(2008) 01 KL CK 0059

In the High Court Of Kerala

CWT — APPELLANT

Vs

John Paul, Popular Automobiles — RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:
Wealth Tax Act, 1957 — Section 17(1), 17(1)(b)

Citation : (2008) 01 KL CK 0059

Hon'ble Judges : T.R. Ramachandran Nair, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Judgement

C.N. Ramachandran Nair, J.—These connected appeals filed by the revenue u/s 27A of the Wealth Tax Act, are against the orders of the Appellate Tribunal holding that the reassessments completed u/s 17(1) of the Wealth Tax Act in the case of all the assessees involved for the assessment years 1985-86, 1986-87 and 1987-88 are time-barred. Even though several questions are raised in the appeals, at the time of issuing notice, this Court redrafted the question with reference to the limitation decided by the Tribunal. For the sake of clarity, we formulate the question herein, which is the only one that calls for our decision:

Whether the appellate Tribunal is justified in holding that the reassessment completed u/s 17(1) of the Act in the case of the assessees, is time-barred?

2. The admitted facts are that all the assessees filed wealth-tax returns on due dates and in the returns so filed, among other assets, the assessees included two items of landed properties and building one is 43.5 cents of land and building thereon and another is 22.5 cents of land. The assessees returned the value of the first item of property at Rs. 8 lakhs and for the second item of property at Rs. 75,000. The assessments were completed on 24-1-1990 accepting the returns. However, later the Wealth Tax Officer rectified the assessment u/s 35 of the Act and made an additional demand by adopting the value of the first item of property at Rs. 9 lakhs, based on the appellate order issued by the Commissioner of Wealth-tax (Appeals), for the assessment years 1983-84 and 1984-85. However, after completion of regular assessment after rectification of

the orders, the officer referred the property for valuation by the approved valuer. The property assessed at Rs. 9 lakhs was valued at Rs. 72.61 lakhs by the approved valuer and the second item of property was valued at Rs. 7,14,800 which was with reference to the valuation dated 31-3-1988. Based on the valuation report, the assessing officer reopened the assessment u/s 17(1) of the Act. The notices for reopening were issued on 17-6-1992 and the reassessments were completed on 20-2-1995. On appeal by the assessees, the first appellate authority held that the case falls u/s 17(2)(b) of the Wealth Tax Act and since the assessees were not involved in any suppression of facts, the assessments completed beyond four years, were barred by limitation. On further appeal by the department, the Tribunal confirmed the orders of the first appellate authority and rejected the appeals filed by the department. It is against the above appellate orders, the department has filed these appeals.

3. We have heard Shri P.K.R. Menon, learned Senior counsel appearing for the revenue and Shri P. Balachandran, learned Senior counsel for the respondents.

4. As already stated above, the only question involved is whether the reassessments completed u/s 17(1) of the Act are barred by limitation. Even though the reassessments were completed after introduction of Section 17 to the Wealth Tax Act with effect from 1 -4-1989, both the first appellate authority as well as the Tribunal decided the validity of the assessment with reference to Sections 17(1)(a) and 17(1)(b) of the Actwhich were the provisions prevailing during the assessment yelars involved,

5. Learned Senior counsel appearing for the revenue contended that since reassessments u/s 17(1) of the Act is a procedural provision, the amended provision only will apply, as notices proposing reassessments were issued after the amendment. Learned Senior counsel for the respondents, on the other hand, contended that for reopening assessments up to the assessment year 1988-89, the unamended provisions only will apply, because even after the introduction of Section 17(1), limitation for reassessment is four years if the case does not fall under Sub-clause (ii) or (ii) of Section 17(1)(a) of the Act. The extended period of limitation of 7 years and 10 years under Sections 17(1A)(a)(ii) and 17(1A)(a)(iii) are available only when net wealth chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 14 or Section 15 or in response to a notice issued under Sub-section (4) of Section 16 or if the assessee fails to disclose fully and truly all material facts necessary for his assessment for that assessment year. In other words, even after the amendment, the principles contained in the provisions, viz., Sections 17(1)(a) and 17(1)(ii) are retained in the amended provision. In all the instant cases, reassessment notices were issued only on 17-6-1992 which is beyond four years from the end of the last assessment year, viz., 1987-88. Therefore, the assessment can be saved unless it is proved by the department that the assessees in these cases failed to disclose fully and truly all material facts necessary for the assessment. Admittedly, the items of properties

involved were assets originally owned by one Shri K.P. Paul which was later distributed among his children who are also the assessees in the connected cases. These items were being assessed to wealth-tax for several years. The valuation itself was a controversy in the earlier years and the valuation of Rs. 9 lakhs fixed by the Commissioner (Appeals) in the first appeal which has become final, is the value adopted by the assessing officer in the revised assessments issued u/s 35 of the Act. Since the assessees themselves declared the items of property with description and value thereof, the question is whether the higher valuation done by the valuer as on the valuation dated 31-3-1988, on a later date, can be the basis for reopening the assessment beyond four years.

6. Learned Counsel for the revenue contended that under valuation also amounts to suppression of material facts and so much so, longer period of limitation is available, which is 8 years under the old provision and 10 years under the new provision, as the value of wealth involved is above Rs. 5lakhs. Learned Counsel for the assessee, on the other hand, contended that valuation does not involve any suppression and is quite subjective and varying, as is evident from the assessment of the same property for several years by the department. Learned Counsel for the revenue has relied on the decision of the Supreme Court in Sri Krishna Private Ltd. Etc. Vs. I.T.O., Calcutta and Others, in support of his contention that reassessment is permissible in this case. However, we do not think that the said decision has any application to this case. That is a case where Income Tax assessment was reopened for the reason that the loans accounted by the assessee were found to be bogus later. However, in this case it is only a case of difference in valuation of items of wealth included by the assessee in the return filed. The assessees valuation was accepted by the assessing officer initially and later it was modified in rectification proceedings u/s 35 of the Act based on valuation made by the Commissioner of Wealth-tax (Appeals) for the immediately preceding year. The valuation got done by the department through the approved valuer was not for the relevant assessment years and the value determined was for the valuation dated 31-3-1988. Even though the subsequent valuation may be relevant for valuation in these years also, we do not think, the same can be treated as a suppression of material facts by the assessee in the return filed. Learned Counsel for the respondents has referred to a decision of the Madras High Court in Commissioner of Income Tax Vs. V.T. Rajendran, wherein the Madras High Court held that difference in valuation of building is not a ground for reopening an Income Tax assessment We are also of the view that the difference in value which is essentially subjective, how much the difference may be, the same cannot be said to be suppression of material facts by the assessee in the returns filed, warranting reassessment beyond four years. We are of the view that cases of this nature are probably covered by the old provision, viz., Section 17(1)(b) of the Act and reassessment under the amended provision of Section 17(1) could be initiated within four years, as provided under the proviso to the Sub-section. Since, in all these cases we find that the assessees cannot be held to be guilty of suppression of material facts in terms of the

proviso to Section 17(1) of the Act and the reassessments initiated were beyond four years from the end of the relevant assessment years, the Tribunal rightly held that the assessments were time-barred.

7. We therefore dismiss all the appeals.

