

(1983) 05 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 6098, 6099, 6126, 6127 and 6128 of 1977

K.G. Kemptur

APPELLANT

Vs

Second Wealth Tax Officer

RESPONDENT

Date of Decision : 30-05-1983

Acts Referred:

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

Citation : (1983) ILR (Kar) 711 : (1984) 146 ITR 611

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Puttaswamy, J.—As common questions of law arise for consideration in these petitions, I propose to dispose of them by a common order.

2. Sri. K.G. Kemptur of Hubli, petitioner in W. P. Nos. 6098 and 6099 of 1977, is the son of Sri K. Gururaj Bhat of Hubli, who is the petitioner in W.Ps. Nos. 6126, 6127 and 6128 of 1977, and they are assessed as individuals under the W.T. Act, 1957 (Central Act No. 27 of 1957) (hereinafter referred to as "the Act") on the file of the II WTO, Hubli Circle, Hubli (hereinafter referred to as "the WTO"), who is the common respondent in these cases.

3. For the assessment years 1973-74 and 1974-75, Kemptur filed his returns under the Act before the WTO, who on their examination, by his orders dated December 2, 1974 (Exs. J and L) making certain additions completed the assessments for the said years.

4. For the assessment years 1972-73, 1973-74 and 1974-75, Gururaj Bhat filed his returns before the WTO, who on the examination of them, by his orders dated November 6, 1974 (Exs. G, J and L), completed the assessment for the said years.

5. For the assessment years 1975-76, Kemptur and Gururaj Bhat filed their

separate returns before the WTO. On those returns, the WTO obtained a valuation report from the Valuation Officer of the Department u/s 16A of the Act, and, on that and all other relevant facts, has completed the assessments against them for the said year which are separately challenged by them in appeals under the Act and we are not concerned with their pendency or their result also.

6. But, on the basis of the report of the Valuation Officer, which is also the stand taken by the Revenue at the hearing, the WTO by his separate and identical notices dated November 23, 1976, and November 22, 1976, issued u/s 17 of the Act has called upon the petitioners to file their returns for the aforesaid years the validity of which are challenged by them in these separate but identical writ petitions under Article 226 of the Constitution on diverse grounds. But, at the hearing, their learned counsel, Sri G. Sarangan has confined their challenge to only one ground that will be noticed and dealt with hereafter.

7. Sri Sarangan has urged that the report of the Valuation Officer for the subsequent assessment year 1975-76 was nothing but an opinion of that officer or valuer as against the opinion of the WTO, who was also an expert valuer, and did not fall within the meaning of the term "in consequence of information" occurring in Section 17(1)(b) of the Act and the initiation of proceedings for the reassessments was without jurisdiction and illegal. In support of his contention, Sri Sarangan has strongly relied on several rulings that will be noticed and examined at the appropriate stage.

8. Sri K. Srinivasan, learned senior standing counsel appearing for the Revenue, has urged that the valuation report of the Valuation Officer u/s 16A of the Act was an information to justify reopening of assessments u/s 17(1)(b) of the Act. In support of his contention, Sri Srinivasan has strongly relied on the ruling of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, .

9. That a notice u/s 17 of the Act for reopening a concluded assessment can be interfered with by this court under Article 226 of the Constitution, if the same has been issued without jurisdiction or is barred by time or is issued by the authority without satisfying the conditions precedent for the same is well settled. But, it is also well settled that a notice for reopening a concluded assessment will not be examined by this court as if it is an appeal.

10. The term "in consequence of information" was found in Section 34(1)(b) of the Indian I.T. Act, 1922 (hereinafter referred to as "the 1922 Act") and is also found in Section 147(b) of the present I.T. Act, 1961 (hereinafter referred to as "the 1961 Act"). That has replaced the earlier Act.

11. In *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, , the Supreme Court interpreted the word "information" occurring in Section 34(1)(b) of the 1922 Act as to mean to include not only facts or factual material but to include also the information as to the true and correct state of the law". In *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, ,

the Supreme Court reiterating its earlier rulings interpreted the term "information" occurring in Section 147(b) of the 1961 Act as "instruction or knowledge derived from an external source concerning facts or particulars, or as to law, relating to a matter bearing on the assessment".

12. In *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, the Supreme Court while examining the question whether the opinion expressed by the internal audit party of the Income Tax Department, would constitute information as to law or fact, reiterated the principles stated in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa*, and *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, and further expressed thus (p. 1001):

"That definition has been reaffirmed in subsequent cases, and with it as the point of departure we shall now proceed.

In so far as the word "information" means instruction or knowledge concerning facts or particulars, there is little difficulty. By its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstance of its relevance. It requires no further authority to make it significant. Its quintessential value lies in its definitive vitality."

13. These meanings placed by the Supreme Court on the analogous provisions of the 1922 and 1961 Acts are also applicable to the term "information" occurring in Section 17(1)(b) of the Act and Sri Sarangan also did not dispute the same. Bearing this in mind, it is now necessary to examine the contention urged for the petitioners.

14. As pointed out by Viscount Simon, an acknowledged authority of all times on Income Tax law of England in *Gold Coast Selection Trust Ltd. v. Humphrey* [1949] 17 ITR 19 "valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible". In the very nature of things two persons agreeing on the valuation of any property or even two renowned experts agreeing on the valuation of one and the same property on a particular date or period is even difficult to expect. But from this it does not necessarily follow that there is no valuation of the property in dispute.

15. A Valuation Officer appointed u/s 16A of the Act, to whom a reference can be made by a WTO before completing his assessment, is a statutory authority under the Act. A valuation made by a Valuation Officer u/s 16A of the Act is binding on the WTO unlike a valuation made by a registered valuer. A WTO is bound to complete the assessment in conformity with the valuation of the Valuation Officer though the assessee is not precluded from objecting and challenging the same in appropriate legal proceedings.

16. That for the relevant assessment years, the WTO had not obtained the report of the Valuation Officer u/s 16A of the Act and had not, therefore, considered them, but had made his assessments on his own valuation or on the valuation of

another registered valuer, that the official valuer had made a valuation u/s 16A of the Act for the assessment year 1975-76 that was binding on him and the same had been received by him later and that is the basis for reopening the assessments are not in dispute.

17. A report of a Valuation Officer made u/s 16A of the Act, though the same contains the opinion of that officer cannot be characterised as a mere opinion of that officer. The contention of Sri Sarangan, though attractive at first sight and is even metaphysical, on closer examination, is devoid of merit. On any principle, it is not possible to hold that the report of the Valuation Officer is not an information as to a fact.

18. On the meaning found by the Supreme Court on the term "information", the report of the Valuation Officer u/s 16A of the Act is an information as to a fact on the basis of which it is open to the WTO to re-open the assessment on being satisfied with the conditions precedent for the same.

19. Assuming for purposes of argument that the report of the Valuation Officer u/s 16A of the Act was only an opinion of that person or officer, in such an event also, that would be a fact, within the meaning of that term occurring in Section 3 of the Indian Evidence Act, 1872, and the same would thus be an information as to a fact to confer jurisdiction u/s 17(1)(b) of the Act.

20. But Sri Sarangan with considerable vehemence urged that the aforesaid construction would result in reopening all assessments and endless enquiries and should, therefore, be avoided.

21. Firstly, this argument of despair cannot be a sound ground to place an unwarranted restriction on the construction of the Act. Secondly, the possibility of misuse is not also a ground to restrict the meaning of the term "information" and the power conferred by the Act. Lastly, all the legal presumptions to be applied in the enforcement of the Act militate against the acceptance of this contention. For all these reasons, I have no hesitation in rejecting this contention of Sri Sarangan.

22. In Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited, , in Acchut Kumar S. Inamdar Vs. P.R. Hajarnavis and Another, , in Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, and in Smt. Rajeshwari Birla Vs. Wealth Tax Officer, "H" Ward and Others, , relied on by Sri Sarangan, the precise question raised in these cases did not arise for consideration before the Supreme Court or the High Courts of Bombay and Rajasthan and, therefore, the ratio in those cases does not really bear on the point.

23. In Tulsidas Kilachand Vs. D.R. Chawla and Others, , on which great reliance was placed by Sri Sarangan, the facts were these ; (1) Tulsidas Kilachand filed his return under the Act for the assessment years 1966-67 to 1969-70 supported by a valuation made by one of the registered valuers. On an examination of those returns and accepting the valuation report of the valuer, the WTO

completed his assessment for the years on May 3, 1971 ; (2) on July 12, 1972, the Executive Engineer (Valuation) of the I.T, Department, Bombay, valued the properties and opined that the properties had been undervalued and on that report, the WTO issued notices u/s 17(1)(b) of the Act to reopen the assessments, the validity of which were challenged by the assessee before the High Court of Bombay on somewhat a similar ground and Pendse J. accepted the same in these words (p. 460):

"It was urged that, in view of the decisions of the Supreme Court in Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others, and in Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited, the mere change of opinion of the officer does not confer jurisdiction to reopen the assessment. In my judgment, the submission is sound and must be upheld. It is now well settled that the jurisdiction to reopen the assessment orders which have become final can be exercised provided the officer has reason to believe from information in his possession that the earlier orders escaped the net wealth chargeable to tax. Mere change of opinion of the succeeding officer is not enough and especially when before passing the assessment order the officer could have easily ascertained the correctness of the statements made in the return. In the present case, the only information available with the respondent No. 1 is a valuation report dated July 12, 1972, The mere fact that the two valuers have given conflicting reports about the true value of the properties is not sufficient to reopen the assessment u/s 17(1)(b) of the W.T. Act. In my judgment, the action of respondent No. 1, in the present case, is totally erroneous and respondent No. 1 has assumed jurisdiction illegally and irregularly. The two interim notices dated March 26, 1973, and February 4, 1974, required to be struck down. "

24. The one and the only reason given by his Lordship in this case is that mere change of opinion of the succeeding officer was not enough to reopen the assessment. If that is so, which is also the settled legal position, that is undoubtedly correct. But that is not the position in the present case. In these cases the WTO has proposed to reopen the assessments on the basis of an information as to a fact of the Valuation Officer under s. ISA of the Act, which I have earlier examined and held was an information as to a fact within the meaning of that term occurring in Section 17(1)(b) of the Act. In this view, the ratio in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, does not bear on the point.

25. Let me assume that the facts of these cases and the question that arises is similar to *Tulsidas Kilachand*'s case and examine the same on that basis.

26. Earlier, I have held that the rulings of the Supreme Court in *Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited*, , does not bear on the point. What I have said on *Simon Carves*" case is also true of *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, . But still Pendse J. has held that the ratio in those cases concluded the

contentions urged in Kilachand's case. With great respect to his Lordship, this does not appear to be correct.

27. The very reasoning on which I have held that the report of the Valuation Officer would constitute information as to a fact should also apply to hold that the latter report of the executive engineer that was not available and had not been considered, would also constitute information as to a fact. In this view also, with respect, I find it difficult to subscribe to the view expressed by Pendse J.

28. On the above discussion, I hold that the notices issued by the WTO for reopening the assessments on the basis of the report of the Valuation Officer does not suffer from an error of jurisdiction or manifest error of law justifying this court's interference under Article 226 of the Constitution. In this view, these writ petitions are liable to be dismissed. But, after issuing rule nisi, this court has stayed further proceedings before the WTO and, therefore, it is necessary to grant time to the petitioners to file their returns and objections before the WTO.

29. In the light of the above discussion, I dismiss these writ petitions and discharge the rule issued in all of them. But, the petitioners are granted 35 days' time from this day for filing their returns and objections before the WTO.

In the circumstances of the case, I direct the parties to bear their own costs.

30. Let this order be communicated to the respondent within 10 days from this day. Let a copy of this order be also furnished to Sri K. Srinivasan, senior standing counsel for the Income Tax Department, within the same time.