
(2004) 03 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Wealth-tax Appeal No. 37 of 2002

Daya Nand

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 17, 17(1B)

Citation : (2004) 192 CTR 602 : (2004) 270 ITR 245 : (2004) 141 TAXMAN 480

Hon'ble Judges : N.K. Sud, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Lokesh Sinhal, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The assessee has filed this appeal u/s 27A of the Wealth-tax Act, 1957 (for short the "Act"), against the order of the Income Tax Appellate Tribunal, "F" Bench, New Delhi (for short the "Tribunal"), dated January 16, 2002.

2. Before advertng to the dispute, the relevant facts may first be noted.

3. The original assessment of the assessee for the assessment year 1991-92 was finalised u/s 16(3) of the Act on the total wealth of Rs. 18,00,000/-vide order dated February 11, 1992. Thereafter, it came to the notice of the Assessing Officer that taxable wealth of the assessee had escaped assessment on account of undervaluation of immovable property. It was found that while calculating the value of immovable property under Schedule III to the Act, the assessee had adopted the gross maintainable rent at Rs. 1,51,550/- as per his Income Tax return. However, this amount included rent of one property for two months only, whereas the rent receivable for the entire year ought to have been included as provided in rule 3 of Part B of Schedule III to the Act. The correct value of the immovable property on that basis worked out to Rs. 26,92,125/- against Rs. 15,23,375/- declared by the assessee. Accordingly, the Assessing Officer was satisfied that the value to the extent of Rs. 11,68,750/-(26,92,125-15,23,375)

had escaped assessment. Consequently, the assessment was reopened by initiating proceedings u/s 17 of the Act vide notice dated July 22, 1993. Before issuing notice u/s 17, the Assessing Officer was required to record reasons in writing and also obtain approval of the higher authority. In the present case, although the Assessing Officer had recorded reasons, he had not obtained the prior approval of the higher authority. Realising this mistake, the Assessing Officer referred the matter for approval of the Deputy Commissioner of Wealth-tax, Rohtak Range, Rohtak, and after obtaining his approval, fresh notice u/s 17 of the Act was issued on March 4, 1994. In pursuance of the said notice, the Assessing Officer completed the reassessment on March 15, 1996, at the total wealth of Rs. 29,33,800/- by adding the amount of Rs. 11,68,750 representing the difference in value of the property in question. The assessee preferred an appeal before the Commissioner of Wealth-tax (Appeals) against the reassessment order which was dismissed. Aggrieved by the same, the assessee filed further appeal before the Tribunal which has also been dismissed vide impugned order dated January 16, 2002.

4. Mr. Lokesh Sinhal, learned counsel for the appellant, did not dispute the fact that while computing the valuation of the property under Schedule III to the Act, the gross maintainable rent in respect of the property in question had been adopted at Rs. 22,000/- which represented rent for two months only and not rent for the whole year. Thus, he could not dispute the fact that the property had indeed been undervalued. He, therefore, confined his challenge to the validity of the proceedings u/s 17 of the Act. He contended that all the relevant facts had duly been disclosed by the assessee in the original return and as such the escapement of wealth was attributable to the failure of the Assessing Officer to draw correct inferences from the facts disclosed. He then contended that the Assessing Officer had no jurisdiction to issue notice u/s 17 of the Act on March 4, 1994, when the proceedings on the basis of the earlier notice dated July 22, 1993, were still pending. He also submitted that even otherwise before issuing notice u/s 17 of the Act on March 4, 1994, the Assessing Officer had not recorded any reasons as required under the proviso to Sub-section (1) of Section 17 of the Act.

5. We have heard counsel for the appellant and have perused the impugned orders and find no merit in the contentions raised by him. The determination of value of the immovable property is governed by the arithmetical formula prescribed in Schedule III to the Wealth-tax Act. It has not been disputed before us that the gross maintainable rent had not been correctly shown for computing the value of the immovable property at Rs. 15,23,775/-. It is also not in dispute that on the basis of the correct gross maintainable rent, the correct value works out to Rs. 26,92,125/-. Thus escapement of wealth is not disputed. It also stands proved that the assessee had not correctly disclosed the net maintainable rent which is the basis for computation of value of the property. In the computation of wealth filed along with the return, it had not been disclosed that the net maintainable rent in respect of the property in question was only for two months

and not for the whole year. The assessee, therefore, cannot claim to have made true and full disclosure of the material facts necessary for his assessment.

6. We also do not find any merit in the other objections raised against the validity of the notice dated March 4, 1994, u/s 17 of the Act. The earlier notice u/s 17 issued by the Assessing Officer on July 22, 1993, was admittedly not a valid notice as it had been issued without the approval of the higher authority as required by Sub-section (1B) of Section 17 of the Act. Thus notice dated July 22, 1993, was void ab initio and did not give rise to any valid proceedings. Therefore, it cannot be said that when notice u/s 17 was issued on March 4, 1994, any earlier reassessment proceedings were pending. Similarly, it is not disputed that the Assessing Officer had duly recorded reasons about the escapement of income on July 22, 1993, whereas notice u/s 17 of the Act was issued subsequently on March 4, 1994. The proviso to Sub-section (1) of Section 17 of the Act provides that before issuing any notice under this section, the Assessing Officer shall record his reasons for doing so. Thus, the only requirement is that the reasons have to be recorded "before" issuing notice u/s 17 of the Act. In the present case, this requirement stands duly complied with. We are, therefore, satisfied that the Tribunal was justified in upholding the validity of the reassessment proceedings.

7. No other point has been raised.

8. Accordingly, the appeal being devoid of any merit, is dismissed in limine.