
(1991) 02 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 1166 of 1984

Commissioner of Wealth Tax	Vs	APPELLANT
Ramnarayan Bhojnagarwala		RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 25, 25(2)

Citation : (1992) 104 CTR 50 : (1992) 194 ITR 489 : (1993) 69 TAXMAN 328

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Sunil Mitra, for the Appellant;None, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, for the assessment years 1975-76 and 1976-77, the following question of law has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in annulling the order of the Commissioner of Wealth-tax and in holding that the decision in the case of Ganga Properties Vs. Income Tax Officer, , applies to the facts of the case ?"

2. The facts relating to this reference shortly stated are that the assessment for the assessment year 1975-76 was completed on March 6, 1980, whereas the assessment for the assessment year 1976-77 was completed on January 16, 1981. In both the assessment orders, an item of Rs. 4,45,000 has been included under the head "Immovable property" and this is described as the value of Jaipur land as per return. Subsequently, the assessee filed an application for a clearance certificate u/s 230A of the Income Tax Act on April 16, 1981. According to this application, the assessee proposed to sell this land at Jaipur to various parties for a total consideration of Rs. 3,69,600. Further, in the wealth-tax return for the assessment year 1981-82 filed on September 23, 1981, the value of this land was shown at Rs. 3,63,000. It is pertinent to mention that, in all the returns

of net wealth subsequent to the two assessment years under reference and up to the assessment year 1980-81, the value of this land was shown at Rs. 45,000. According to the Commissioner of Wealth-tax, the assessments made for the said assessment years were erroneous in so far as they were prejudicial to the interests of the Revenue. He issued a show cause notice u/s 25(2) of the Act and, after hearing the assessee, passed an order setting aside the assessment and directing the Wealth-tax Officer to make a fresh assessment after proper enquiry relating to the land at Jaipur.

3. Being aggrieved, the assessee preferred an appeal before the Tribunal. The Tribunal, following the decision of a single Bench of this court in *Ganga Properties Vs. Income Tax Officer*, held that the materials which were relied on by the Commissioner of Income Tax were not in existence at the time when the assessments were made and came into existence afterwards and, accordingly, they cannot form part of the record of the proceedings of the Income Tax Officer at the time when he passed the order and cannot be taken into account. The Tribunal, therefore, annulled the order passed by the Commissioner setting aside the assessment and directing a fresh assessment to be made in accordance with law.

4. At the hearing, no one appeared on behalf of the assessee.

5. Section 25(2) provides that the Commissioner may call for and examine the records of any proceedings under this Act, and if he considers that any order passed therein (by the Wealth-tax Officer) is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

6. The question is whether, in revising the assessment, the Commissioner has to restrict himself to the records which were available with the Wealth-tax Officer when the impugned orders were made or the records which were available at the time when the Commissioner exercised his jurisdiction u/s 25(2) of the Wealth-tax Act, 1957. It may be mentioned, however, that an Explanation was added to the Wealth-tax Act by the Finance Act, 1988, which provides that "record" "includes all records relating to any proceeding under the Act available at the time of examination by the Commissioner". This Explanation was added for removal of doubts.

7. The Tribunal has solely relied on the decision of a learned single judge of this court in *Ganga Properties Vs. Income Tax Officer*, where it was held that the materials which were not in existence at the time the assessment was made and came into existence afterwards cannot form part of the record of the proceedings of the Income Tax Officer at the time he passed the order and cannot be taken into consideration by the Commissioner for the purpose of invoking his

jurisdiction u/s 263(1), for he is not acting as an appellate authority but exercises only a revisional jurisdiction.

8. In our view, this decision has to be read in the context and setting of the facts of that case. Whether an order is erroneous in so far as it is prejudicial to the interests of the Revenue may be demonstrated with reference to the materials which may come into the possession of the Commissioner of Wealth-tax while he exercises his jurisdiction u/s 25(2) of the Act. There may be intrinsic evidence in the records when the order is passed which may also indicate that the order passed is erroneous in so far as it is prejudicial to the interests of the Revenue. It will depend on the facts and circumstances of each case. It cannot be laid down as a general principle of law that, under no circumstances, the materials which may come into the possession of the Commissioner of Wealth-tax subsequent to the completion of the assessment by the Wealth-tax Officer cannot be looked into for the purpose of invoking his jurisdiction u/s 25(2) of the Wealth-tax Act, 1957. In this case, it is necessary to find out the grounds on which the Commissioner of Wealth-tax exercised his jurisdiction. He held as follows :

"As earlier stated, there is a wide divergence between the value of the land shown for the assessment years in question and that declared by the assessee subsequently in 1981. According to me, this considerable difference in the value of the land cannot be explained merely by the assessee's assertion that this was as a result of the rise in the price of land in Jaipur after March, 1979. In any case, it is evident that a proper inquiry has not been made by the Wealth-tax Officer in respect of the value of the land in Jaipur in the assessments for the assessment years 1975-76 and 1976-77. Hence, the assessment orders of the Wealth-tax Officer for the assessment years 1975-76 and 1976-77 are erroneous in so far as they are prejudicial to the interests of the Revenue. I, therefore, set aside the assessment orders for the assessment years 1975-76 and 1976-77 and direct the Wealth-tax Officer to make fresh assessments after proper inquiry relating to the land at Jaipur and according to law."

9. From this order, it will be evident that the Commissioner was of the view that the assessments which had been made by the Wealth-tax Officer were made without any enquiry whatsoever accepting the valuation shown by the assessee in the return and, accordingly, he thought that it was erroneous in so far as it was prejudicial to the interests of the Revenue. As supporting material, he also took into account that there is a wide divergence between the value of the land shown in the assessment years in question and that declared by the assessee subsequently in 1981 just after the completion of the impugned assessment. The main ground on which the Commissioner proceeded will be apparent from the following observation :

"It is evident that a proper inquiry has not been made by the Wealth-tax Officer in respect of the value of the land in Jaipur in the assessments for the assessment years 1975-76 and 1976-77. Hence, the assessment orders of the Wealth-tax Officer for the assessment years 1975-76 and 1976-77 are erroneous

in so far as they are prejudicial to the interests of the Revenue. I, therefore, set aside the assessment orders for the assessment years 1975-76 and 1976-77 and direct the Wealth-tax Officer to make fresh assessments after proper inquiry relating to the land at Jaipur and according to law."

10. It cannot, therefore, be said that the materials which came into the possession of the Wealth-tax Officer subsequent to the completion of the assessment formed the basis of exercise of power by the Commissioner of Wealth-tax u/s 25(2) of the Wealth-tax Act, 1957.

11. In *Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta*, the Supreme Court was of the view that, where the Income Tax Officer accepts the initial capital, the sale of ornaments, the income from business, the investments, etc., without any inquiry or evidence whatsoever, in such a case, the order of assessment is erroneous and prejudicial to the interests of the Revenue and the Commissioner of Income Tax has jurisdiction u/s 33B of the old Act to revise such assessment. Section 25(2) itself provides that the Commissioner may make a further enquiry before cancelling the assessment order and he can rely on the result of such enquiry. In our view, the Commissioner may regard the order as erroneous on the ground that, in the circumstances of the case, the Wealth-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. A similar view was taken by the Supreme Court in the case of *Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others*, where the Commissioner exercised his jurisdiction, inter alia, on the ground that the enquiries made had revealed that the assessee neither resided nor carried on any business from the address declared in the returns. Also, the Income Tax Officer was not justified in accepting the initial capital, the gift received and sale of jewellery, the income from business, etc., without any inquiry or evidence whatsoever. On this ground, the exercise of his jurisdiction by the Commissioner of Income Tax was held to be proper.

12. In *Smt. Sumitra Devi Khirwal Vs. Commissioner of Income Tax*, one of the grounds was that the facts revealed that the Income Tax Officer completed the assessments post haste without making any enquiry or investigation into the relevant points necessary for making correct assessments.

13. In our view, therefore, whenever a question arises as to whether a correct and proper assessment has been made upon due enquiry and it is found that no such enquiry was made, the Commissioner has jurisdiction in such a case to set aside the assessment directing a fresh assessment in exercise of his power u/s 25 of the Act. That apart, Section 25(2) itself provides that the Commissioner may make independent enquiries before he exercises his jurisdiction under the Act. We have already extracted the order of the Commissioner where he has held that the value of the Jaipur land was subsequently found to be about eight times more than what was disclosed in the return and the assessee himself in the return submitted after the completion of the assessment for a subsequent year

showed the valuation at Rs. 3,63,000 as against the value shown in the return at Rs. 45,000 for the assessment years in question. We are, therefore, of the view that it cannot be said in all cases that the Commissioner is precluded from looking into the materials which may come into his possession after the completion of the assessment. It will necessarily depend on the facts and circumstances of the particular case. The enquiry may be antecedent to the assessment or after the assessments have been made. The material may be gathered subsequent to the assessment by the Commissioner himself or it may be brought to the notice of the Commissioner from any source.

14. The Supreme Court, in Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, , observed as follows (at p. 89) :

"It is not necessary to further detail the reasons given by the Commissioner because on the face of the record the orders were prejudicial to the interests of the Revenue, and even if the facts which the Commissioner introduced regarding the enquiries made by him had been indicated to the assessee, the result would have been the same. The assessee, in our view, has not in any way suffered from the failure of the Commissioner to indicate the results of the enquiries mentioned above. Moreover, the assessee will have full opportunity of showing to the Income Tax Officer whether he had jurisdiction or not and whether the income assessed in the assessment orders which were originally passed was correct or not."

15. Thus, the assessee will not be prejudiced even at the stage when fresh assessments are made by the Wealth-tax Officer in pursuance of the direction given by the Commissioner of Wealth-tax.

16. For the reasons aforesaid, we answer the question in this reference in the negative and in favour of the Revenue.

17. There will be no order as to costs.

Shyamal Kumar Sen, J.

18. I agree.