

(2004) 07 RAJ CK 0048
In the Rajasthan High Court
Case No : WT Ref. No. 16 of 2004

Commissioner of Wealth Tax

APPELLANT

Vs

Kamal Kumar Mansinghka

RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 27A
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (2004) 191 CTR 339 : (2005) 275 ITR 485

Hon'ble Judges : Rajesh Balia, J; O.P. Bishnoi, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This is an appeal u/s 27A of the WT Act and the office has wrongly registered it as OTR Tax Ref.

2. The office is directed to register it as an appeal and number it accordingly.

3. This appeal is directed against the order passed by the Tribunal, Jodhpur Bench, Jodhpur in WTA No. 74/Jp/1995 for asst. yr. 1983-84 and relates to the validity of the proceedings of reassessment in pursuance of the notice dt. 23rd March, 1994 in respect of asst. yr. 1983-84.

4. The facts which are found by the Tribunal and are not in dispute shows that in the first instance, the assessment for 1983-84 under the WT Act, 1957, was completed on 16th Feb., 1984 which was founded on the order of the Tribunal in the case of Seth Pussalal Mansinghka Trust for asst. yrs. 1980-81 and 1982-83 in which the assessee was allowed to exercise the option about inclusion of value of immovable property in question, which was under the said trust in the hands of the appellant from asst. yr. 1982-83 onwards. In the first instance, a notice u/s 17 was served on the assessee on 12th March, 1985 reopening the assessment for asst. yr. 1983-84 and calling upon the assessee to include the value of

immovable property in question belonging to the trust in its wealth u/s 21(1A). In pursuance thereof, the fresh return was filed by the assessee disclosing the total wealth as same as was returned in the original return. However, the said return was revised to include the value of immovable property of the trust in the net wealth of the assessee. The said revised return was assessed u/s 16(3) r/w Section 17 vide order dt. 15th March, 1988.

5. Thereafter, relying on the Departmental Valuation Officer's report, the said assessment was again reopened vide notice dt. 24th March, 1994.

6. The short question which arises for consideration in this appeal and which has been dealt with by the Tribunal is whether the notice issued on 24th March, 1994 (23rd March, 1994) for reopening the assessment for 1983-84 was barred by limitation or not.

7. The Tribunal found that it was not a case in which the reassessment proceedings were initiated on the ground that no wealth chargeable to tax has escaped assessment for the asst. yr. 1983-84 by reason of any failure on the part of the assessee to make a return u/s 14 or Section 15 or in pursuance of a notice issued under Sub-section (4) of Section 16 or Section 17 in this connection or on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that assessment year. The law also enjoins upon the AO to record reasons before issuing notice u/s 17.

8. The Tribunal found that, since it was not a case in which notice u/s 17 has been issued either for the reason of failure on the part of the assessee to file the return as required under the provisions of Sections 14 to 15, 16 or 17, nor it is a case where the initiation of reassessment proceedings were on account of any failure on the part of the assessee to disclose truly and fully all material facts necessary for his assessment for the assessment year in question, no proceedings for reassessment could be initiated after expiry of the period of four years from the end of assessment year in question 1983-84. The said limitation expired on 31st March, 1988. Thereafter, notice issued in March, 1994 was clearly barred by time and without jurisdiction which obviously vitiates the proceedings held pursuant thereto. Consequently, the reassessment for asst. yr. 1983-84 was quashed.

9. The learned counsel for the appellant urges that the Tribunal has seriously, erred in applying the provisions of Section 17 as it stood during the asst. yr. 1983-84 and has not taken note of the amendment brought in by the Direct Tax (Amendment) Act of 1989 w.e.f. 1st April, 1989. He contends that the law which governs the validity of initiation of reassessment proceedings is that which is in force on the date on which the notices are issued and not the provisions which were in force during the assessment year in respect of which notices are issued.

10. So far as the contention of the learned counsel for the appellant that the law which governs the validity of exercise of power by the AO is the law in force as

on the date of notice which in the present case is 25th March, 1994 appears to be correct. However, on the facts found by the Tribunal, it does not alter the end result and therefore, in our opinion, no substantial question of law arises for consideration in this appeal.

11. While substituting s. 17 in its entirety proviso to Sub-Section (1) of Section 17 was also enacted for contingency which was earlier governed by Section 17(l) (b); and fell beyond Section 17(l)(a). The proviso to Section 17(1) as it now stands w.e.f. 1st April, 1989 reads as under :

"Provided that where an assessment under, Sub-section (3) of Section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any net wealth chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 14 or Section 15 or in response to a notice issued under Sub-section (4) of Section 15 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year:

Provided further that the AO shall, before issuing any notice under this subsection, record his reasons for doing so."

12. The perusal of the aforesaid proviso leaves no room of doubt that, where there is no failure on the part of the assessee to make return u/s 14 or Section 15 or in response to notice issued u/s 16(4) or Section 17 or where there is no failure on the part of the assessee to disclose fully and truly all necessary facts for his assessment for the assessment year in question, the law prohibits to take any action u/s 17(1) after the expiry of four years from the end of the relevant assessment year.

13. In other cases, the period within which the proceedings of reassessment can be initiated is governed by Section 17(1A).

14. In this connection, reliance on Sub-section (1A) of Section 17 is misplaced to connect the period of limitation with quantum of estimated escapement even in cases falling under aforesaid proviso to Section 17(1). Apparently, by enacting proviso to Section 17(1), a classification has been made between initiation of proceedings for reassessment in a case where escapement is considered to have taken place on account of any default on the part of the assessee in filing return or in not disclosing truly and fully all material facts necessary for assessment of the relevant assessment year on the one hand and cases where notwithstanding no such default is attributable to the assessee, still for some reason or the other the AO is satisfied that wealth chargeable to tax has escaped assessment, may be because of an interpretation which is found to be erroneous, or such other reason which cannot be attributed to assessee's failure to disclose truly and fully all material facts necessary for assessment. Prior to amendment of Section 17, this distinction was apparent between cases falling under Clause (a) and (b) of Section 17(1), respectively. While Clause (b) of Section 17(1) could be invoked

only on the basis of information that comes to AO subsequent to earlier assessment and which did not fall within the province of Section 17(1)(a), in cases where there was default on the part of the assessee in making disclosure of material facts truly and fully or in filing return they were governed by Clause (a). However, by substitution of Section 17 in the present form, the condition of coming into existence relevant information about escapement of tax subsequent to earlier assessment has been done away with and exercise of power to reassess has been made more liberal to bring the escaped subject of tax to tax net, yet the distinction between escapement on account of default in filing return or in disclosing truly and fully all material facts necessary for assessment and other cases have been maintained by enacting proviso to Section 17(1). While proviso to Section 17(1) takes away the jurisdiction of the AO to initiate proceedings after expiry of period of four years in cases falling under it, Section 17(1) provides limitation for initiating proceedings in cases not falling with proviso to Section 17(1) and in providing different limitation a live nexus has been established with magnitude of escapement resulting on account of failure on the part of the assessee to disclose his objection. More the escapement on account of such failure, larger the period of limitation. Taking any other view, as suggested by the learned counsel, shall render the proviso to Section 17(1) otiose and redundant, which result cannot be accepted, on any canon of interpretation of statute. If there was no distinction, the proviso will become inapplicable in any case.

15. We have noticed above that in the present case on the findings of the Tribunal, there is no failure on the part of the assessee either to make return as required of him under any provision referred to above, nor there was any failure on his part to disclose fully and truly any necessary fact for the assessment year in question. Admittedly, it was only subsequent furnishing of the valuation report by the Departmental Valuation Officer founded on different methodology of valuation of immovable property that this notice has been issued. Obviously, this exercise falls in the realm of the AO while making assessment and not in the realm of disclosure of true and correct facts necessary for assessment.

16. What constitutes failure to disclose truly and fully all material facts necessary for assessment has been well settled since the decision of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, wherein the Court said material facts in the context refer only to primary facts; the duty of the assessee is only to disclose primary facts and he has not to indicate what factual or legal inferences may properly be drawn from such primary facts.

17. The assessee in the present case has disclosed the existence of asset, its locality (which in fact was not in doubt) and rent which it was fetching since long. He relied on the provisions of Rent Control Act which restricted enhancement of rent. He valued the property on the basis of method provided under Rule 1BB of WT Rules, then prevailing which was accepted by WTO in earlier assessment

proceedings. Now the WTO considers that the basis of valuation of the property in question ought not to have been based on rent but should have been as per the method adopted by Departmental Valuer. Obviously, no failure on the part of assessee to disclose truly and fully all material facts has been alleged or made out. The Tribunal has also found on facts that determination of rent of premises was not collusive. In these circumstances, clearly the proviso to Section 17(1) is attracted. Therefore, applying the provisions of Section 17 as it stood on the date on which the notices were issued for asst. yr. 1983-84, the period of limitation had expired on 31st March, 1988 and no proceedings could have been initiated for substituting higher valuation merely on the basis of the valuation report founded on different methodology for valuing the immovable property in question.

18. Consequently, we do not find any merit in this appeal. The appeal is accordingly dismissed.