

(1990) 03 KAR CK 0019

In the Karnataka High Court

Case No : Writ Appeals No's. 333 and 334 of 1987

Fifth Wealth Tax Officer

APPELLANT

Vs

Abdul Qadar Adam and another

RESPONDENT

Date of Decision : 11-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 16, 17 (1) (a)

Citation : (1990) ILR (Kar) 2863 : (1990) 186 ITR 549

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : G. Chandrakumar, for the Appellant; K.S. Ramabadran, for the Respondent

Judgement

M. Rama Jois, J.—These two writ appeals are presented by the Wealth-tax Officer aggrieved by the order of the learned single judge (see Abdul Qadar Adam and Abdul Razak Adam Vs. Wealth Tax Officer, allowing the writ petitions presented by the respondents and quashing notices issued u/s 17(1)(a) of the Wealth-tax Act, 1957.

2. The brief and undisputed facts of the case are these : For the assessment year 1972-73, respondents who are co-owners having half share in the house property bearing premises No. 12, Millers Road, Bangalore, declared the total value of the building at Rs. 1,80,000 and the half share of each of them at Rs. 90,000. The whole of the area including the building was 5,775 sq. yards. The assessing authority did not accept the valuation furnished by the respondents. He fixed the value of the house property as on March 31, 1971, the date of valuation as follows :

"The value as on March 31, 1971, is fixed as follows :

Rs. No. 12, Miller"s Road property 5,775 sq. yards at Rs. 55 per sq. yard 3,17,625
Cost of materials (excluding 25% of the area for layout) 10,000

----- Assessee's half share therein Rs. 2,13,812 4,27,625" -----

3. In fixing the above value, the assessing authority also took into consideration the information available from sales of similar properties in Millers Road. On that basis, the assessment was made. Subsequently, the very property was sold by three sale deeds executed on March 30, 1973, July 27, 1973 and July 30, 1973, for a total consideration of Rs. 8,00,998. The assessee had failed to disclose the capital gains in the Income Tax assessment had failed to disclose the capital gains in the Income Tax assessment proceedings for the years 1972-73 and 1973-74. However, after the voluntary disclosure scheme of 1976 came into force, the respondents chose to disclose capital gains to the extent of Rs. 6,50,000 on account of the sale of the property as stated above. On coming to know of the voluntary disclosure made by the respondents, on August 24, 1978, the Wealth-tax Officer issued notice u/s 17(1)(a) of the Wealth-tax Act, proposing to reopen the assessment. Questioning the legality of the said notice, the respondents presented two writ petitions.

4. The contention of the respondents in the writ petitions was that the condition precedent for the exercise of jurisdiction u/s 17(1)(a) of the Act was not satisfied and that, therefore, the notice issued were without jurisdiction. The learned single judge allowed the writ petitions accepting the contention of the respondents and quashed the notices. Aggrieved by the said order of the learned single judge, these writ appeals have been presented.

5. Sri. G. Chandrakumar, learned counsel for the appellant, contended that as the Wealth-tax Officer had reasons to believe that the respondents assessment of his net wealth for the assessment year 1972-73, the Wealth-tax Officer had jurisdiction to initiate action u/s 17(1)(a) of the Act. He submitted that so long as the basis on which the action was initiated had nexus to the exercise of jurisdiction u/s 17(1)(a) of the Act, this court could not have interfered under article 226 of the Constitution and even assuming that the respondents had any valid defence for the notices that should have been allowed to be taken in reply to the show cause notice.

6. There can be no doubt that, when notices u/s 17(1)(a) or 17(1)(b) of the Act are issued by the Wealth-tax Officer and for doing so, the basis prescribed under clause (a) or clause (b), as the case may be, exists, this court should decline to interfere in a petition under article 226 of the Constitution and the defence, if any, of the concerned assessee should be allowed to be taken before the Wealth-tax Officer in reply to the show cause notice. It is only in cases where the condition precedent prescribed in clause (a) or clause (b) does not exist and still a notice has been issued by the Wealth-tax Officer, the party is entitled to seek relief at the hands of this court under article 226 of the Constitution, so that he may not be subjected to unnecessary proceedings before the authorities. In other words, the relief which may be sought for in a petition under article 226 of the Constitution should be in the nature of a writ of prohibition which will be issued only if there is total lack of jurisdiction and not otherwise. Therefore the

question for consideration in this case is, whether the basic condition for the exercise of jurisdiction u/s 17(1)(a) of the Act exists or not. As can be seen from the assessment order and the facts stated earlier, the respondents had disclosed that they were the owners of property bearing premises No. 12, Millers Road, Bangalore. It is true they had given the valuation of the said property as Rs. 1,80,000. But this valuation was not accepted by the Wealth-tax Officer. He made his own computation and fixed the value of the property at the rate of Rs. 55 sq. yard and after giving deduction to the extent of 25 per cent. to the area and the cost of material at Rs. 10,000, computed the value of the property at Rs. 4,27,625 and half share of it was assessed at the hands of each of the assesseees. Section 17 of the Wealth-tax Act, 1957, which confers jurisdiction on the Wealth-tax Officer to assess or reassess the escaped turnover, reads :

"17(1) If the Wealth-tax Officer -

(a) 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 this 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 under-assessment or assessment at too low a rate or otherwise; or

(b) 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 may, in cases falling under clause (a) at any time within eight years and in cases falling under (b) at any time within four years of the end of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

(2) Nothing contained in this section limiting the time within which any proceeding for assessment or reassessment may be commenced, shall apply to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order under sections 23, 24, 25, 27 or 28 :

Provided that the provisions of this sub-section shall not apply in any case where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment relates to an assessment year in respect of which as assessment or reassessment could not have been made at

the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any provision limiting the time within which any action for assessment or reassessment may be taken."

7. As can be seen from clause (a), the condition precedent for the exercise of power under that provision to initiate action is that the assessing authority must have reasons to believe that, on account of omission or failure on the part of the assessee to disclose his net wealth or his failure to disclose fully and truly all materials necessary for the purpose of assessment of his net wealth. In the present case, the assessee had disclosed his wealth including the property in question premises bearing No. 12, Millers Road, Bangalore. He no doubt gave the value at Rs. 1,80,000. But that valuation was not accepted by the Wealth-tax Officer and he valued it at Rs. 4,27,625. The fact that the said property, after some time, was sold for a higher value at Rs. 8,00,998 constitutes no basis to say that as on the date when the assessee filed the return, he had failed to disclose fully and truly all material information which was necessary for the assessment in relation to the house property. The assessee was required to disclose the existence of the property at a particular locality and its extent and nature. In this case, the locality in which the building was situate was furnished and the extent of the area of the land and building was also furnished. In fact, it was only having regard to the said information that the Wealth-tax Officer collected evidence relating to similar properties situate on the same road and then assessed the value of the property for the purpose of wealth-tax. There was no information in relation to the property which was in the possession of the respondents which they should have disclosed and which had not been disclosed which constitute the basis for initiating action u/s 17(1)(a) of the Act. In fact, reasons recorded by the assessing authority for initiating action u/s 17(1)(a) of the Act reads :

"Note :- In the assessment order made of February 7, 1973, the value of the Millers Road property (the assessee's half share being 50%) is taken at Rs. 2,13,812 as against assessee's declared value of Rs. 90,000. As per the voluntary disclosure made by the assessee, the property was sold in the year ending March 31, 1973, and 1974. The total consideration for the property received by the assessee comes to Rs. 8,00,998. Thus, the assessee's half share of the property comes of Rs. 4,00,499. The assessee has not disclosed the value correctly and truly in the return of wealth filed by the assessee. Wealth has escaped assessment. Issue notice u/s 17."

8. It may be seen from the said note that it is not stated that any material information which was in possession of the assessee at time of filing the return was not disclosed. All that the Wealth-tax Officer says is that the value of the property was not disclosed correctly. In our opinion, the reasons recorded do not fulfill the condition precedent for the exercise of power u/s 17(1)(a) of the Act, for, the assessee had given all particulars about the property and he gave his own valuation. It was open to the Assessing Officer either to accept the valuation

or not. He could have asked the official valuer to give a report about the value of the property u/s 16 of the Act. The assessing authority in fact did not accept the valuation given by the respondents/assessee and made his own valuation on the basis of the sale value of similar properties in the same locality. The value so fixed was actually more than twice the valuation furnished by the assessee. The Wealth-tax Officer was able to make such an assessment only because the respondents had fully given the correct description of the property and the locality in which it was situate. Therefore, the assessing authority could not subsequently turn round and say that the assessee had not fully and correctly furnished the necessary information. The Wealth-tax Officer does not state that any information which according to him was available with the respondents had not been disclosed. Of course, if the Wealth-tax Officer felt that even the valuation made by him in the assessment order was not correct, he could have certainly invoked his jurisdiction u/s 17(1)(b) and reopened the assessment and made a reassessment under that clause. But that he could do within a period of four years from the end of the assessment year. As that date in this case was March 31, 1973, and the notice was issued on November 24, 1978, it was time-barred u/s 17(1)(b). If the notice had been issued within four years, though wrongly u/s 17(1)(a), we would have sustained it under clause (b). It is no doubt true that action was not time-barred u/s 17(1)(a) as the notice was within the prescribed period of eight years for initiating action thereunder but, as pointed out by us, the very basis for invoking clause (a) of section 17(1) did not exist and, therefore, the impugned notice suffered from total lack of jurisdiction. We, therefore, respectfully agree with the view taken by Rajasekhara Murthy J.

In the result, we make the following order.

9. The writ appeals are dismissed.