(1991) 04 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : C. W. Ps. No''s. 92 of 1979 and 174 of 1980

LILAWATI KAPOOR TRUST APPELLANT

Vs

WEALTH-TAX OFFICER AND ANOTHER. RESPONDENT

Date of Decision : 29-04-1991

Acts Referred:

Voluntary Disclosure of Income and Wealth Ordinance, 1975 — Section 15
Wealth Tax Act, 1957 — Section 14

Citation : (1992) 193 ITR 164 : (1992) 2 ShimLC 74

Hon'ble Judges : Devinder Gupta, J

Bench : Division Bench

Judgement

DEVINDER GUPTA J., - Since a common question of law has arisen for determination in these two writ petitions and as the parties are also the same, the decision of legal questions is also based upon similar facts, and therefore, the writ petition can conveniently be disposed of by a common judgment.

Smt. Lilawati Kapoor possessed considerable property. To safeguard the properties and to regulate their administration, a trust was created under a will executed by her. M. D. Kapoor was named as the executor who obtained probate of the will. The petitioners net wealth was of such an amount as to render it liable to wealth-tax under the provisions of the Wealth-tax Act, 1957 (Act No. 27 of 1957), hereinafter referred to as the "Wealth-tax Act". Neither did the petitioner file any voluntary return on or before June 30 of each corresponding assessment year for eight assessment years 1968-69 to 1975-76 nor had the Wealth-tax Officer issued any notice to the petitioner under sub-section (1) and sub-section (2), respectively, of section 14 of the Wealth-tax Act. On June 23, 1975, eight separate returns were filed by the petitioner. Proceedings for assessment on these eight returns could not take place and the matter remained pending with the Wealth-tax Officer. No notice as envisaged under sub-section (2) of section 16 of the Act was issued to the petitioner. Before any action could be taken in these returns, on October 8, 1975, the Voluntary Disclosure of Income and Wealth Ordinance, 1975 (Ordinance No. 15 of 1975) (hereinafter referred to as the "ordinance"), was promulgated. Taking advantage of the scheme contained in the Ordinance, the petitioner, on December 10, 1975, made a voluntary disclosure of wealth under sub-section (1) of section 15 thereof before the second respondent at Patiala for the eight assessment years in question for which the petitioner had earlier failed to furnish return u/s 14 of the Wealth-tax Act. A declaration was made in accordance with section 15 of the ordinance of the amount and extent of wealth in the eight returns which the petitioner had filed on June 23, 1975. Respondent No. 2 sent these eight declarations to the first respondent so as to enable him to make the same into account for the purposes of proceedings relating to the assessment of the net wealth of the petitioner under the Wealth-tax Act.

On December 2, 1975, the petitioner paid a sum of rupees 36,933 towards the wealth-tax liability in accordance with the disclosures made in eight declarations under sub-section (1) of section 15 of the Ordinance, receipts whereof were attached by it with the declarations. In addition thereto, the petitioner invested a sum of rupees 15,200 in securing bonds referred to in sub-section (3) of section 3 within the time specified in sub-section (4) of section 5 and calculated under sub-section (6) of section 15 of the Ordinance. According to the petitioner, it had complied with all the provisions contained in the Ordinance so as to enable it to take the benefit of the scheme envisaged under the Ordinance but when the matter came up for assessment before the first respondent on March 27, 1979, instead of assessing the petitioner in accordance with the provisions of the Ordinance and giving it the benefit thereof, the first respondent assessed it under the provisions of the Wealth-tax Act for the first seven assessment years 1968-69 to 1974-75 for which Rs. 72,868 was assessed as wealth-tax liability. In respect of the assessment year 1975-76, respondent No. 1, on December 26, 1979, passed an order assessing the petitioner under the provisions of the Wealth-tax Act instead of giving any benefit to it of the scheme under the Ordinance. The petitioner was assessed to wealth-tax for the assessment year 1975-76 at rupees 24,550. Feeling aggrieved, the petitioner filed two separate writ petitions. Civil Writ Petition No. 93 of 1979 with respect to the seven assessments for 1968-69 to 1974-75 challenging the order, annexure P-1, passed by the first respondent on March 27, 1979, and for the assessment year 1975-76 questioning the order, annexure P-1, in the said petition passed by the first respondent on December 26, 1979, in Civil Writ Petition No. 174 of 1980 with a prayer to declarations filed under sections 15 of the Ordinance and to make the assessment in accordance therewith. As, in the meanwhile, a penalty notice, annexure P-4, in C. W. P. No. 174 of 1980 had also been issued, the petitioner prayed for quashing the same in the said writ petition only.

The contention of the petitioner is that it had fully complied with the provisions of section 15 of the Ordinance by making a voluntary disclosure and benefit ought to have been given to it by making assessment under the provisions of the Ordinance instead of proceeding to assess it on the basis of the returns filed on June 23, 1975.

The writ petitions have been contested by the respondents by filing reply on the affidavit of the Wealth-tax Officer, A-Ward, Shimla, by contending that, though the petitioner did not file any return under sub-section (1) of its wealth by June 30 in every assessment year and no notice was issued under sub-section (2) of section of 14 of the Wealth-tax Act, the petitioner did, on June 23, 1975, file the returns for the assessment years in question which have to be treated as returns filed under sub-section (1) of section 14 of the Act. Therefore, in view of clause (a) of sub-section (1) of section 15 of the Ordinance, the petitioner was not entitled to the benefit of the scheme contained in the Ordinance.

We have heard learned counsel for the parties and gone through the records.

Sub-section (1) of section 14 if the Wealth-tax Act requires every person, if his net wealth on the valuation date was of such an amount as to render him liable to wealth-tax under the provisions of the Wealth-tax Act, to furnish to the Assessing Officer before June 30, of the corresponding assessment year a return setting forth the net wealth as on the valuation date. Sub-section (2) thereof empowers the Assessing Officer to serve a notice upon a person who, in his opinion, is assessable under the Wealth-tax Act requiring him to furnish a return disclosing the net wealth as on the valuation date. It is the admitted case of the parties that, for the eight assessment years in question, the petitioner did not furnish any return on or before June 30 of the corresponding assessment years and that no notice under sub-section (2) of section 14 of the Wealth-tax Act was served by respondent No. 1 upon the petitioner calling upon it to file returns for the assessment years in question. According to the petitioner, returns filed by it on June 23, 1975, were in accordance with the provisions of section 15 of the Wealth-tax Act which provide that, if any person had not furnished a return under the section, discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made. According to the respondents, the returns filed by the petitioner on June 23, 1975, were the returns which the petitioner had not furnished within the time allowed u/s 14 and, therefore, the sane having been filed u/s 15 of the Wealth-tax Act, will be deemed to have been filed, though late, under sub-section (1) of section 14 of the Wealth-tax Act.

It is also not in dispute that no proceedings u/s 16 of the Wealth-tax Act had taken place after the petitioner had submitted returns on June 23, 1975. Neither was the petitioner served with a notice under sub-section (2) of section 16 requiring it to appear before the first respondent, nor was any notice under sub-section (4) of section 16 served for production of records. Before any action could be taken on the returns filed on June 23, 1975, the Ordinance was promulgated on October 8, 1975. The Ordinance, in fact, was a scheme announced by the Government for voluntary disclosure of undisclosed income and wealth tax in past, to declare their undisclosed income and wealth and to pay tax thereupon on a reasonable basis and to return to the path of civic responsibility in future. A press note issued simultaneously on the promulgation of the Ordinance dated October, 8, 1975, contained various particulars of the scheme and the background in promulgating the Ordinance. The Ordinance provided that the scheme for voluntary disclosure would apply only in relation to declarations made during the period from October 8, 1975, to December 31, 1975. The aforementioned press note contained various details of making declaration, particulars required to be furnished and the concessions and immunities available to the declarants.

The Central Board of Direct Taxes, on October 15, 1975, issued Circular No. 180 [1975] 101 ITR 88 giving Explanatory Notes on the provisions of the Ordinance.

The Ordinance had made three different provisions, namely, provisions relating to voluntary disclosure of income, provisions relating to declaration of income in cases of search of search and seizure and provisions relating to voluntary disclosure of net wealth or assets. The relevant provisions under the Ordinance with which we are concerned, namely, voluntary disclosure of wealth, is concerned in section 15, the relevant portion of which may be quoted as under (see Commissioner of Income Tax Vs. Nawab Musharaf Hossain, :

"15. Voluntary disclosure of wealth. - (1) Subject to the provisions of this section, where any person makes, on or after the date of commencement of this Ordinance but before the first day of January, 1976, a declaration in respect of -

(a) the net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return u/s 14 of the Wealth-tax Act; or

(b) the value of the assets which has not been disclosed, or the value of the assets which has been understated, in any return of net wealth for any assessment year....

Provided that -

(i) Nothing in clause (a) shall apply in relation to the net wealth assessable for any assessment years for which a notice u/s 14 or section 17 of that Act has been served upon the declarant before the commencement of this Ordinance.

The reading of the aforementioned provision would show that the person seeking to take advantage of the scheme was required to make a declaration on or before January 1, 1976, with respect to the net wealth chargeable to wealth-tax for any assessment year for which he had failed to furnish a return u/s 14 of the Wealth-tax Act. After such a return had been filed, notwithstanding anything contained in the Wealth-tax Act, the net wealth or the value so declared was not to be taken into account for the purposes of any proceedings relating to imposition of penalty on the person making the declaration subject, however, to a condition that such a person was not served with any notice u/s 14 or section 17 of the Wealth-tax Act. In the instant case, as observed in the earlier part of the judgment, neither had the petitioner filed any returns under sub-section (1) of section 14 nor was a notice issued to it by the first respondent under sub-section (2) of section 14 of the Wealth-tax Act. Returns file on June 23, 1975, were not in pursuance of any notice issued by respondent No. 1. No action had been taken on such returns, nor had any notice as provided in sub-section (2) of section 16 or as provided in section 17 of the Wealth-tax Act has been issued to the petitioner. The requirement of section 15 of the Ordinance is that a person seeking to take advantage thereof should have failed to furnish a return u/s 24 of the Wealth-tax Act. Since no return had been filed on or section 14 of the Wealth-tax Act. Since no return had been filed on or before June 30 of the corresponding assessment year, the returns filed on June 23, 1975, cannot be taken to be returns filed u/s 14 of the Wealth-tax Act. A return can be said to have been furnished u/s 14 of the Wealth-tax Act, as required by section 15 of the Ordinance, provided it was submitted in the prescribed manner setting forth the net wealth on or before June 30 of the corresponding assessment year. In case, no such return was filed before June 30 of the corresponding assessment year, then it cannot be said that the return filed subsequently was u/s 14 of the Wealth-tax Act. Any declaration of the assets or wealth not made in pursuance of a notice issued under sub-section (2) of section 14 of the Act is not the declaration referred to in clause (a) of sub-section (1) of section 15 or in clause (1) of the proviso to sub-section (1) of section 15 of the Ordinance. A reading of clauses 26 and 27 of the circular, which are reproduced below, will make the position very clear (see [1975] 101 ITR 88 :

"26. Wealth, etc., which can be declared. - u/s 15 (1) of the Ordinance, a person can make a declaration in respect of -

(a) the net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return u/s 14 of the Wealth-tax Act, 1957, provided no notice under that section or u/s 17 has been served on him before the 8th October, 1975, for furnishing the return of net wealth for that year; or

(b) the value of the assets which has not been disclosed, or the value of the assets which has been understated, in any return of the net wealth for any assessment year.

The provisions of clause (b) above will not, however, apply in relation to so much of the value of assets as has been assessed in any assessment for the relevant assessment year made by the Wealth-tax Officer before the date on which the declaration is made.

27. Immunity provided in respect of declared net wealth, etc. - The net wealth or, as the case may be, the value declared in a declaration u/s 15 (1) of the Ordinance will not be taken into account for the purposes of any proceedings relating to imposition of penalty on the person making the declaration or for the purposes of his prosecution under the Wealth-tax Act, 1957. This immunity is conditional on the fulfillment of the conditions regarding payment of wealth-tax on the amount declared and the investment of the requisite amount in notified government securities. The relevant provisions contained in this behalf in the Ordinance have been explained in paragraphs 28, 19 and 31 of this Circular."

Rule 5 of the Voluntary Disclosure of Income and Wealth Rules, 1975, which was published in the Gazette of India on October 8, 1975, provide for the form of declaration to be made u/s 15 of the Ordinance in respect of net wealth or valuation of assets not disclosed or understated. It further provides that the declaration shall be made in Form C appended to the rules which contains Note No. 2 in the following terms (see [1975] 101 ITR 99:

"Notes :...

2. A declaration u/s 15 (1) of the voluntary Disclosure of Income and Wealth Ordinance, 1975, cannot be made in relation to net wealth assessable for any assessment year for which a notice u/s 14 or section 17 of the Wealth-tax Act, 1957, has been served on the declarant before October 8, 1975."

Since it is not the case of the respondent that any notice u/s 14 or 17 of the Wealth-tax Act had been issued to the petitioner and since the returns filed u/s 14 of the Wealth-tax Act, it has to be held that the petitioner had failed to furnish returns for the assessment years in question u/s 14 of the Wealth-tax Act. In view of this, the net wealth or the value declared by the petitioner u/s 15 of the Ordinance on December 10, 1975, was not required to be taken into account for the purposes of any proceedings relating to imposition of penalty. By having issued the Ordinance, what was required was to encourage those persons who had evaded undisclosed wealth and to pay tax thereon. For this purpose, the scheme contained in the Ordinance provided an inducement in the form of waiver of penalty. The provisions contained in the Ordinance, as such, have to be liberally construed. The respondents have to tried to put a very narrow construction which is not supported by the scheme. A part of the Press Note issued on October 8, 1975, as quoted below, will be helpful in support of our holding that the provisions of the Ordinance were required to be construed liberally (see [1975] 101 ITR 84) :

"Voluntary Disclosure of Income and Wealth Ordinance, 1975 : Press Note dated October 8, 1975.

The Government today announced a Scheme for Voluntary Disclosure of undisclosed income and wealth through a Presidential Ordinance.

The Scheme offers an opportunity to person who have evaded tax in the past to declare their undisclosed income and wealth, pay tax thereon on a reasonable basis and return to the path of civic responsibility in future. Simultaneously, it will enable the channelisation of black money secreted by tax evaders into produce fields in the overall interest of the economy. A special feature of the Scheme is that five per cent. of the disclosed income will be spent on projects of high social priority like slum clearance and housing for low income groups.

The benefit of the Scheme will not be available in the case of smugglers and foreign exchange racketeers who have been detained or for whose detention orders have been issued under the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974. The Scheme will also have a restricted operation in the case of persons whose books of account or documents or valuable assets have been seized as a result of search and seizure made by the Income Tax Department.

While formulating the Scheme, Government have taken note of the all round awareness of the risk of tax evasion created by the recent drive against economic offenders and the wide powers given to Income Tax authorities under the Taxation Laws (Amendment) Act, 1975, and except that those with undisclosed income and wealth will take advantage of the Scheme."

In view of the above, we allow the writ petition and quash the order, annexure P-1, dated March 28, 1979, in C. W. P. No. 93 of 1979 and the demand created therein, order annexure P-1 dated December 26, 1979, along with the demand created thereunder as well as penalty notice, annexure P-4, in C. W. P. No. 174 of 1980 and to direct the respondents give effect to the declaration made by the petitioner u/s 15 of the Ordinance.

In view of the quashing of the orders, a fresh order may be passed by respondent No. 1 in accordance with law for the assessment years in question after giving full effect to the declarations made by the petitioner under the provisions of section 15 of the Ordinance. Parties are left to bear their own costs.

