(1988) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12409 of 1984

Daulatram and Others APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 18-03-1988

Acts Referred:

Income Tax Act, 1922 — Section 22, 37
Income Tax Act, 1961 — Section 131, 132, 132A, 132B, 133
Wealth Tax Act, 1957 — Section 16A, 2, 23, 24, 34AA

Citation : (1988) 03 AP CK 0020

Hon'ble Judges : Seetharam Reddy, J;M.N. Rao, J

Bench : Division Bench

Advocate : K. Ranganathachari, for the Appellant; M.S.N. Murthy, for the Respondent

Judgement

Seetharam Reddy, J.—The petitioners, three in number, seek to issue a writ of prohibition prohibiting the Valuation Officer from proceeding further in the matter pursuant to the notice dated 4-8-1984, issued by him. Format - The relevant format in brief is: A four-storeyed building bearing Municipal No. 5-9-30/1 at Basheerbagh, Hyderabad city, constructed during 1979-82, under the co-ownership of Sarvasri Daulat Ram, Ashok Kumar and Smt. Vanita Daulat Ram, the reference of which was made by the ITO to the Valuation Officer for due evaluation to assess the income relevant for the assessment year 1983-84, constitutes the subject of this writ petition.

2. On filing of the income tax return by the assessees-petitioners for the assessment year 1983-84, the ITO concerned referred the matter of valuation in respect of the aforesaid building to the Valuation Cell of the Department. The Valuation Officer issued a notice dated 4-12-1982, calling upon the petitioners to produce various materials like the site plan, copy of approved valuer''s report, date of commencement of construction and so forth. Though, at the outset, this power of the said ITO was questioned, however, they later submitted the requisite information on 21-9-1983. Thereafter, the Valuation Officer inspected

the site on 22-9-1983 and then a comprehensive valuation report dated 24-9-1983 determining the cost of construction at Rs. 24.46 lakhs was tendered to the ITO.

The further averment in the affidavit is that strangely enough, the District Valuation Officer called upon the petitioners for furnishing the same details that were sought for earlier, for the purpose of revaluation. This second notice was said to have been issued pursuant to the second reference made by the ITO concerned. That reference is dated 27-2-1984. To this, a protest was registered on 31-3-1984, stating that the ITO is not empowered to have the cost of construction determined much less redetermined u/s 142(2) of the income tax Act, 1961 (''the Act''), inasmuch as the earlier valuation was already done on a reference by the Valuation Officer and, therefore, there is no necessity to exercise second reference. However, there was no response to this. Thereafter, the impugned notice dated 4-8-1984 was issued by the Superintending Engineer to the effect that he would be inspecting the property on 17-8-1984, as the matter was referred to him in order to ascertain afresh the cost of construction, asking the petitioners to make it convenient to be present. It is this notice that is challenged in this writ petition solely on the ground that there is no provision enacted any where in the Act empowering the ITO to make even any reference, let alone the second reference, to the Valuation Officer for the purpose of ascertaining the cost of construction of a building.

3. Now, the counter averments in the affidavit filed by the revenue, inter alia, are that the predecessor-ITO made a reference to the Valuation Cell in order to ascertain the cost of construction, so also the actual value of the property for wealth-tax purposes u/s 133(6) of the Act. That was exclusively for the purpose of obtaining his advice, to determine the cost of construction of the property which becomes apparent from the letter dated 29-11-1982. The Valuation Officer''s report was submitted on 24-9-1983. Subsequently, however, on 29-10-1983, a search and seizure was conducted by the revenue both on the business premises as well as the residential premises of the assessees and, consequently, the Intelligence Wing of the Department processed the case and reported that large amounts of unaccounted money appeared to have been spent on the construction of the house.

Secondly, the valuation was done earlier by the ''Valuation Officer'' who was incompetent, as the value of the asset was more than Rs. 10 lakhs which has to be valued by the ''District Valuation Officer'' only, as per the Wealth-tax Rules, 1957. That apart, the Assistant Director of Inspection also brought to the notice of the ITO certain facts relating to the building, like plinth area, quality of construction, defects in measurements and so forth. Hence, on 20-12-1983, a letter was issued by the ITO to the District Valuation Officer, Superintending Engineer in this case, to take up the necessary valuation work in order to have the advantage of the expertise of the officer. By letter dated 29-3-1984, it was informed on clarification sought for by the assessees that the enquiry is going to be conducted u/s 142(2).

4. Points raised - The twin points that are sought to be canvassed by the learned counsel for the petitioners are: (1) There is no provision in the Act enabling the ITO to refer the matter to a Valuation Officer for the purpose of ascertaining the cost of construction of a building. It is only, if at all any, that section 55A of the Act that alone postulates a situation where a reference could be made to the Valuation Officer in respect of a capital asset, and that too in relation to capital gains alone; (2) If the ITO has no power to refer the matter to the Valuation Officer even initially, then a second reference which is sought to be done in this case is wholly without any jurisdiction.

5. Relevant statutory provisions - Now, before adjudicating, the relevant statutory provision enacted in sections 55 A, 131, 132, 133 and 142(2) of the Act may be set out:

55A. Reference to Valuation Officer. -- With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the income tax Officer may refer the valuation of- the capital asset to a Valuation Officer--

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a register valuer, if the income tax Officer is of opinion that the value so claimed is less than its fair market value;

(b) in any other case, if the income tax Officer is of opinion--

(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do;

and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (h-a) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Wealth-tax-Officer under sub-section (1) of section 16A of that Act.

Explanation : In this section ''Valuation Officer'' has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

131. Power regarding discovery, production of evidence, etc. -- (1) The income tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner, Commissioner (Appeals) and Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following

matters, namely:--

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(1A) If the Assistant Director of Inspection has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income tax authority.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the income tax authority may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1 A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an income tax Officer or an Assistant Director of Inspection shall not--

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

132. Search and seizure. --(1) Where the Director of Inspection or the Commissioner or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that--

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian income tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian income tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian income tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian income tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,--

(A) the Director of Inspection or the Commissioner, as the case may be, may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or income tax Officer, or

(B) such Deputy Director of Inspection or Inspecting Assistant Commissioner, as the case may be, may authorise any Assistant Director of Inspection or income tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to--

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Commissioner, but such Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 121, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue.

(1A) Where any Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director of Inspection or any other Commissioner or any such Deputy Director of Inspection or Inspecting Assistant Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Commissioner may, notwithstanding anything contained in section 121, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian income tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed--

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person''s handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), the income tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Inspecting Assistant Commissioner,--

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian income tax Act, 1922 (11 of 1922), or this Act;

(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian income tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into account the materials available with him, the income tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the income tax Officer may, with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of section 132B.

(7) If the income tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the income tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained:

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian income tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the income tax Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such income tax Officer.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section

(5), he may, within thirty days of the date of such order, make an application to the Commissioner stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(11A) Every application referred to in sub-section (11) which is pending immediately before the first day of October, 1984, before an authority notified under that sub-section as it stood immediately before that day shall stand transferred on that day to the Commissioner, and the Commissioner may proceed with such application from the stage at which it was on that day:

Provided that the applicant may demand that before proceeding further with the application, he be reheard.

(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the Commissioner, may, after giving the applicant an opportunity of being heard, pass such orders as it or he thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1 A).

(14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer--

(i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1 : In computing the period of one hundred and twenty days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2 : In this section, the word ''proceeding'' means any proceeding in respect of any year, whether under the Indian income tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

133. Power to call for information. --The income tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,--

(1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;

(2) require any Hindu undivided family to furnish him with a return of the names

and addresses of the manager and the members of the family;

(3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;

(4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head ''Salaries'' amounting to more than four hundred rupees, together with particulars of all such payments made;

(5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom He or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts;

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the income tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the income tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner or the Commissioner (Appeals), will be useful for, or relevant to, any proceeding under this Act.

142. Enquiry before assessment. --(1)******

(2) For the purpose of obtaining full information in respect of the income or loss of any person, the income tax Officer may make such inquiry as he considers necessary.

6. income tax Officer - Whether empowered u/s 55A to ascertain the market value of a capital asset by referring to a Valuation Officer.

7. Point No. 1 - It is quite manifest from section 55 A that it enables the ITO to have the fair market value of a capital asset ascertained through the agency of a Valuation Officer.

8. The crucial provision is that this section is provided by the Taxation Laws (Amendment) Act, 1972, to be effective from 1-1-1973, with a deliberate object of empowering the ITO to find out the market value of a capital asset for the purpose of Chapter IV which is titled ''Computation of total income''. It comprises sections 14 to 59 of the Act. The said Chapter is divided into six sub-Chapters. They are:

A. Salaries.

B. Interest on securities.

C. Income from house property.

D. Profits and gains of business or profession.

E. Capital gains.

F. Income from other sources.

Bearing the frame of the Chapter in mind, wherein resides section 55A which, though falls within the sub-Chapter ''Capital gains'', if we make a careful analysis, the intention of the Legislature becomes pretty obvious, as the words that have been employed are ''for the purpose of this chapter'' denoting thereby that while computing the income, various factors might fall for determination and, therefore, whenever such contingency does arise, the ITO who is, as stated earlier, invested with the power, can as well ascertain through the agency of a Valuation Officer. The learned counsel for the petitioners, Shri Ranganath achari, argued with great vehemence that this power could be exercised vis-a-vis the ascertainment of the value of a capital asset in relation to capital gains only and nothing else. We apprehend, we are not persuaded to accede to this submission as it would be causing violence to the very explicit language used in the very section apart from the contextual interpretation. The mere residence of the section within the sub-Chapter ''Capital gains'' cannot be a guidance to hold that it pertains to that sub-Chapter alone inasmuch as, as pointed out earlier, the word'' Chapter'' occurring in the section, is crucial in coming to this conclusion. The word employed is ''Chapter'' and not ''Capital gains'', which amply and unambiguously demonstrates the intention of the Legislature.

9. Hence, we have no hesitation in holding that section 55 A empowers the ITO to have the fair market value of a capital asset determined by referring the same to a Valuation Officer. On such reference, the provisions, inter alia, of sub-sections (2) to (6) of section 16A and sub-sections (3) and (4) of section 23 of the Wealth-tax Act, 1957, are ipso facto applicable by extension, as laid down u/s 55 A of the 1961 Act itself. So also, the ''Valuation Officer'' in section 55 A of the 1961 Act has the same meaning as in clause (r) of section 2 of the 1957 Act. Consequently, it is not in dispute that the Rules framed under the Wealth-tax Act will also apply in this behalf.

Before the said amended section 55A was enacted, though no specific provision existed, the authority concerned was taking shelter u/s 142 (2) of the Act, which reads: "For the purpose of obtaining full information in respect of the income or loss of any person, the income tax Officer may make such inquiry as he considers necessary", and trying to achieve the object as is now explicitly enacted in section 55A.

Though in the counter, the stand taken by the revenue is that it is not section 55 A but section 136 that governs the situation in this behalf, most part of the argument was devoted by the learned standing counsel for the revenue stating that the relevant provision is section 55 A, section 136 of the Act being only incidental to the main. Be that as it may, a mere wrong reference to a particular provision in the Act cannot demolish the case of the respondent if it could be traceable to a correct statutory provision which the revenue, at any rate at the time of argument, has, very rightly, realised that it was indeed traceable to section 55A.

From the foregoing, therefore, it is quite manifest that section 55A is the provision that holds the field in answering the first point framed in this behalf. Therefore, the answer is that the reference to the Valuation Officer u/s 55A is valid.

10. Second reference to the Valuation Officer - whether competent - The second question is whether a second reference, when once the first valuation has been arrived at, will be valid and legal.

11. It is not in dispute that, under the first reference, the valuation, after due notice to the assessees concerned, was arrived at. The circumstances have been explained by the revenue under which the second reference was sought to be made and the Valuation Officer thereafter gave the impugned notice to the assessees. The circumstances mentioned in the counter-affidavit are:

Firstly, the valuation arrived at earlier by the Valuation Officer was not valid inasmuch as under rule 3A of the Wealth-tax Rules, 1957, if the valuation of the capital asset is more than Rs. 10 lakhs, it is not competent for the Valuation Officer to determine the value.

Secondly, after such valuation there was a raid conducted both on the business premises of the assessees as well as the residential premises on 29-10-1983, at which it transpired that the investment with regard to the said building was much more than the one that was not only shown by the assessees but also by the earlier officer.

Thirdly, the Assistant Director of Inspection, Valuation Cell, has also furnished certain material facts relating to plinth area, quality of construction, defects in measurements, etc., at variance with the earlier material. Therefore, the second valuation was a must.

12. The relevant Wealth-tax Rules, applicable to the case, may now be noticed. Rule 3A of the Wealth-tax Rules, reads:

3A. Jurisdiction of Valuation Officers.--(1) Regional Valuation Officers shall exercise, within such areas as the Board may direct, general supervision over the work of District Valuation Officers, Valuation Officers and Assistant Valuation Officers.

(2) District Valuation Officers, Valuation Officers and Assistant Valuation Officers shall perform the functions of a Valuation Officer in respect of such areas and in relation to such classes of assets as the Board may direct.

(3) Where under any directions issued under sub-rule (2), the functions of a Valuation Officer in relation to any class of assets, being buildings or lands or any rights in buildings or lands, in respect of any area have been assigned to a District Valuation Officer, Valuation Officer and an Assistant Valuation Officer, such functions shall be performed by the District Valuation Officer, the Valuation Officer or, as the case may be, the Assistant Valuation Officer as provided hereunder:--

(i) If the value of the asset as declared in the return made by the assessee u/s 14 or section 15 exceeds Rs. 10 lakhs or if the asset is not disclosed or the value of the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Wealth-tax Officer, exceeds the aforesaid amount, the functions shall be performed by the District Valuation Officer;

(ii) if the value of the asset as declared in the return made by the assessee u/s 14 or section 15 exceeds Rs. 2 lakhs but does not exceed Rs. 10 lakhs or if the asset is not disclosed or the value of the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Wealth-tax Officer, falls within the aforesaid limits, the functions shall be performed by the Valuation Officer; and

(iii) if the value of the asset as declared in the return made by the assessee u/s 14 or section 15 does not exceed Rs. 2 lakhs, or if the asset is not disclosed or the value of the asset is not declared in such return or no such return has been made and the value of the asset, in the opinion of the Wealth-tax Officer, does not exceed the aforesaid amount, the functions shall be performed by the Assistant Valuation Officer:

13. It is in the light of the aforesaid fresh material that the second point raised herein has to be answered. From the aforesaid rule, it is quite evident that the first ''Valuation Officer'' was not at all competent to value the capital asset, as the value of the capital asset admittedly was more than Rs. 10 lakhs, in which case it will be competent only for the ''District Valuation Officer'' to value the said capital asset. Therefore, the valuation arrived at earlier by the ''Valuation Officer'' could not have been taken into the reckoning at all, as it was contrary to the statutory provisions. Secondly, there was material which came to light admittedly subsequent to the finalisation of the valuation by the first Valuation Officer which was not only germane but crucial in determining the correct valuation of the building, viz., the raid conducted on 29-10-1983, revealed that a higher investment than the one arrived at earlier came to the knowledge of the authorities concerned. Further, the reports of the Valuation Cell (sic) which were brought to the notice of the ITO, subsequent to the first valuation report showed a lot of variation in respect of plinth area, quality of construction and defects in measurements and so forth. It is the second Valuation Officer who, after due reference from the ITO, has given a notice explicitly bringing all these materials to the notice of the assessees, which go to show that adequate opportunity and

notice has been given before finalising the valuation afresh, incompliance with the principles of natural justice. Therefore, there is no good reason as to why such second reference should not be allowed to be made as otherwise, obviously fresh material, which was highly relevant, would have gone unnoticed rendering the entire exercise and the purpose of valuation futile.

14. Now, therefore, the question is whether it is competent for the ITO to make a second reference.

Firstly, in our view, it could be doubtless traceable to the very section 55A inasmuch as the ITO himself realised that it was contrary to the statutory provisions for the earlier Valuation Officer to have determined the value of the asset, as the value of it was admittedly more than Rs. 10 lakhs. Secondly, it is inherent in the nature of things, such as these that, when an authority has been conferred with a power to determine the value of an asset by reference to a Valuation Officer, to have it revalued by a legally competent Valuation Officer, thereby undoing the valuation arrived at earlier by a person who was incompetent. This is on the premise that a power to do an act requires to do the same properly, correctly and legally. Besides, there is nothing in the provisions either u/s 55A or under the Rules made under the Wealth-tax Act forbidding the ITO from taking recourse to such a process. Further, the contention of the learned counsel for the assessees that the authorities are estopped from embarking upon a fresh valuation has no foundation. It is quite plain that there cannot be any estoppel against the statute. It is not in dispute in this case that the statute placed an embargo on the ''Valuation Officer'' in determining the value of the capital asset the value of which was more than Rs. 10 lakhs. The first exercise was admittedly contrary to the very express statutory provision and so had no legal sanction. Consequently, the second reference was legally expedient. Hence, the contention, which is devoid of substance, is rejected.

The power of second reference could also be traceable to section 142(2) which, in our judgment, empowers the ITO to make inquiries which he considers proper for the purpose of obtaining full information in respect of the income of any person. This, as is quite apparent, is with reference to the income of the assessee. It transpired in this case from the raids conducted as well as the information furnished after the first valuation by the Valuation Cell that there was enormous variance between the investments shown by the assessee on the one hand as well as the valuation arrived at by the first officer, and the material which came to be known on the aforesaid two counts, on the other. Hence, the entire exercise of second reference may as well be brought within the gamut of sub-section (2) of section 142.

15. A faint attempt was sought to be made by the learned standing counsel for the revenue arguing that the power could as well be traceable to sub-section (6) of section 133 which, at the cost of repetition, reads:

133. Power to call for information. --The income tax Officer, the Appellate

Assistant Commissioner, the Inspecting Assistant Commissioner or the Commissioner (Appeals) may, for the purposes of this Act,--

(1) to (5) ******

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the income tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the income tax Officer, the Appellate Assistant Commissioner, the Inspecting Assistant Commissioner or me Commissioner (Appeals), will be useful for, or relevant to, any proceeding under this Act.

A careful consideration of the provisions enacted in section 133 makes it manifest that the information which is contemplated by this section is only with reference to either the assessee or any person concerned with the assessee and not to any authority or person belonging to the revenue. The question of obtaining any information from the Superintending Engineer, the District Valuation Officer, on second reference, cannot be said to be a person from whom information is sought to be obtained. It is straining the language, because, while construing the statutory provisions, not only the language but also the scheme and the object of the very provision must be borne in mind. Hence it is very hard for this Court to accede to the submission made on behalf of the revenue, which we reject as devoid of substance.

16. Conclusion - In view of the above, we conclude by holding that the second reference is not only proper in the circumstances of this case, but also legal which is traceable to the provisions enacted in section 55A as well as section 142(2). Consequently, the contentions advanced on behalf of the assessees are rejected as baseless and devoid of merit and substance.

17. The writ petition is accordingly dismissed. No costs. The oral application of the learned counsel for the petitioners for leave to appeal to the Supreme Court is rejected as, in our opinion, no substantial question of law of general importance arises in this case which needs to be decided by the Supreme Court.