
(1997) 06 MAD CK 0056

In the Madras High Court

Case No : Writ Appeal No"s. 1094 to 1096 of 1992

K. R. VENKATESAN

APPELLANT

Vs

WEALTH TAX OFFICER and Others

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Citation : (1998) 146 CTR 268

Hon'ble Judges : Kanakaraj, J

Bench : Division Bench

Judgement

KANAKARAJ, J. :

The appellant owns immovable properties at Coimbatore as Karta of an HUF. He had been filing voluntary returns under s. 14(1) of the WT Act, 1957 (hereinafter referred to as the Act) and the respondents had been accepting the returns and passing orders. For the asst. yr. 1984-85, the appellant filed a return on 18th June, 1984, disclosing a net wealth of Rs. 3,17,800. The first respondent accepted the return, completed the assessment and passed orders under s. 16(1) of the Act, by an order, dt. 8th September, 1986. Similarly, for the asst. yr. 1985-86, a return was filed on 29th November, 1985, disclosing a net wealth at Rs. 4,41,900 and the same was accepted and an order was passed on 8th September, 1986. By a notice, dt. 15th February, 1991, the first respondent invoked s. 17 of the Act and proposed to assess the escaped wealth both for the asst. yrs. 1984-85 and 1985-86. By a notice, dt. 1st October, 1991, the first respondent referred the valuation of the properties relating to the assessment years ending with 31st March, 1983 upto 31st March, 1987, to the Valuation Officer. Writ Petition No. 4055 of 1992, seeks to quash the notice, dt. 1st October, 1991 issued under s. 16A of the Act. Writ Petition Nos. 4053 and 4054 of 1992 seek to challenge the notices issued under s. 17 of the Act in respect of the asst. yrs. 1984-85 and 1985-86. All the writ petitions were dismissed by Govindaswamy, J. by order, dt. 19th March, 1992, holding that the petitioner could raise his objections to the respondent, by sending replies to the notices

and thereafter, if aggrieved take remedial measures by invoking the relevant provisions of the statute. All the writ petitions were, therefore, dismissed in limine. The writ appeals are directed against the said order. Writ Appeal No. 1094 of 1992 is directed against the order in Writ Petition No. 4054 of 1992 and Writ Appeal No. 1095 of 1992 relates to the order made in Writ Petition No. 4055 of 1992, relating to the s. 16A notice. Writ Petition No. 1096 of 1992 relates to the order in Writ Petition No. 4053 of 1992.

2. On behalf of the appellant, Mr. Sundar, learned advocate, has sought to urge that the notices are without jurisdiction and that, therefore, this Court has power to interfere even at this stage. So far as the notice issued under s. 17 of the Act is concerned, the argument is that the prerequisites for invoking s. 17 of the Act are not available or at any rate not referred to by the first respondent. Consequently, the first respondent lacks jurisdiction to invoke s. 17 of the Act. Alternatively, learned counsel for the appellant contends that the notices are beyond the time prescribed in the Act and, therefore, the same should not be given effect to. So far as the notice issued under s. 16 of the Act is concerned, the argument is that the same could be invoked, only when the assessment proceedings are pending before the officer concerned.

3. At the outset, we would like to make it clear that s. 17 of the Act had undergone a change w.e.f. 1st April, 1989, by the Direct Tax Laws (Amendment) Act, 1987. Inasmuch as the impugned notices under s. 17 of the Act have been issued only on 15th February, 1991, it goes without saying that they were only the amended provisions, which would govern the instant case. However, it is necessary to notice the provision of law, as it stood before 1st April, 1989, because several judgments have been cited only under the unamended Act. We, therefore, refer to the unamended Act, as it stood before 1st April, 1989. The unamended s. 17 of the Act provided for two contingencies, the first is where the assessee fails to make a return or fails to disclose fully and truly all the material facts. The second contingency is where the AO gets information to suggest that there had been an escapement from assessment for the relevant year. In respect of the first contingency, the period of limitation was eight years and in respect of the second contingency the period of limitation was four years. After the amendment, whenever there is escapement of assessment, where by reason of underassessment or assessment at too a low a rate, the officer has powers to reopen the assessment, after giving notice. The period of limitation is important and has significance to the facts of the present case. We, therefore, quote here the relevant provision relating to the limitation contained in s. 17(1A) of the Act :

"No notice under sub-s. (1) shall be issued for the relevant assessment year :

(a) in a case where an assessment under sub-s. (3) of s. 16 or sub-s. (1) of this section has been made for such assessment year :

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-cl. (ii) or sub-cl. (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees ten lakhs or more for that year;

(b) in any other case :

(i) If four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-cl. (ii) or sub-cl. (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees two lakhs and fifty thousand or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the net wealth chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees five lakhs or more for that year ..."

It will thus be seen that the period of limitation is linked to "the net wealth chargeable to tax which had escaped assessment". These are all the jurisdictional facts, which have got to be ascertained before it could be stated that the notice is barred by limitation or not. It is contended for and on behalf of the respondents by Mr. S. V. Subramaniam, learned senior Central Government standing counsel (Income Tax) that in respect of the assessment years in question, the seven year period alone is applicable and, therefore, for the asst. yr. 1984-85, they have got time till 31st March, 1992, and for the asst. yr. 1985-86, they have got time till 31st March, 1993. Inasmuch as the notices were issued on 15th February, 1991, they are perfectly valid and not liable to be quashed. So far as the question of the authority, having reason to believe, it is pointed out that in the subsequent assessment years, the appellant himself had disclosed the net wealth at very huge amounts, like Rs. 7,57,900 for the asst. yr. 1986-87 and Rs. 6,50,800 for the asst. yr. 1987-88. The argument of Mr. Sundar, learned counsel for the appellant is based on the judgment of the Supreme Court in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, It has to be remembered that the said Judgment arose out of the unamended provisions of the IT Act, which contained similar provisions of law like the WT Act. It was with reference to the said provisions of law, the apex Court pointed out that unless the ingredients are available for reopening an assessment, the power cannot be exercised. Learned counsel for the appellant also relies on the judgment in Acchut Kumar S. Inamdar Vs. P.R. Hajarnavis and Another, , for the proposition that mere undervaluation of a property cannot give rise to reopening of

assessment. We are of the opinion that after the amendment of s. 17 of the Act w.e.f. 1st April, 1989, the position is slightly different. All that is necessary is that the AO should have every reason to believe that a property has escaped assessment, whether by reason of underassessment or assessment at too low a rate or otherwise. The word otherwise has to be given some meaning and it is not possible to contemplate or limit the circumstances under which an assessment can be reopened, because the property has not been correctly valued. All that can be said is that an AO should not exercise the power arbitrarily or in a mala fide manner. So long as the AO has some reason to believe that the property had escaped proper assessment, he can always exercise the power, provided he does so within the period of limitation. In this case, learned senior counsel for the respondent says that the assessee himself had given a very higher valuation for the subsequent years.

4. It may be due to passage of time or it may be that for the earlier years, the assessee had suppressed the correct value. These are matters, which could be examined by issue of a notice under s. 17 of the Act. At the stage of a notice, it may not be proper to interfere with, unless the AO lacks total jurisdiction to exercise the power. Where certain jurisdictional facts have got to be ascertained, it cannot be said that the AO lacks jurisdiction, he can always issue a notice and ascertain whether such jurisdictional facts are available to invoke the provisions of s. 17 of the Act are available.

5. On the question of limitation, we accept the argument of learned senior counsel appearing for the respondent that a seven year period is available in respect of the asst. yrs. 1984-85 and 1985-86 and, therefore, the notice issued on 15th February, 1991, is well before the last date, viz., 31st March, 1992, in respect of the asst. yr. 1984-85. Consequently, the argument based on the question of limitation also fails.

6. We have only to consider the notice issued under s. 16A of the Act. So far as this notice is concerned, it is brought to our notice that the assessee appeared before the authority and filed his objections on 23rd March, 1992. The Valuation Officer had determined the value and had sent his report on 25th March, 1992. Therefore, the Writ Appeal No. 1095 of 1992, which is directed against Writ Petition No. 4055 of 1992 has really become infructuous. That apart, inasmuch as we have held that the notice issued under s. 17 of the Act, dt. 15th February, 1991, is valid, the notice issued under s. 16A of the Act on 1st October, 1991, is also valid because, it has been issued, after the reopening of the assessment proceedings.

7. For all the above reasons, we do not find any substance in the writ petition and we agree with learned single Judge that the petitioner could put forth all his objections before the AO and the AO shall deal with the objections of the petitioner, in accordance with law, after affording all statutory safeguards to him. The writ appeals are dismissed. However, there will be no order as to costs.