

(1983) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 27 of 1982

Lokendra Singh Rathore

APPELLANT

Vs

Wealth-tax Officer, 'A' Ward and Another

RESPONDENT

Date of Decision : 07-12-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 17(1)

Citation : (1985) 153 ITR 466 : (1985) 23 TAXMAN 496

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.—This a petition under Articles 226 and 227 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows : The petitioner owned 203 bighas of agricultural land situated in village Dosigaon in Ratlam District and 168 bighas of BIR situated in village Morwani. While submitting his return for wealth-tax for the assessment year 1970-71, the petitioner declared the value of the aforesaid agricultural land and BIR at Rs. 70,820 as on March 31, 1970, which was the relevant valuation date for the assessment year 1970-71. The petitioner contends that the valuation was declared by him on the basis of the report of an approved valuer. The valuation was accepted by the Department and the assessment of the petitioner to wealth-tax for the assessment year 1970-71 was made on the basis of that valuation. For the assessment year 1971-72, the valuation of the land in question made by the petitioner on the basis of the valuation made for the assessment year 1970-71 was accepted by the Department. On August 16, 1971, the petitioner sold 168 bighas of BIR for Rs. 16,000, and on March 15, 1972, the petitioner sold 150 bighas of agricultural land for Rs. 30,000. As the petitioner was left only with 53 bighas of agricultural land for the assessment year 1972-73, after deducting the sale price of the land sold as aforesaid, the valuation of the remaining land was made by the petitioner, on the basis of the valuer's report.

That valuation was accepted by the Department and the order of assessment was passed on January 17, 1973. For the assessment year 1973-74 also, the petitioner declared 53 bighas of agricultural land in his return of wealth-tax and declared the valuation at Rs. 24,872 on the basis of the valuation declared for the assessment year 1972-73. That valuation was accepted by the WTO who completed the assessment and passed the order of assessment on December 28, 1973. Thereafter, on March 23, 1981, notices were served by respondent No. 1, the WTO, on the petitioner u/s 17 of W.T Act, 1957 (hereinafter referred to as "the Act)", for reopening the assessments of the petitioner for the assessment years 1972-73 and 1973-74. The petitioner contends that he had disclosed fully and truly all the primary facts necessary for the assessments in question and, therefore, respondent No. 1 had no jurisdiction to issue the notices for reopening the assessments.

3. In the return filed on behalf of the respondents it was stated that initially when the returns were filed for the assessment years in question, the Department did not enter into the question of valuation of the land and the assessment orders were passed. It is contended that there was failure and omission on the part of the petitioner in disclosing the value of the agricultural land fully and truly and hence the impugned notices are not without jurisdiction. Along with the return a copy of the order passed by the WTO recording reasons for reopening the assessment has been filed and in that order, it is stated that as the value shown by the assessee was too low on account of omission and failure on the part of the assessee to disclose material facts, the petitioner was underassessed.

4. A question similar to the one arising in this case came up for consideration before a Division Bench of this court in *Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another*, . In that case, it was observed that (p. 183) :

"It was not disputed that prior to the assessment years in question the petitioner had disclosed the value of her lands on the basis of the report of the approved valuer and the same was accepted by the WTO. In the assessment years in question, therefore, she declared the same value after making deductions due to sales of parts of the land. She, therefore, declared the value on the basis of her earlier valuation and had also disclosed the fact about sales of parcels of the land during previous years relevant to assessment years in question. If the WTO doubted the correctness of the valuation, it was open to the Department to get the same valued by its own valuer or to have recorded evidence about the real market value of the lands on the valuation date. Section 17(1)(a) of the W.T. Act does not empower the Revenue to reopen the final assessment even though by oversight, carelessness or inefficiency on the part of its officer, proper investigation was not carried out though all the primary facts which the assessee was required to place before him had been so placed. This is the considered view of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, , *Gemini Leather Stores Vs. The*

Income Tax Officer B Ward, Agra and Others, and Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, .

As the assessee had placed all the primary facts before the WTO for the assessment years in question with regard to the value of the agricultural land, there was no failure on her part which would entitle the WTO to take recourse to Section 17(1)(a) of the Act for reopening the assessments."

5. Learned counsel for the Department was unable to point out as to why the ratio of the aforesaid decision would not be attracted in this case. In view of the aforesaid decision, it must be held that the petitioner having placed all the primary facts before the WTO with regard to the value of the agricultural land, recourse to Section 17(1)(a) of the Act by the WTO for reopening the assessments in question was not justified.

6. The petition is, therefore, allowed and notices issued by respondent No. 1, the WTO, u/s 17 of the Act for reopening the assessment for the assessment years 1972-73 and 1973-74 (annexures F and F-1), are quashed. In the circumstances of the case, the parties shall bear their own costs of this petition.

7. The outstanding amount of security deposit, if any, to be refunded to the petitioner.