
(1995) 02 KL CK 0010

In the High Court Of Kerala

Case No : Income-tax Reference No. 41 of 1988

Commissioner of Wealth-tax

APPELLANT

Vs

V. Cleetus

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

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

Citation : (1995) 125 CTR 409 : (1995) 2 ILR (Ker) 215 : (1995) 213 ITR 14

Hon'ble Judges : M.M. Pareed Pillay, C.J.; T.V. Ramakrishnan, J; P. Shanmugam, J

Bench : Full Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; C. Kochunni Nair and G. Sivarajan, for the Respondent

Judgement

M.M. Pareed Pillay, C.J.—The question that arises for consideration is whether the order passed by the Valuation Officer in a reference made u/s 16A of the Wealth-tax Act, 1957, can be taken as information in the possession of the Wealth-tax Officer so as to enable him to initiate action u/s 17(1)(b) of the Act.

2. The facts necessary for the appreciation of the issue are as follows : The assessee filed a return for the assessment year 1976-77 under the Act, supported by a valuation given by a registered valuer. Holding that the value so returned is less than the fair market value of the property the Wealth-tax Officer referred the matter to the Valuation Officer u/s 16A of the Act. Before the Valuation Officer had sent a copy of his order, the Wealth-tax Officer completed the assessment on the value returned by the assessee. It was thereafter that the Wealth-tax Officer received the order from the Valuation Officer. The Wealth-tax Officer issued notice u/s 17(1)(b) for reassessment on the basis of the aforesaid report. After hearing the assessee, reassessment was completed. The assessee took up the matter in appeal before the Appellate Assistant Commissioner without success. Thereupon he preferred an appeal before the Tribunal. The Tribunal held that the order of the Valuation Officer is invalid and allowed the appeal accordingly.

3. The Tribunal held that any reference made u/s 16A cannot lead to the reopening of a closed assessment u/s 17(1) as the report submitted by the Valuation Officer would be in an invalid reference and must be treated as a nullity in the eye of law, non est and void ab initio. The Tribunal further held that the Wealth-tax Officer had no jurisdiction to reopen the assessment on a reconsideration of the same material which was before the authority and that it amounted to a change of opinion.

4. The Revenue applied for reference to this court u/s 27(1) of the Act. The Tribunal thereupon referred the question as to whether the Appellate Tribunal was right in law in holding that the Wealth-tax Officer has no jurisdiction to reopen the assessment on the basis of the Departmental Valuation Officer's report.

5. Section 17(1)(a) provides that if the Wealth-tax Officer 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 the Act for any assessment year or to disclose fully and truly all material facts necessary for 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 underassessment or assessment at too low a rate or otherwise, he may, 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 u/s 14(2), and may proceed to assess or reassess such net wealth. Section 17(1)(b) provides that in a case where the Wealth-tax Officer has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in Clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise, he can at any time within four years of the end of that assessment year, proceed to reassess. If the proceedings are taken for assessment u/s 17(1)(a) and (b), the provisions of the Act would apply as if the notice had been issued u/s 14(2).

6. This is a case where the Wealth-tax Officer had made a reference u/s 16A to the Valuation Officer. Before the Valuation Officer's order was received, the assessment was completed. It was after the completion of the assessment that the Wealth-tax Officer took steps for reassessment as provided u/s 17(1)(b). The last date for completion of the assessment for the year 1976-77 was March 31, 1981. The assessment was completed on January 31, 1981. Admittedly, the order of the Valuation Officer was received by the Wealth-tax Officer on March 9, 1981. The contention of the assessee is that the Valuation Officer's order which has been subsequently received cannot be construed as information in the possession of the Wealth-tax Officer and so Section 17(1)(b) has no application. It is contended by counsel for the assessee that the subsequent proceedings taken for reassessment cannot be sustained legally.

7. Section 16A enables the Wealth-tax Officer to refer the valuation of any asset to a Valuation Officer. Section 16A(1)(a) provides that in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of the opinion that the value so returned is less than its fair market value, he can refer it to the Valuation Officer. Section 16A(1) (b) states that in any other case, if the Wealth-tax Officer is of the opinion that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf, he can refer the valuation of any asset to the Valuation Officer. Equally it is open to the Wealth-tax Officer to refer to the Valuation Officer the valuation of any asset having regard to the nature of the asset and other relevant circumstances, if it is necessary so to do.

8. Learned counsel for the Revenue submitted that merely because the Valuation Officer's order was obtained after the assessment was completed, the character of the information has not undergone any metamorphosis. He referred to K.G. Kemptur Vs. Second Wealth Tax Officer, where the Karnataka High Court had occasion to consider an identical fact situation. In the said case the Wealth-tax Officer made a reference to the Valuation Officer appointed u/s 16A of the Act before completing the assessment. The order of the Valuation Officer though received subsequent to the assessment was considered as information which could form the basis for the Wealth-tax Officer to reopen the assessment. Learned counsel submitted that the above decision squarely applies to the facts of the case in hand.

9. Learned counsel for the assessee invited our attention to Commissioner of Wealth-tax Vs. Ravi Cheloor, , where a Division Bench of this court held that pendency of assessment proceedings is a condition precedent for making use of the Valuation Officer's order. In the cited case, for the assessment years 1972-73 and 1973-74, the Wealth-tax Officer had completed the assessments of the assessee on March 23, 1974, by accepting the value of the assets as admitted by the assessee. Later, the successor-Wealth-tax Officer found that the market value of the assets was not properly determined and made a reference to the Valuation Officer u/s 16A of the Act for valuing the assets. The Valuation Officer determined the market value of the assets on the income capitalisation method and on the basis of the order of the Valuation Officer, the Wealth-tax Officer reopened the assessments for the two years u/s 17(1)(b) and completed the assessments by adopting the value as determined by the Valuation Officer and rejecting the contention of the assessee. This court held that pendency of assessment proceedings is a condition precedent for making a reference to the Valuation Officer u/s 16A and as the assessments were completed, there cannot be any reassessment on the basis of the Valuation Officer's order subsequently sought for. In Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, the Rajasthan High Court held in a similar case that the Valuation Officer's order cannot form the basis for reassessment proceedings where the assessment was already completed. The above decisions lay down that in a case where no

assessment proceedings were pending, a reference to the Valuation Officer after the completion of the assessment proceedings cannot have any legal validity and the Valuation Officer's order cannot form the basis for reassessment. The above decisions will not apply to a case where the Valuation Officer's order was sought in pending assessment proceedings and it was obtained whether before completion of assessment or thereafter.

10. Commissioner of Wealth-tax Vs. Ravi Cheloor, and Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, cannot have any application to the case on hand as the Valuation Officer's order was sought for after the assessment proceedings were completed. In the case on hand the reference was made u/s 16A to the Valuation Officer. No doubt, it is true that the Valuation Officer's order reached the Wealth-tax Officer only after the assessment was completed.

11. Merely because the order of the Valuation Officer reached the Wealth-tax Officer after the completion of the assessment proceedings, it does not lose the character of information as envisaged u/s 17(1)(b) of the Act. What Section 17(1)(b) provides is that in a case where the Wealth-tax Officer obtained information and on that basis if he has reason to believe that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise, he is empowered to initiate action for reassessment. Of course, in a case where the assessment proceedings were completed, the Wealth-tax Officer cannot call for the order of the Valuation Officer. That is clearly unwarranted. As the order of the Valuation Officer was called for during the pendency of the assessment proceedings, it cannot be equated to a case where the order was sought for after the completion of the assessment as in the case in Commissioner of Wealth-tax Vs. Ravi Cheloor, and Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, In the case on hand though assessment was completed even before the Valuation Officer's order reached the Wealth-tax Officer, there is no hurdle in using that information for reassessment as stipulated u/s 17(1)(b). The Wealth-tax Officer could certainly use such information for reassessment. It is pertinent to note that the Valuation Officer's order was well within his jurisdiction when he forwarded it to the Wealth-tax Officer. Certainly that is not the position in a case where the assessment proceedings were completed without calling the order from the Valuation Officer. As Section 17(1)(b) in clear terms mentions "any information in the possession of the Wealth-tax Officer" for initiating the reassessment proceedings, the Valuation Officer's order which is certainly information in the possession of the Wealth-tax Officer cannot be considered to be devoid of any value or significance. The Wealth-tax Officer can certainly act on the information, though subsequently received, for initiating reassessment proceeding's. The contention of the assessee that the Valuation Officer's order cannot be used as information and that it has no legal basis is not tenable.

12. For the foregoing reasons, we hold that the Valuation Officer's order subsequently obtained can only be used as a piece of information by the Wealth-

tax Officer. Consequently, it has to be held that the order of the Valuation Officer has no binding force on the Wealth-tax Officer as it was not obtained during the pendency of the original assessment proceedings. The binding force of the order of the Valuation Officer as provided u/s 16A(1)(b) will not be there as the order reached the "Wealth-tax Officer not before the assessment proceedings were completed. The resultant position is that the order of the Valuation Officer received subsequent to the completion of the assessment proceedings can only be used as a piece of information which certainly would enable the Wealth-tax Officer to commence reassessment proceedings.

13. Accordingly, we dispose of the reference by answering the question against the asscssee and in favour of the Revenue.

14. Communicate a copy of this judgment under the. seal of this court and the signature of the Registrar to the Income Tax Appellate Tribunal, Cochin Bench, for information.