

(1993) 09 KAR CK 0020
In the Karnataka High Court
Case No : T.R.C. No. 12 of 1992

Commissioner of Wealth Tax

APPELLANT

Vs

T. Ramachandran

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 14 (2), 17 (1) (A)

Citation : (1994) 116 CTR 159 : (1994) 206 ITR 322 : (1994) 73 TAXMAN 454

Hon'ble Judges : S.A. Hakeem, J; S. Venkataraman, J

Bench : Division Bench

Advocate : H.L. Dattu, for the Appellant; S.P. Bhat, for the Respondent

Judgement

S.A. Hakeem, J.—The respondent is an assessee under the Wealth-tax Act ("the Act", for short). For the assessment year 1971-72, the assessee had failed to file a return in response to the notice u/s 14(2) of the Act, whereupon the Wealth-tax Officer completed the assessment ex parte u/s 16(5) of the Act. In the best judgment assessment, he estimated the net wealth of the assessee at Rs. 3,00,000. Subsequently, the assessment was reopened u/s 17(1)(a) of the Act since, according to the assessing authority, the wealth chargeable to tax had escaped assessment by failure on the part of the assessee to file the return. The reassessment completed by the assessing authority was unsuccessfully challenged by the assessee in appeal before the first appellate authority, viz., Commissioner (Appeals). On further appeal, the Income Tax Appellate Tribunal held the reopening of the assessment to be bad in law and cancelled the reassessment. The Tribunal has, inter alia, found that, while completing the original assessment ex parte u/s 16(5) of the Act, the Wealth-tax Officer had been guided by the details of the properties furnished by the assessee in respect of the assessment for the earlier assessment year 1969-70. The Tribunal further noted that there was no failure on the part of the assessee to disclose any of his properties in respect of the assessment year 1969-70. The Tribunal, therefore, came to the conclusion that the reopening of the assessment for the relevant

assessment year would not be justified merely on the ground that the assessee had failed to furnish his return of wealth for that year.

2. On the above facts, the Tribunal has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that reopening of assessment u/s 17(1)(a) of the Wealth-tax Act for the assessment year 1971-72 is not justified on the ground that the assessment was completed ex parte ignoring the fact that no return of wealth was filed by the assessee for that year resulting in omission and failure on the part of the assessee to file a valid return ?"

3. Sri H. L. Dattu, learned counsel for the Revenue, vehemently urged that, since there was underestimate of the value of the wealth by reason of the assessee's failure to file the return which should have furnished the necessary material regarding its value, the assessing authority was justified in reopening the assessment to bring to tax the escaped value of the assessee's wealth. It is further urged that, even if it is a best judgment assessment, the assessing authority can, in the exercise of his jurisdiction u/s 17(1)(a) of the Act, reopen the assessment. On the contrary, Sri S. P. Bhat, learned counsel for the assessee, sought to support the reasoning and the conclusion of the Tribunal in setting aside the reassessment proceedings.

4. In order to appreciate the rival contentions, it is appropriate to refer to the provisions of section 17(1)(a) of the Act as it stood prior to the substitution of sub-section (1) with effect from April 1, 1989, by the Direct Tax Laws (Amendment) Act, 1987. It reads thus :

"17. (1) If the Assessing Officer, -

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise;. . . .

he may, in cases falling under clause (a) at any time within eight years. . . . serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section."

5. The Tribunal has found that there was an assessment for the year 1969-70 from which it is clear that the assessee had given complete details of the property held by him, including self-occupied property. Mention had also been made of the open land from which ground rent had been received. None of the

properties had been omitted by the assessee in the return filed for the assessment years 1969-70 and 1970-71. Both the assessments are based on the details furnished for the year 1969-70. Hence, it cannot be said that the assessee had omitted to mention any particular property in the return for the year 1970-71. Hence, it cannot be said that there was failure on the part of the assessee to furnish particulars necessary for assessment. This finding of fact is not under challenge in this reference. Even otherwise, the office note at the foot of the reassessment order dated February 22, 1983, discloses that the Wealth-tax Officer had admittedly adopted the values taken in respect of the properties in question as per orders for the assessment years 1968-69 and 1969-70, which had been annulled on the ground of limitation.

6. The assessment was reopened u/s 17(1)(a) of the Act on the basis of two letters from another Income Tax Officer which are incorporated in the Tribunal's order. There is no dispute that there was no concealment of the property itself. But the Assessing Officer only disputed the net value of the said properties on the basis of the said report of the Income Tax Officer. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , dealing with the corresponding provision under the Income Tax Act, 1961, the Supreme Court has held that the expression "material facts" used in clause (a) of the said provision, refers only to primary facts : the duty of the assessee is only to disclose primary facts and he need also indicate what factual or legal inferences should properly be drawn from the primary facts.

7. In *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, , dealing with the corresponding provision under the Income Tax Act, i.e., section 147(a) which is *pari materia* with section 17(1)(a) of the Act, the Supreme Court has held thus (at page 445) :

"It would appear from the perusal of the provisions reproduced above that two conditions have to be satisfied before an Income Tax Officer acquires jurisdiction to issue notice u/s 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz., (1) the Income Tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee : (a) to make a return u/s 139 for the assessment year to the Income Tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must co-exist in order to confer jurisdiction on the Income Tax Officer. It is also imperative for the Income Tax Officer to record his reasons before initiating proceedings as required by section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income Tax Officer that it is a fit case for the issue of such notice. We may add that the duty which is cast upon the assessee is to make a true and full disclosure of the

primary facts at the time of the original assessment. Production before the Income Tax Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income Tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income Tax Officer with regard to the inference which he should draw from the primary facts. If an Income Tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment."

8. In *M.V. Kibe Vs. Commissioner of Wealth-tax*, , it is held that section 17(1)(a) of the Act does not empower the Wealth-tax Officer to reopen a final assessment if proper investigation was not made, where all the primary facts which the assessee was required to place before him, had been so placed. Relying upon the decision of the Supreme Court in *Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay*, , it is held that the obligation of the assessee is to disclose only primary facts and not inferential facts. There must be full and true disclosure of all material facts. What facts are material would depend upon the facts and circumstances of each case and there must be escapement of tax or underassessment due to such failure or omission. In the instant case, as found by the Tribunal, the details of the property as disclosed by the assessee in his returns for the earlier years were available to him. If the Wealth-tax Officer doubted the correctness of the valuation as given in the previous year, it was open to him to discard that value and determine the market value on his own enquiry and in accordance with law. In the circumstances of the case, therefore, it cannot be said that the underestimate of the property is merely on account of the assessee's failure to file the return for the year. It is thus clear that the duty to apply his mind and make proper inquiry, especially when the primary facts were before him on the basis of which he could have pursued the inquiry and found out the value of the property.

9. In that view of the matter, the answer to the question referred to above is in the affirmative and against the Revenue.