

(1996) 02 MAD CK 0169

In the Madras High Court

Case No : Tax Case Petitions No"s. 178 and 180 to 184 of 1985

Commissioner of Wealth-tax

APPELLANT

Vs

S. Eapen

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Income Tax Act, 1961 — Section 28

Wealth Tax Act, 1957 — Section 17, 17(1), 27, 27(3)

Citation : (1997) 224 ITR 45

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, Deokinandan, for the Appellant; K.M.L. Majele, C.V. Rajan, for the Respondent

Judgement

Thanikkachalam J.

1. In tax case petitions, the Department requested this court to direct the Tribunal to refer the following two common questions, for the opinion of this court, u/s 27(3) of the Wealth-tax Act, 1957 :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in upholding the finding of the Appellate Assistant Commissioner that the reopening of the assessments for the years 1972-73 to 1974-75 was not justified and therefore was bad in law ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the value of the lands as adopted by the Appellate Assistant Commissioner ?"

3. The assessee owned movable and immovable properties. For the assessment years 1972-73 to 1974-75, the Wealth-tax Officer adopted the value of the non-agricultural lands at Rs. 2,000 per cent. Later, he came to know that the assessee had gifted 23 cents of the land to a church in June, 1975, and the lands gifted were valued at Rs. 3,800 per cent. The Wealth-tax Officer found that as

the assessee himself had valued the gifted land at Rs. 3,800 per cent, the value as adopted in the aforesaid assessments resulted in underassessment. For the said reason, he reopened the assessments u/s 17 of the Wealth-tax Act, 1957. The assessee gave his consent for the reopening of the assessment. In the reassessment made u/s 17(1)(b) of the Wealth-tax Act, 1957, the Wealth-tax Officer adopted Rs. 3,000 per cent for the assessment year 1972-73 and Rs. 3,500 for the assessment years 1973-74 and 1974-75. In respect of the regular assessments for the assessment years 1975-76 to 1977-78, the Wealth-tax Officer adopted the value of the lands at Rs. 8,546 per cent; Rs. 10,546 per cent and Rs. 11,646 per cent, respectively.

4. Against the above assessments and reassessments, the assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the gift made in June, 1975, was relevant for the assessment year 1976-77 only and that value cannot be taken to be the market value of the land on the relevant valuation dates. According to him, there was no relevant information before the Wealth-tax Officer for reopening the assessments. In regard to the valuation of the land, the Appellate Assistant Commissioner held that the same shall be estimated for the front portion consisting of 25 cents for the assessment years 1972- 73 to 1974-75 at Rs. 2,500 per cent, for the assessment years 1975-76 to 1977-78 at Rs. 2,500 per cent. For the remaining portion, the value was estimated at Rs. 2,000 per cent for the assessment years 1972-73 to 1974-75 and for the assessment years 1975-76 to 1977-78, it was taken at Rs. 2,500 per cent.

5. Aggrieved by the order of the Appellate Assistant Commissioner, the Department preferred appeals to the Appellate Tribunal, the Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner in holding that the reassessments made for the assessment years 1972-73 to 1974-75 were invalid in law, inasmuch as there was no information which came into the possession of the Wealth-tax Officer for reopening the assessments. The Tribunal further pointed out that the gifts made by the assessee in June, 1976, or December, 1978, do not in any manner suggest that the value of the property on the valuation dates relevant for the years now under appeal was the same as was adopted subsequently or would even be more than the values adopted on the relevant valuation dates. The Tribunal further pointed out that the reopening of the assessment was made on a mere suspicion, which cannot constitute information. Therefore, the Tribunal held that the reopening was bad. On the merits the Appellate Tribunal accepted the value of the lands in question as determined by the Appellate Assistant Commissioner.

6. Before us learned standing counsel for the Department submitted that the Tribunal was not correct in confirming the order passed by the Appellate Assistant Commissioner in holding that the reopening was bad. In the gift deed, the assessee has valued the lands gifted at a higher figure than what was furnished in the wealth-tax returns. Therefore, instead of adopting the value as

furnished by the assessee or determining the value by taking into consideration the guidelines values as prescribed by the Tamil Nadu Government, the Tribunal is not justified in accepting the value determined by the Appellate Assistant Commissioner. Therefore, learned standing counsel submitted that both on the question of reopening as well as on the question of determining the market value of the land in question, the Tribunal was not connect in confirming the order passed by the Appellate Assistant Commissioner.

7. The assessee owned immovable properties. While completing the original assessment for the assessment years 1972-73 to 1974-75, the Wealth-tax Officer adopted the value of the non-agricultural lands at Rs. 2,000 per cent. Later, he came to know that the assessee had gifted 23 cents of land to a Church in June, 1975. In the gift deed, the assessee himself had admitted the value of the lands at Rs. 3,800 per cent. Since there was underassessment according to the Wealth-tax Officer, he reopened the assessments, and in the reassessment proceedings u/s 17(1)(b) of the Wealth-tax Act, adopted the value at Rs. 3,000 per cent for the assessment year 1972-73 and Rs. 3,500 per cent for the assessment years 1973-74 and 1974-75. In the regular assessment for the assessment years 1975-76 to 1977-78, the value was determined at Rs. 8,546 per cent, Rs. 10,546 per cent and Rs. 11,546 per cent, respectively.

8. The gift was made in June, 1975, relevant for the assessment year 1976-77. It is the case of the assessee that the valuation as furnished by the assessee in the assessment year 1976-77 cannot govern the market value of the land on the relevant valuation dates. The assessee also submitted that there was no relevant information before the Wealth-tax Officer in order to validly reopen the assessments. Simply because the assessee consented for reopening, that would not constitute an information, entitling the Wealth-tax Officer for reopening the assessments u/s 17(1)(b) of the Wealth-tax Act. The satisfaction of the statutory requirement does not find a place in the order passed by the Wealth-tax Officer for reopening the assessments. The information that had come into the possession of the Wealth-tax Officer was the gift made by the assessee in 1976 or the sale made in 1978. The Tribunal pointed out that neither of these two circumstances justify a conclusion that the value of the property on the respective valuation dates, relevant to the years now under consideration, was underassessed. It is only on account of suspicion the assessments were reopened. Suspicion, however, strong, cannot transform into information. Inasmuch as there was no valid information entitling the Wealth-tax Officer to reopen the assessment, the Tribunal held that the reopening was bad. The conclusion arrived at by the Tribunal that the reassessment made by the Wealth-tax Officer was bad, appears to be well-founded.

9. In so far as the valuation of the land in question is concerned, the Wealth-tax Officer adopted the value of the land according to the value as stated in the gift deed. However, the Appellate Assistant Commissioner, on appeal, determined the value of the lands after taking into consideration the necessary materials. It was

submitted that the value determined by the Appellate Assistant Commissioner was not based upon the guideline value as prescribed by the Tamil Nadu Government. The value as submitted by the assessee in the gift-tax assessment also cannot be considered to be the correct market value, because it is for the Assessing Officer concerned to exercise his mind in the matter of determining the market value as on the valuation dates. The Wealth-tax Officer, after taking into consideration the value as submitted by the assessee in the wealth-tax returns and the value as stated in the gift deed, determined a separate value for Each of the assessment years under consideration. The Tribunal has noted that in the gift-tax assessment, the Appellate Assistant Commissioner valued the gifted lands at Rs. 59,000. Therefore, the Tribunal pointed out that for the same property, there cannot be two valuations; one for wealth-tax purposes and another for gift-tax purposes. Considering all these aspects, the Tribunal held that the Appellate Assistant Commissioner was correct in determining the market value of 25 cents at Rs. 2,500 per cent for the assessment years 1972-73 to 1974-75 and at Rs. 2,500 per cent for the assessment years 1975-76 to 1977-78. For the remaining portion, the value was taken at Rs. 2,000 per cent for the assessment years 1972-73 to 1974-75 and Rs. 2,500 per cent for the Assessment years 1975-76 to 1977-78. In Commissioner of Wealth-tax Vs. Smt. Suguna Mahendran and others, , this court while considering the provisions of section 27 of the Wealth-tax Act, 1957, held that it is not at all permissible for the assessing authority or for that matter, the Tribunal to rely upon an event of sale which takes place subsequent to the assessment year in question, to determine the value of the property as in the relevant assessment year. Determining the value of the property involves a question of fact. On facts, the Tribunal, determined the value of the property in question for the assessment years under consideration. Accordingly, we see that there is no infirmity in the order passed by the Tribunal in confining the valuations determined by the Appellate Assistant Commissioner.

10. In view of the foregoing reasons, we consider that no referable question of law arises as framed and suggested at the instance of the Department. Accordingly, these tax case petitions are dismissed. No costs.