(1994) 01 AHC CK 0094

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 506 of 1981

Indu Bhushan Sah (HUF) APPELLANT

Vs

Wealth-tax Officer and Another RESPONDENT

Date of Decision : 24-01-1994

Acts Referred:

Estate Duty Act, 1953 — Section 59
Income Tax Act, 1961 — Section 147
Wealth Tax Act, 1957 — Section 17

Citation : (1994) 118 CTR 1 : (1994) 208 ITR 598

Hon'ble Judges : R.K. Gulati, J;A.P. Misra, J

Bench : Division Bench

Advocate : R.K. Agarwal, for the Appellant; M. Katju and Bharatji Agarwal, for the Respondent

Final Decision : Allowed

Judgement

A.P. Misra, J.—Since the aforesaid two writ petitions raise a common question, they are being disposed of finally by means of a common judgment after hearing learned counsel for the parties. In these two cases in spite of time being granted in the past to learned counsel for the Revenue no counter-affidavit has been filed. In fact, on April 16, 1991, the last order was passed for granting further time to file counter-affidavit and no more, but even thereafter more than two years have already elapsed, no counter-affidavit has been filed, nor any application has been moved except for an oral request which was made today to grant further time. In fact more than 13 years have gone since the filing of the writ petition and no counter-affidavit has been filed. There is no justification to grant any further time and we are deciding these petitions finally only on the basis of the averments made in the writ petition itself after hearing learned counsel for the parties.

2. Through the first writ petition, the petitioner seeks quashing of the assessment proceedings initiated u/s 17 of the Wealth-tax Act for the

assessment years 1976-77, 1977-78 and 1978-79 by means of the impugned notices dated March 6, 1980, and an order dated April 4, 1981, reference to which is made in the letter for the Valuation Officer, which are annexures-4, 5, 6 and 14 to the writ petition.

3. Through the second writ petition, the petitioners seek quashing of the entire proceedings initiated u/s 17 of the Wealth-tax Act for the assessment years 1975-76, 1976-77, 1977-78 and 1978-79 and the aforesaid impugned notices dated March 6, 1980, and the order dated April 2, 1981, contained in a letter to the Valuation Officer which are annexures 1 to 4 and 12 to the writ petition.

4. The case of the petitioners is that they were assessed to wealth-tax for the aforesaid assessment years after elaborate inquiries. Initially, there was some mistake for which the petitioners moved an application for rectification u/s 35 of the said Act, which was allowed. It is thereafter that notices u/s 17 of the Wealth-tax Act were issued on March 6, 1980, which are impugned. The petitioners in pursuance of the same, filed objections on April 7, 1980. Thereafter they again received further notices dated May 4, 1981, and May 16, 1981, from the Valuation Officer, respondent No. 2, u/s 16A(2) of the said Act. The case of the petitioners is that on the receipt of the aforesaid notices from the Valuation Officer, the petitioners got the files inspected on July 24, 1981, which revealed that because of an audit objection the impugned notice u/s 17 of the said Act was issued. The petitioners further made averments which for the purpose of the disposal of the writ petitions are not necessary and to which we are not referring. From the aforesaid facts, it is clear that the initiation of proceedings u/s 17 of the Act and the impugned notice by the Valuation Officer is founded only on the basis of an audit objection. This fact, since no counter-affidavit has been filed, has not been denied by the respondent even during the course of the arguments advanced before us. Any initiation of proceedings under the aforesaid section only on the basis of an audit objection cannot be sustained which is fully covered by a decision in Ashoke Gupta Vs. Assistant Controller of Estate Duty and Others, . No doubt, Section 59 of the Estate Duty Act, 1953, is in pari materia with Section 147 of the Income Tax Act, 1961. The present Section 17 of the Wealth-tax Act is also in pari materia with Section 147 of the Income Tax Act. In the said decision, it is held that the report of the audit officer pertaining to the facts of valuation cannot furnish the basis for the reopening of the assessment. Similar is the position in the present case. Accordingly, the impugned notices cannot be sustained. To similar effect is also the position in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, , a decision of the Supreme Court. In view of the said decision, the present impugned notices and the order dated April 4, 1981 (annexures 4, 5, 6 and 14) in Writ Petition No. 506 of 1981 and the notices and order dated April 4, 1981 (annexures 1, 2, 3, 4 and 14) in Writ Petition No. 535 of 1981 are held to be illegal and are accordingly quashed.

5. The said writ petitions are accordingly allowed with costs.

