

(1981) 12 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No's. 1202, 1664 to 1673, 1855 to 1864, 1880 to 1889, 1891 to 1899, 2048 to 2064 and 3728 to 3737 of 1979

J.K.K. Natarajah

APPELLANT

Vs

Wealth Tax Officer

RESPONDENT

Date of Decision : 15-12-1981

Acts Referred:

Wealth Tax Act, 1957 — Section 16A, 17A(4)

Citation : (1983) 142 ITR 804

Hon'ble Judges : Padmanabhan, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant; J. Jayaraman and Mrs. Nalini Chidambaram, for the Respondent

Judgement

Balasubrahmanyam, J.—These writ petitions are conveniently dealt with by a common order, for, they all raise an identical question concerning the application to the writ petitioners of certain provisions of the W.T. Act, 1957. As many as seven individuals have filed these writ petitions. Each of them is a partner in as many as four partnership firms. The firms are engaged in the production of yarn with the aid of machinery. The petitioners are wealth-tax assessees. The writ petitions concern their assessments to wealth-tax for the assessment years 1965-66 to 1974-75. Under the scheme of the W.T. Act, the tax is levied on an individual's net wealth. "Net wealth" means the value of the surplus of the assets over the debts of the assessee. All assets will have to come into the computation, excepting those that are expressly exempted by the statute. Under the statutory definition of assets, a partner's partnership interest, as such, would also come into the reckoning as an asset, considered in itself. Under the scheme of the W.T. Act, the market value of each and every one of the assets of an assessee will have to be determined in order to arrive at the aggregate value of all his assets. The partnership interest as such, being an asset in itself held by a partner, must also be reckoned in terms of market value. How to determine the market value of a share in a partnership is governed by the W.T. Rules, 1957.

Rule 2 of the Rules lays down what is familiarly known to accountants as "the break-up value method" for ascertaining the market value of the interest of a partner in a partnership. Under this method, you focus your attention, first, to the assets of the partnership. You take the partnership assets and determine their market value. You then turn to the firm's debts, and aggregate their amounts. Deducting the firm's debts from the aggregate value of the firm's assets will give you the net worth of the firm's undertaking as such. To the figure of net worth of the partnership so determined, you then apply the individual partner's fractional share ratio. Thus, you would arrive at the market value of his partnership interest, as an asset in itself. These steps in the process of computation would show the important part which the valuation of the partnership assets plays in the computation of the market value of the partner's share.

2. Valuation of assets sometimes requires the hand of experts. There are professional valuers qualified and trained to evaluate the market value of lands, buildings, and various other kinds of property, both movable and immovable. Provision is accordingly made in the W.T. Act enabling the assessing officer to refer to specialist Valuation Officers, matters relating to the valuation of any given assets. Once a reference is made to a Valuation Officer, he has got to follow a set procedure and then draw up his valuation report in the form of an order in writing. The reference by the WTO to a Valuation Officer, the procedure to be followed by the latter, the rights and privileges of those who would be affected by the valuation proceedings are all elaborately laid down in s. 16A of the W.T. Act. Under this section, when a Valuation Officer renders his valuation in an order, then the assessing officer is bound by that order. He has simply got to incorporate that valuation in his assessment order, and proceed to levy wealth-tax on that basis. This last provision in s. 16A shows the vital part played by the Valuation Officers and their proceedings in the fixation of tax liability on wealth-tax assessees, in cases in which references are made to them by the WTO.

3. In this group of cases, the WTO made references to Valuation Officers in the matter of valuation of lands, buildings and certain other assets belonging to one or other of the four partnership firms in which the writ petitioners had their interests as partners. The Valuation Officers then took proceedings for valuation and passed orders determining the value of the concerned assets. In accordance with those orders, the WTO determined the value of the partnership interests in question, and completed the assessments on the petitioners.

4. In the present writ petitions, the orders passed by the Valuation Officers and the consequential assessments made by the WTO are questioned on several grounds. The principal contention is that the orders passed by the Valuation Officers are in violation of even the minimum requisites of a fair hearing laid down in s. 16A of the W.T. Act. The WTO had referred to the Valuation Officer (plant and machinery) the question of valuation of the plant and machinery of the four partnership firms. The complaint in these writ petitions is that

reasonable opportunity was not granted to the petitioners to make their representations before that Valuation Officer as respects the valuation of spinning machines and other items of machinery. Another grievance is that another Valuation Officer, called the Valuation Officer, Valuation Cell (Unit-I) had drawn up his valuations of immovable properties without calling for objections and without hearing the petitioners, excepting in respect of one solitary item. The contention urged is that since the Valuation Officers have entered their valuations summarily and without following the statutory procedure, their orders are invalid, and the invalidity of the valuation orders vitiates the assessment orders which subsequently adopted these valuations.

5. The legal contentions of the petitioners based on the natural justice argument have to be accepted on the very terms of s. 16A of the Act. The jurisdiction and procedure in valuation proceedings are clear-cut under the section. Where the assessee has valued an asset in his return and the Valuation Officer agrees with that figure, there is no need for any procedure to enable him to adopt that figure in his valuation order. So too would be a case, which may be rare to come by, where the assessee over-values his asset and the Valuation Officer happens to arrive at a valuation lower than the assessee's figure. But where, according to the Valuation Officer, the value of an asset is higher than that declared by the assessee in his return the higher valuation cannot be determined by the Valuation Officer in his order as the valuation of that asset unless he follows the set procedure laid down by the section. Sub-section (4) in such cases demands that the Valuation Officer should serve notice on the assessee informing him of the higher figure on which the value of the asset is proposed to be estimated in place of the returned figure. The notice must fix a date of hearing, giving a reasonable opportunity to the assessee to put forth his objections orally and/or in writing, as respects the estimated figure proposed by the Valuation Officer. The notice must call upon the assessee to produce at the hearing his evidence in support of the returned valuation. Subsection (5) sets down the requisites of the hearing before the Valuation Officer. It provides that, at the hearing, the officer must examine the supporting evidence tendered by the assessee, and also "any other evidence which the Valuation Officer requires the assessee to furnish". The Valuation Officer should then take into consideration all the materials on record and examine them. He must then proceed to determine, in an order in writing, his valuation of the asset or assets in question. Copies of the valuation order so drawn up will have to be sent to the assessee and the WTO concerned.

6. The records of the valuation proceeding in these cases show that the Valuation Officer had not adhered to the mandates of these statutory provisions. The Valuation Officer (machinery and plant) who had taken up the firms' spinning plants for valuation gave opportunity of some kind to the petitioners, but his proceedings do not disclose that all the objections of the petitioners had been adequately considered. The other valuation orders concerning items of immovable property do not fare better. The record shows that Unit II Valuation Officer of immovable properties passed orders valuing items of immovable

property within his charge without issuing notice to the petitioners and without giving them a hearing. The Unit I Officer, who is a party to the writ petitions, gave notice in respect of one item of immovable property, but his order determined the valuation not only for that item, but for many other items for which the petitioners had no notice.

7. It is said, in extenuation, that the time-limits for the concerned wealth-tax assessments were fast drawing to a close, and hence the Valuation Officers had to either hustle the proceedings or dispense with the hearing altogether in order to enable the WTO to finish the assessments in time. We do not appreciate this excuse. Valuation Officers are under a statutory duty to issue notice to the assesseees, give them an opportunity to object to the proposed official valuation, examine the evidence pro and con tendered by the assesseees, and give them a fair hearing before drawing up the orders of valuation. Section 16A does not say anything about the bar of limitation for assessments. It does not dispense with the requisites of notice and hearing just to accommodate the exigencies of the assessing officer's time-limit. At this rate a WTO has only to delay his reference to the Valuation Officer till the eleventh hour to get a binding ex parte order of valuation from him, either behind the back of the assessee, or without following proper procedure. The Valuation Officer has his duty cut out for him under the Act by s. 16A. That duty will have to be discharged in accordance with the procedural requirements of that section. The Valuation Officer is not to be oppressed by considerations of bar of limitation of assessment. He may by all means, conduct the proceedings with reasonable dispatch, but he cannot skip the statutory procedures, nor hustle the hearing unfairly just to make the WTO's position safe with his assessment. The WTO, as an assessing authority, must no doubt feel concerned in every case about time-barring assessments. This only means that he had better make a reference to the Valuation Officer fairly early in the course of assessment proceedings. Or, to avoid all this bother, he may do the valuation himself, without making a reference under s. 16A. For, s. 16A does not compel the WTO to refer every question of valuation to a Valuation Officer. Whether to make a reference or not under s. 16A is wholly left to the discretion of the WTO. But once he makes a reference, he has got to let the proceedings under s. 16A take their course. Neither he, nor the Valuation Officer, can sacrifice or even whittle down the procedure prescribed by that section. A violation of the procedure by the Valuation Officer would not only discredit his own valuation order, but would vitiate the assessment order as well, for under the section the WTO has no choice except to incorporate the order of the Valuation Officer. Thus, a valuation order which is bad in law drags the follow-up assessment order also into the vortex of invalidity.

8. It might well be that not all the valuations in this case are tarred with the same brush. According to the departmental standing counsel, the Valuation Officer (plant and machinery) who valued the items of machinery held by the partnership firms did not violate the statutory requirements either of notice or of hearing. This may be so. But even so, the valuation which the WTO had taken

into account may have to be set aside, as a whole, since in the matter of valuation of the petitioners' interests in the partnerships, what has to be arrived at fairly and correctly is the valuation of all the assets of the partnership concern as a whole. If there is a procedural or other flaw in some of the components which make up the aggregate assets of the firm, that would distort the ultimate figure of valuation of the partnership interests as such. There is, therefore, no other way to set right or remedy the situation excepting to quash the valuations adopted in the assessment order as a whole. As a necessary consequence, all the assessments involved in the case of all the writ petitioners will also have to stand quashed.

9. This result, however, should have no terrors for the Department, considering that the W.T. Act has provided for a safety-valve, especially from the bar of limitation, particularly in cases where the assessments are set aside by courts for some reason or other. Section 17A(4) lays down that the bar of limitation otherwise prescribed under the Act shall not apply to any assessment or reassessment made on an assessee in consequence of, or to give effect to, any direction contained in any order of a court otherwise than by way of reference. Orders of the High Court under art. 226 of the Constitution are covered by this provision. In the foregoing paras, of this judgment we have shown how the valuation orders and the consequential assessment orders are bad in law. Our decision, however, is founded on the limited ground that the petitioners have not been given a fair hearing by the Valuation Officer. This procedural shortcoming, however, can be made good, if the valuation officers were directed to comply with the provisions of s. 16A and redo their valuations.

10. We accordingly think it proper in this group of writ petitions to quash and set aside the petitioners' assessments to wealth-tax for the assessment years 1963-66 to 1974-75, and also quash the orders passed under s. 16A on which the said assessment orders are based. We may make it clear that the valuation orders hereby set aside include not only those orders having reference to the assets of the partnership firms in which the petitioners are partners, but also other valuation orders having reference to the petitioners' own individual properties. We may further make it clear that while the valuation orders are set aside, there will be a direction to all the valuation officers concerned to take up the proceedings de novo and proceed with the valuation in accordance with the law. In such proceedings, the petitioners will be at liberty to raise all contentions of law and fact, including those which they have raised in these writ petitions which we have not considered in this judgment. Subject to the directions aforesaid we quash the wealth-tax assessments for 1965-66 to 1974-75, made against the petitioners and also the valuation orders under s. 16A of the W.T. Act, on which the assessments are based. In the circumstances of the case, however, there will be no order as to costs.