenue raises the following questions:

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in quashing the notice u/s 17(1) of the WT Act, 1957 for the asst. yr. 1976-77?

2. Whether on the facts and circumstances of the case and in law, the quashing of notice u/s 17(1) of the WT Act, 1957 was not perverse, being contrary to material on record inasmuch as the assessee was aware of the actual market value which was higher than the historical value shown in the return of wealth?

4. We have heard the learned Counsel for the parties. After considering the section as it then stood and as pointed out earlier, there ought to have been material to indicate that the assessee had not disclosed fully or truly all material facts. In the instant case, all the necessary facts and material were available to the AO. There was therefore, no omission or failure on the part of the assessee. The value of the assets was declared by the assessee in his return. It was for the concerned AO to either accept the valuation or proceed otherwise. This is not a case therefore, of any omission or failure on the part of the assessee nor is it the case of an assessee failing to disclose fully or truly all the material facts. The Tribunal therefore, was right in the conclusion which it had arrived at. Thus, the finding of the Tribunal cannot be said to be a finding which appellate Court could not have recorded. It is no doubt true that the CIT(A) had held against the respondent and had merely followed the reasonings of the AO which reasons we have earlier set out. In case of no reason it was open to the Tribunal as an appellate authority to consider the material which was not considered, to record a finding if the ingredients of the section which are required to be considered and satisfied were considered by the AO or the CIT(A).

5. In our opinion, therefore, the challenge to the order on the ground that the Tribunal could not have taken a view as taken is devoid of merits. Consequently, there is no merit in the questions as framed. Appeal dismissed.