

(2001) 02 RAJ CK 0129

In the Rajasthan High Court

Case No : WT Ref. No. 103 of 1995 26 February 2001 A.Y. 1980-81 to 1986-87

CWT

APPELLANT

Vs

SMT. SITA DEVI

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Wealth Tax Act, 1957 — Section 16(1)

Citation : (2002) 172 CTR 20

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Full Bench

Advocate : Sandeep Bhandawat, for the Revenue, for the Appellant;

Judgement

Rajesh Balia, J.

Heard learned counsel for the revenue.

2. The learned counsel for the respondent has not appeared on previous two occasions and the matter was adjourned on last two hearings. The matter was heard during the course of the day, but has been kept pending as an opportunity to the respondents to avail for putting its case before the courts, assistance. Today at commencement of the day, Mr. Mahendra Trivedi for the respondent has appeared only to seek adjournment which was declined. Thereafter Mr. Trivedi withdrew himself from the court and did not appear.

3. The two Wealth Tax Ref. Nos. 103/95 and 106/95 arise out of same set of facts and, therefore, are being heard and decided together. The reference in each case, made by the Tribunal, relates to the assessment years 1980-81 to 1986-87 in connection with the proceedings under the Wealth Tax Act, 1957. The respondent-assessee, in each case during the relevant assessment period was one of the five partners of firm M/s Ashoka Palace Hotel, Banswara. Returns for all the assessment years were filed by the assessee in both the cases on 10-3-1989, and assessment was completed u/s 16(1) of the Act without requiring the presence of assessee, by accepting the returns submitted by the

assessee and computation of wealth-tax payable under the Act was made on that basis. In the returns, net wealth of the assessee included share of the assessee, in value of building known as Ashoka Palace Hotel, which was the property of partnership firm as per his share in the partnership firm for each assessment year.

4. It appears that before returns were filed, Wealth Tax Officer has made a reference to the Departmental Valuation Officer under 16A for determining the value of Ashoka Palace Hotel as property of firm for assessment years 1980-81 to 1984-85 on 2-12-1983 and for assessment years 1985-86 and 1986-87 on 23-7-1986. While report in pursuance of the reference made on 7-12-1983, by the Department Valuation Officer was submitted on 20-3-1984, on the later reference, report was submitted on 27-3-1989. Thus, on the date of filing of returns, by the assessee for seven assessment years and its assessment u/s 16(1) on 16-3-1989, valuation report dated 20-3-1984, submitted by the Departmental Valuation Officer was already on record, but valuation report in respect of assessment year 1985-86, though the matter was already referred to the Departmental Valuation Officer, was not received. The same was received after assessments were made.

Thereafter, on going through the record of assessment, in the case of assessment for the aforesaid years under consideration, the learned Commissioner of Wealth Tax was of the opinion that because one valuation report was already on record and for subsequent period, reference was also made u/s 16A, he ought to have waited for receipt of the report from the Departmental Valuation Officer and should not have taken recourse to framing assessment u/s 16(1) by accepting the returns. The difference in value of share of the assessee in the Ashoka Palace hotel building as computed by the respondent-assessee and on the basis of valuation report, submitted by the Departmental Valuation Officer in tabular form stands as under :

With these considerations, the Commissioner of Wealth Tax set aside the assessment u/s 16(1) of the Act and directed the assessing officer to proceed to make assessments afresh in accordance with and after taking into consideration that material, In the meantime, the assessing officer has himself reopened the assessment u/s 17(1) of the Act on 28-9-1989, by issuing notice to the assessee under that provision.

5. The three-fold contentions were raised before the Commissioner of Wealth Tax against the proposed action u/s 25. Firstly, the assessing officer has reopened the assessment u/s 17(1) on 28-9-1989, and, therefore, the assessment orders lost their existence for all practical purpose and no order could have been made u/s 25(2), secondly, report of Valuation Officer cannot be considered as part of record of assessment, because no assessment was pending when the two references were made to Departmental Valuation Officer (hereinafter referred to as the DVO) inasmuch as neither any returns were filed nor any statutory notices were served on the assessee, to constitute any proceedings which could be said

to be pending during which reference to DVO could have been made u/s 16A, lastly references made by the Wealth Tax Officer were not valid, as the same were made in the case of firm Ashoka Palace Hotel and notices were issued to the firm but no notices were issued to the partners of the firm. Such valuation made by giving notice to the firm only, which is not at all an assessable entity, could not be considered as material on record of assessee's wealth-tax file.

All the objections were overruled by the Commissioner of Wealth Tax, and Wealth Tax Officer was directed to pass fresh assessment orders, after setting aside the orders made u/s 16(1).

6. On appeal before the Tribunal, the Tribunal held that the orders of Wealth Tax Officer passed u/s 16(1) were not orders but only intimations u/s 16(1)(a) of the Act and, therefore, provisions of section 25 would not apply thereto. Secondly, reference having been made only in the name of M/s Ashoka Palace Hotel which was a firm, and the firm being not an assessable entity under the Act, no reference could have been made u/s 16A and question of considering such valuation reports by the Wealth Tax Officer in the case did not arise. Therefore, the orders u/s 16(1)(a) were not erroneous.

7. So far as contention of the assessee to the effect of the notice u/s 17(1) on the existence of assessment orders u/s 16(1) was concerned, it did not find favour with the Tribunal also.

8. Under the aforesaid circumstances, the following two questions of law have been referred to this court for its opinion in each case by the Tribunal :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the acceptance of the return u/s 16(1) is no order which could enable the Commissioner of Wealth Tax to assume revisionary jurisdiction for issue of notice u/s 25(2) of the Wealth Tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that on the basis of valuation in the case of firm, the share of valuation taken in the hands of the partners is unjustified. ?"

9. Section 16 of the Wealth Tax Act as it existed prior to 1-4-1989, before it was substituted reads as under :

"Section 16 Assessment.(1) If the assessing officer is satisfied without requiring the presence of assessee or production by him of any evidence that a return made u/s 14 or section 15 is correct and complete, he shall assess the net wealth of the assessee and determine the amount of wealth-tax payable by him, or the amount refundable to him on the basis of such return.

(2) If the assessing officer is not so satisfied, he shall serve a notice on the assessee, either to attend in person at his office on a date to be specified in the notice, or to produce or cause to be produced on that date any evidence on which, the assessee may rely in support of his return.

(3) The assessing officer, after hearing such evidence as per the person, may produce and such other evidence as he may require on any specified points and after taking into account all relevant material, which the assessing officer has gathered, shall, by order in writing, assess the net wealth of the assessee and determine the amount of wealth-tax, payable by him or the amount refundable by him or the amount refundable to him on the basis of such assessment.

(4) For the purpose of making an assessment under this Act, the assessing officer may serve on any person who has made a return under sub-section (1) of section 14 or upon whom a notice has been served under sub-section (2) of that section or who has made a return u/s 15, a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents, as the assessing officer may require.

(5) If any person fails to make a return in response to any notice under sub-section (2) of section 14, or fails to comply with the terms of any notice, issued under sub-section (2) of sub-section (4), the assessing officer, after taking into account all relevant material which he has gathered, shall estimate the net wealth to the best of his judgment and determine the amount of wealth-tax, payable by the person or the amount refundable to him on the basis of such assessment."

10. Regular assessment u/s 2(ob) has been defined to mean assessment u/s 16. This definition is without distinction whether it is under sub-section (1) or sub-section (3). We are unable to find any basis on which the order u/s 16(1) cannot be considered to be an order which would be outside the purview of Commissioner of Wealth Tax, u/s 25 of the Wealth Tax Act.

Whether assessment is made under sub-section (1) of section 16, by accepting the correctness of the information, furnished by the assessee without calling upon the assessee or after calling upon the assessee, framing of assessment takes place under sub-section (3) of that section. On the basis of result of hearing it does not make any difference so far as its efficacy as regular assessment u/s 16 is concerned. Both constitute determination of tax liability under the Act and are amenable to the same process. We assume that since the orders u/s 16(1) comes on the basis of admitted facts submitted by the assessee himself, ordinarily there is no room for the assessee to take resort to the appeal.

11. It appears to us that the Tribunal was perhaps led by amended provisions of section 16 which was substituted with effect from 1-4-1989. Under the scheme of section 16 as now existing, the word "intimation" has been used when the Wealth Tax Officer resorts to make computation of tax u/s 16(1)(a) of the Wealth Tax Act. It permits the assessing officer to make certain adjustment in the returns, submitted by the assessee on the basis of information available from the returns. However, when provisions have been made for adjustment, provision has also been made for enjoining a duty upon the assessing officer, if any objection is raised by the assessee within the period of one month from the date

of service of intimation, to have recourse to proceedings under sub-section (3) of section 16 and frame a regular assessment order thereafter.

Apparently, the Tribunal has misdirected itself in importing in its consideration a mandatory provisions of section 16(1)(a) which came into force with effect from 1-4-1989, after assessment u/s 16(1) was completed by the assessing officer on 16-3-1989, only.

12. We are of the opinion that answer to question No. 1 ought to be negative, i.e., to say in favour of the revenue and against the assessee by holding that order u/s 16(1) as it was existing before its present form with effect from 1-4-1989, was an order of regular assessment as defined u/s 2(ob) and was amenable to the proceedings u/s 25(2) by the Commissioner of Wealth Tax. We make it clear that we do not express any opinion about the consequences of amended provisions and nature of order made u/s 16(1)(a), on exercising such power of revision by the Commissioner of Wealth Tax in respect thereof.

13. The second question relates to the finding of the Tribunal, that valuation of the share of the partners in the property owned by the firm, on the basis of valuation of the property in the case of firm in the hands of parties impermissible. The objection relating to the assessment of wealth of any individual or Hindu undivided family or a company, as the case may be, under the provision of Wealth Tax Act, as well as about the evidentiary value of report of the DVO, even in the case reference to such officer u/s 16A, is found to be outside, its purview, for the purpose of evaluating the correctness of the returned value of any asset does not lose its evidentiary value as an expert opinion. The provisions of Wealth Tax Act reveals, that section 3 of the Act which is charging section levies wealth-tax on the net-wealth on the corresponding valuation date only in the case of individual, Hindu undivided family and company. The firm is not an assessable entity recognized independent of its partners in the scheme of Wealth Tax Act, as is the case under the Income Tax Act. Nonetheless, while computing net wealth of an assessee, who is a partner in a firm, clause (b) of sub-section (1) of section 4 envisages in no uncertain terms that, where the assessee is a partner in a firm or member of association of person, value of his interest in the firm or association has to be determined in the prescribed manner. Thus, value of property owned by the firm, in which assessee is a partner has direct link and relevance with computation of net wealth of assessee on the corresponding valuation date.

14. The mode of valuing interest of a partner in the assets of partnership or association of person has been prescribed by rules. Rule 2 of Wealth Tax Rules, 1957, which prescribes that manner reads as under :

"2. Valuation of interest in partnership or association of person : (1) The value of the interest of a person in a firm of which he is a partner or in an association of person of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association, on the valuation date shall

first be determined. That portion of the net wealth of the firm or association, as is equal to the amount of its capital, shall be allocated among the partners or members in the proportion, in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or in the absence of such agreement, in the proportion, in which the partners or members are entitled to share profits. The sum total of the amounts, so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

(2) Where the net wealth of a firm or association computed in accordance with sub-rule (1) includes the value of any assets located outside India, the value of the interest of any partner or member in the assets located in India shall be determined having regard to the proportion, which the value of the assets located in India diminished by the debts relating to those assets bears to the net wealth of the firm or association.

(3) Where the net wealth for a firm or association computed in accordance with sub-rule (1) includes the value of any assets referred to in section 5(2) of the Act, the value of the interest of a partner or member shall be deemed to include the value of his proportionate share in the said assets, and the provisions of section 5(2) of the Act shall be applied to him accordingly."

15. A perusal of the aforesaid rule shows that value of interest in assets of partnership or association of person is not to be made on the basis of any asset to be taken individually, but net wealth of the firm in the first instance has to be computed as on valuation date and then the notional share of a partner as on relevant valuation date has to be ascertained as per terms of partnership, and share, so ascertained alone forms part of the assessment of net wealth of such person as per his status as taxable entity under Wealth Tax Act. Therefore, the share of a partner of the firm is, such sum as computed in accordance with above rule alone, which can find place in the determination of his net wealth, and not the separate value of each and every asset of the firm can travel to the assessment of wealth of a partner. Though in computing the net wealth of the firm for the purpose of determining allocable share thereof to any partner, valuation of assets of the firm may also have to be made and in determining its valuation for computing net wealth of the firm in first instance, the evidence, relating to value of any asset, may be relevant.

16. Be that as it may, in the present case, the Commissioner of Wealth Tax merely on the basis of valuation report of one of the assets of the firm known as Ashoka Palace Hotel has taken it to be relevant piece of evidence for the purpose of making assessment for the purpose of allocating assessee's share in the valuation of the building as a partner and has held the order passed by the assessing officer to be erroneous and prejudicial to the interest of revenue, by ignoring the relevant material on record.

17. We are of the opinion that in the aforesaid scheme of the Act in the matter of value of interest of an assessee in the assets of the partnership or association of person of which he is a member, the individual value of a particular asset belonging to a firm is wholly irrelevant in absence of any material, to suggest the value of net wealth of the firm in the prescribed manner under rule 2 of the Wealth Tax Rules.

18. It needs no emphasis that the firm as such is not an assessee, subjected to levy of wealth-tax under the Act of 1957. The entities which have been recognised as an assessable entity for levy of wealth-tax are only, an individual, an Hindu undivided family and a company. Any of these three assessable entities, if they happen to be partner in any other firm or member of association of person, their interest in net wealth of the firm or association of person, as the case may be, computed as per their share in the firm or interest in the property of association, may be liable to be included in the net wealth of the assessee. But individual value of any single asset without the same, forming part of computation of net wealth of the firm or association of person of which he is a member, for the purpose of determining his share is of little relevance and can be given no credence for the purpose of holding, whether the assessment by assessing officer without taking into account valuation report of DVO in respect of one immovable property owned by a firm is erroneous and prejudicial to the interest of revenue.

19. We, however, are inclined to agree with the reasoning of the Tribunal that unless returns are filed by the assessee under any of the provisions of the Act, and notice is given by the assessing officer for filing returns, no proceedings can be said to be pending before the assessing officer which can give jurisdiction to invoke provisions of section 16A of the Wealth Tax Act. The consequence of a valuation report made in accordance with the provision of section 16A is that under sub-section (6) of that section it is binding on the assessing officer. However, cases where reference is made without pendency of proceedings before the assessing officer, such report cannot attract provisions of section 16A including the provisions of section 16A(6), so as to have a binding effect. But the same does not lose its evidentiary value as a corroborative and relevant piece of evidence for assessing the market value of an asset on valuation date, which forms part of the computation of net wealth of an assessee.

The result of aforesaid discussion is that we answer question No. 1 in negative, i.e., to say in favour of revenue and against the assessee and answer question No. 2 in affirmative, i.e., to say in favour of assessee and against the revenue.

There shall be no order as to costs.