

(1991) 01 KAR CK 0055
In the Karnataka High Court
Case No : T.R.C. No's. 3 to 10 of 1985

Commissioner of Wealth Tax

APPELLANT

Vs

M. Ramachandran

RESPONDENT

Date of Decision : 14-01-1991

Acts Referred:

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

Citation : (1991) 99 CTR 244 : (1991) 191 ITR 186 : (1992) 62 TAXMAN 125

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chandrakumar, for the Appellant; R. Krishna Murthy, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The following questions have been referred for our opinion under the provisions of the Wealth-tax Act, 1957 :

"(1) Whether, on the facts and in the circumstances of the case, the reopening of the assessments for the years 1964-65 to 1971-72 were u/s 17(1)(b) of the Wealth-tax Act and not u/s 17(1)(a) of the Wealth-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the valuer's report for the subsequent years cannot be treated as information for reopening the earlier year's assessment u/s 17(1)(b) of the Wealth-tax Act ?"

2. The assessment years are 1964-65 to 1971-72. The assessments were completed initially on March 23, 1973. Within four days, notices u/s 17 were issued and served on the assessee. The reason for this is stated in the statement of the case thus :

"The assessee has filed a valuer's report dated January 12, 1973, wherein the value of property known as Madumbai property is shown at Rs. 37,38,378. The valuer has allowed as deduction a sum of Rs. 7,69,500 towards layout charges. This deduction is not properly allowable because the layout charges are of contingent nature. Besides, the valuer has adopted different rates varying from

Rs. 90 to Rs. 180 per sq. yd. on the basis of disallowance of layout charges of Rs. 7,69,500 and valuing the entire land at Rs. 180 per sq. yd. the total value of Mudumbai property comes to Rs. 45,08,378. The assessee's share [1/12th thereof] comes to Rs. 3,75,698 as against the assessee's value of Rs. 1,26,778."

3. The assessee contended that a subsequent report of the valuer cannot be information so as to enable the assessing authority to initiate action u/s 17 of the Act. He also contended that the question would not fall u/s 17(1)(a) of the Act because there was no suppression of any relevant material by the assessee and that the assessee had disclosed the assets fully and truly.

4. Here itself, we may note that the assessing authority actually referred the question of valuation to the valuation cell. The reopening of the assessment was on several grounds and one such ground was that the earlier valuer had allowed certain layout charges, which were not allowable, since layout charges were of a contingent nature. Further, the rate adopted by the valuer vastly varied. Thus, it cannot be said that the reopening of the assessments was solely on the basis of the subsequent report of the valuer. The ultimate valuation done by the Wealth-tax Officer was on the basis of the report of the valuer consequent on a reference by him, and after re-opening the assessments. A perusal of the revised assessment orders reveals that the valuer made the valuation with reference to each of the relevant valuation date. The valuation by the expert (i.e., the valuer) was not as on any subsequent date and this is not a case where the assessing authority estimated the valuation of the property by going backwards by applying any percentage of deduction from the value of the properties furnished by the valuer with reference to a subsequent year.

5. The assessing authority held that the proceedings would fall u/s 17(1)(a) and, therefore reassessment was possible since the action was within eight years from the end of the relevant years. In case the proceedings are to be u/s 17(1)(b), the period of limitation is only four years from the end of the particular assessment year concerned and, in this context the first question referred assumes much importance.

6. On appeals being filed by the assessee, the first appellate authority held that the report of the valuer cannot be the basis for action u/s 17 of the Wealth-tax Act. The Revenue went up in appeals to the Appellate Tribunal. The Appellate Tribunal dismissed the appeals. Hence these references at the instance of the Revenue.

7. As to the first question, there is no serious controversy. The assessee has not suppressed any facts at the time of the first order of assessment. The reopening is done on the basis of the alleged information available to the authority. Consequently, it has to be answered that the reopening of the assessments were u/s 17(1)(b) and not u/s 17(1)(a); the Tribunal rightly applied the bar of limitation in respect of the assessment years 1964-65 to 1967-68.

8. On the second question, a decision of this court in *M.S. Vasudev Vs.*

Commissioner of Wealth Tax, (TRC Nos. 18 and 19 of 1983, dated June 18, 1990) was relied on by Mr. Chandrakumar. In the said case, during the assessment proceeding itself, the authority had referred the question of valuation to the valuer; but, thereafter, made the assessment order without waiting for the report. Subsequently, the valuer made his report valuing the property as on the valuation date; on this basis, the assessments were reopened. Thus, it could be seen that the basis for reopening the assessment was the expert opinion of the valuer as on the relevant valuation date itself; such report could be "information" for a proceeding u/s 17(1)(b). The assessee's learned counsel, however, referred to the decision of this court in Commissioner of Wealth Tax Vs. V.N. Shankar, (TRC Nos. 8 and 9/84 dated January 4, 1991). There, it was held that whether the subsequent report of the Government valuer could be information for initiating the proceedings u/s 17(1)(b) depended upon the facts of each case; it was held that valuation being not an exact science, it is inevitable to have different valuation in respect of the same property and, consequently, a marginal difference in valuation cannot be ground to reopen an earlier order of assessment.

9. In the instant cases, the assessing authority had before him the valuations of the properties as on the relevant valuation and those valuations were considered for making the fresh assessments, this is not a case where the Wealth-tax Officer applied his own standards for valuation and it cannot be held on the facts circumstances that the factors applied by the assessing authority are entirely irrelevant.

10. The second question referred seems to us to be not happily worded. The statement of case quotes the basis for initiating the proceedings u/s 17 as something other than the report of the valuer, by stating that the realisation that certain allowance were wrongly computed was the starting point. Fresh valuer's report for the subsequent year as the reason for the reassessment cannot be identified by reading the statement of the case and the relevant order of assessments.

11. We have already referred to what was recorded by the Wealth-tax Officer as extracted in the statement of the case which shows that the valuer's report by itself was not the sole "information" in the instant cases. The assessment orders indicate that the valuer's report with reference to the relevant valuation dates was applied by the assessing authority and not merely the valuation report for the subsequent year. Bearing these facts in mind, the question referred to us is answered in favour of the Revenue and the affirmative.

12. The second question is answered accordingly.