

(1998) 02 MAD CK 0125

In the Madras High Court

Case No : Tax Case No"s. 1232 and 1233 of 1985 (Reference No"s. 738 and 739 of 1985)

Commissioner of Wealth Tax

APPELLANT

Vs

K.L. Varadaraju

RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

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

Citation : (1999) 238 ITR 440

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; Balaji, for K. Ramagopal and S.S. Sundararaman, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is the owner of the property at No. 3. A. V. Palaniswamy Naidu Street, Coimbatore. The property is a residential bungalow. We are concerned with two assessment years, viz., 1972-73 and 1973-74. The original assessment under the Wealth-tax Act for the assessment year 1972-73 was made on October 28, 1972, on a net wealth of Rs. 4,40,700. For the assessment year 1973-74, the original assessment was made on January 29, 1974, on a net wealth of Rs. 5,56,500. The Wealth-tax Officer determined the value of the said property in the original assessment at Rs. 2,22,048 on the basis of the registered valuer's report. Subsequent to the completion of the original assessment for the assessment year 1972-73, the Wealth-tax Officer referred the matter to the Departmental Valuation Officer u/s 16A of the Act to determine the value of the property who determined the property's value at Rs. 4,65,000. According to the Departmental Valuation Officer, the area of the property was 90 cents and on that basis, the value of the property was determined at Rs. 4,65,000. The Wealth-tax Officer on the basis of the report of the Departmental Valuation Officer found that the area of the house as found by the Departmental Valuation Officer was 90 cents, and held that the assessee had not disclosed the full and true materials for making a proper assessment. He was

also prima facie of the opinion that the assessee had not returned the correct value of the shares held by him in a company called Ajanta Textiles Ltd., which value was shown as Rs. 35,000, at Rs. 5 per share. But the Wealth-tax Officer was of the view that the value of the shares was at Rs. 10 per share as quoted on the Madras Stock Exchange and if that value was taken into account, there was an underassessment in the wealth tax assessment proceedings for both the assessment years and issued a notice of reassessment to the assessee. The Wealth-tax Officer ultimately completed the reassessment as there was no response to the notice from the assessee, and brought to tax the difference in value.

2. The assessee, challenging the order of the Wealth-tax Officer, filed appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner found that the assessee at the time of original assessment filed a plan of the house wherein the assessee mentioned that the area of the site was 39,200 sq. ft. According to the Appellate Assistant Commissioner, one cent is equal to 435.6 sq. ft. and if that formula is taken into account, the area of the property as mentioned by the assessee in the original assessment would come to 91 cents. The Appellate Assistant Commissioner also found that the assessee obtained the property on a partition in the joint family and in the partition, the area of the site was mentioned as 81 cents and so, the assessee repeated the same at the time of filing of the return during the course of original assessment. He also found that as regards the valuation of shares, the assessee had furnished sale particulars at the time of original assessment and after taking into account the particulars, the value of the shares was fixed at Rs. 35,000. He, therefore, held that the reassessment proceedings initiated by the Wealth-tax Officer for both the assessment years u/s 17(1)(a) of the Act were not valid and the officer had no jurisdiction to reopen the assessment u/s 17(1)(b) of the Act. As regards the application of Section 17(1)(b) of the Act the Appellate Assistant Commissioner found that the proceedings u/s 17(1)(b) of the Act, were time barred and, therefore, the provisions of Section 17(1)(b) have no application to the facts of the case. In this view of the matter, he allowed the appeals preferred by the assessee.

3. The Department carried the matter on appeal before the Appellate Tribunal. The Appellate Tribunal confirmed the findings of the Appellate Assistant Commissioner and the Appellate Tribunal found that the assessee cannot be stated to have omitted to disclose true and full material facts necessary for making a proper assessment before the Wealth-tax Officer at the time of original assessment. The Tribunal also held that the provisions of Section 17(1)(a) have no application and the provisions of Section 17(1)(b) was not applied. The Tribunal also recorded a finding that the Wealth-tax Officer made a reference to the Departmental Valuation Officer after the original assessment was completed and under the provisions of Section 16A of the Act, the Wealth-tax Officer is not empowered to make a reference to the Valuation Officer after the completion of the assessment. The Tribunal held that the assessee cannot be said to have

furnished inadequate particulars and further, the assessee had no knowledge about the area of the property and it cannot be stated that the assessee omitted to produce material particulars. Challenging the order of the Appellate Tribunal, the Department sought for a reference and the following questions of law have been referred by the Tribunal for our consideration ;

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the cancellation by the Appellate Assistant Commissioner of the reassessments made u/s 17(1)(a) of the Wealth-tax Act, 1957, for the assessment years 1972-73 and 1973-74 ?

2. Whether the Appellate Tribunal had valid and relevant materials to hold that the assessee could not be said to have knowingly omitted or failed to disclose the correct area of the site in which the building is situate and that, therefore, the provisions of Section 17(1)(a) would not give powers to the Wealth-tax Officer to reopen the assessment ?

3. Whether, the Appellate Tribunal's finding that the report u/s 16A of the Wealth-tax Act submitted by the Valuation Officer was in an invalid reference and that, therefore, the said report could not be made the basis for reopening the assessment u/s 17(1)(a) of the Wealth-tax Act, 1957, was based on proper materials of the case ?"

Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the Tribunal was not correct in holding that the reassessment was invalid as the assessee had failed to disclose the relevant material particulars at the time of original assessment. Learned counsel for the assessee, on the other hand, supported the order of the Appellate Tribunal.

4. We have carefully considered the submissions of learned counsel. We are of the view, both the Appellate Assistant Commissioner and the Appellate Tribunal have given a finding of fact that the assessee had produced all relevant particulars for the purpose of a proper assessment at the time of original assessment and the assessee cannot be stated to be guilty of producing inadequate particulars or untrue particulars at the time of original assessment. The assessee had produced the site plan along with the return at the time of original assessment, showing the area as 39,200 sq. ft. When relevant particulars were available before the Wealth-tax Officer, it is the duty of the Wealth-tax Officer to find out the exact area and on that basis, to determine the value of the property. The assessee had furnished full and true particulars regarding the valuation of the property and that value returned by the assessee was also supported by the report of the registered valuer. We are, therefore, of the opinion that it cannot be stated that the assessee had omitted to disclose full and true particulars at the time of original assessment.

5. In so far as the valuation of shares is concerned, the finding of the Appellate Tribunal is that there was a full discussion as regards the valuation of the shares at the time of original assessment and after that, the Wealth-tax Officer

determined the value of the shares at Rs. 35,000 for both the assessment years. Therefore, it cannot be stated that the assessee had failed to disclose relevant particulars for the valuation of the shares at the time of original assessment. As already held, when the relevant particulars regarding the shares were before the Assessing Officer, it is the duty of the Assessing Officer to find out the value of shares. We cannot put the blame on the assessee for the lapse of the Assessing Officer in not determine the value of the shares". Therefore, we are of the opinion that the assessee had disclosed full and true particulars regarding the valuation of both the items of the properties at the time of original assessment and on that basis only the original assessment was completed. We are, therefore, of the opinion that the Tribunal committed no error in holding the assessment proceedings initiated for both years were not valid and the Wealth-tax Officer had no jurisdiction to make reassessment u/s 17(1)(a) of the Act. Admittedly, it is not a case falling u/s 17(1)(b) of the Act as the proceedings u/s 17(1)(b) have become time barred at the time of initiation of proceedings and therefore only on the basis of Section 17(1)(a) of the Act, the question of validity of reassessment has to be determined. We hold that the provisions of Section 17(1)(a) are also not applicable to the facts of the case and the Tribunal was correct in holding that the Wealth-tax Officer lacked the jurisdiction to make the reassessment in the instant case.

6. Though the Tribunal had made an observation regarding the action of the Assessing Officer in obtaining the valuation report from the Departmental Valuation Officer invoking his powers u/s 16A of the Act, we are of the opinion that the report will be relevant only if the reassessment proceedings were taken u/s 17(1)(b) of the Act. Since the proceedings were initiated u/s 17(1)(a) of the Act, it is unnecessary for us to express any opinion on the correctness of the view of the Appellate Tribunal as to whether the powers u/s 16A of the Act were properly invoked by the Assessing Officer.

7. Accordingly, we answer the questions of law referred to us as under :

The assessee is entitled to costs of Rs. 750.