
(1985) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 176 of 1983

Lokendra Singh Rathore

APPELLANT

Vs

Wealth-tax Officer and Another

RESPONDENT

Date of Decision : 30-01-1985

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 17(1), 5(1)

Citation : (1986) 51 CTR 60 : (1985) 155 ITR 629 : (1986) 27 TAXMAN 515

Hon'ble Judges : R.K. Varma, J;P.D. Mulye, J

Bench : Division Bench

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

Judgement

Mulye, J.—The petitioner, who is an ex-ruler of erstwhile Ratlam State in Madhya Bharat, has filed this petition under Articles 226 and 227 of the Constitution of India in the matter of proceedings for reopening of assessment u/s 17 of the W.T. Act, 1957 (No. 27 of 1957), for the assessment year 1974-75.

2. Facts giving rise to this petition, material for the decision of the case, may be stated in brief thus : The petitioner, who owns movable and immovable properties, has been submitting his wealth-tax returns according to the provisions of the W.T. Act. The assessment year involved in the present petition is 1974-75. In his wealth-tax returns, the petitioner gave all the necessary details about the property held by him as also the sales effected regarding some of those properties. The assessment regarding computation of wealth based on wealth as on March 31, 1974, for the, assessment year 1974-75 was made as per annexure-F and annexure-G dated March 16, 1979, as in the past. In all these assessments, the petitioner has shown Ranjit Vilas Palace, popularly known as old palace, Ratlam, of which he is the owner and in possession, as exempted from wealth-tax by virtue of provisions of Sub-clause (iii) of Sub-section (1) of Section 5 of the said W.T. Act, which relates to any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by

virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions) Order, 1950.

3. Thereafter by annexure-H dated November 27, 1981, respondent No. 1 sent a notice u/s 17 of the W.T. Act for reopening the assessment for the year 1974-75 on the ground that he had reason to believe that the net wealth chargeable to tax for the assessment year 1974-75 had escaped assessment. The petitioner submitted his reply to the said notice, vide annexure-H dated December 13, 1982, by which he sought the necessary information to apprise him as to which item of wealth has escaped assessment to tax or had been under assessed so that he could meet the requirements of the notice. The petitioner by his subsequent letters dated December 16, 1982--annexure-I--and December 27, 1982--annexure-J--requested the WTO to supply the reasons for the reopening of the completed assessment but no reply was received. The petitioner has, therefore, filed the present petition to quash the notice dated November 27, 1981, annexure-H, issued u/s 17 of the W.T. Act.

4. According to the petitioner, the notice for reopening the assessment was wholly without jurisdiction. Further, according to the petitioner, presumably the first respondent had purported to reopen the assessment for the assessment year in question on the basis of a report of the audit party regarding the valuation and that the proposed action of reassessment cannot be justified u/s 17(1)(b) of the W.T. Act for which the period of limitation is four years from the end of the assessment year, which had already expired when the said notice was issued and thus there was bar of limitation.

5. The respondents in their returns have contended that the petition is premature as at this stage only a notice has been issued and no action as such has been taken ; that the petitioner has alternative remedies available under the said Act in which there is a provision for appeal before the CWT (Appeals) and thereafter further appeal before the Income Tax Appellate Tribunal. It is further contended that the notice for reopening u/s 17(1)(a) of the W.T. Act for the assessment year 1974-75 was issued not because of difference in valuation of agricultural lands as he apprehended, but the assessee had gifted 9,066 sq. ft of land outside the compound of Ranjit Villas Palace in the assessment year 1977-78. According to the respondents, as this land is situated outside the compound-of the palace, it was not exempted u/s 5(1)(iii) of the W.T. Act. The assessee did not include this asset in the return of net wealth nor was it assessed. Therefore, by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of his net wealth chargeable to tax, the value of the above property has escaped assessment and accordingly notice u/s 17(1)(a) to assess the escaped wealth was issued. It is further submitted that the respondents were not bound to communicate the reasons to the assessee but respondent No. 1 before issuing the notice recorded the reasons on November 27, 1981 (annexure-AA), which

have been furnished to this court along with the returns. The reason to believe is that the assessee gifted 9,066 sq. ft. of land outside the compound of Ranjit Vilas Palace in the previous year relevant to the assessment year 1977-78, and as this land is situated outside the compound of the palace, it was not exempt u/s 5(1)(iii) and that the assessee did not include this asset in the returns of net wealth nor was it assessed. That the value of the said (land 9,066 sq. ft.) as on the valuation date is estimated at Rs. 1,95,000 taking into account the fact that the Department Valuation Cell has estimated the value at the time of gift in 1977-78 assessment at Rs. 2,26,680. Thus, according to the respondents, notice u/s 17 of the Act was issued under Sub-section (1)(a) of Section 17 which provides a limitation of eight years and not u/s 17(1)(b) for which the limitation prescribed is four years.

6. The petitioner after the filing of the returns has submitted a rejoinder affidavit dated February 8, 1984, enclosing therewith the copy of the registered sale deed dated June 22, 1976 (annexure-K), along with the enclosures including the map, copy of his reply dated September 21, 1981 (annexure-L) and copy of the reply dated April 7, 1980 (annexure-M), received from the Municipality of Ratlam by the purchasers of the sale deed (annexure-K).

7. In the said affidavit, it has been averred that there was not any separate parcel of land admeasuring 9,066 sq. ft. belonging to the assessee situated outside the compound of the Ranjit Vilas Palace that as an ex-Ruler of the Ratlam State, the entire Ranjit Vilas Palace was exempt from wealth-tax u/s 5(1)(iii) of the W.T. Act, which exemption has been claimed in the returns for wealth-tax year after year and has been allowed; that by sale deed dated June 22, 1976 (annexure-K), the assessee sold a part of the land adjoining the palace and forming part thereof admeasuring 1,72,138 sq. ft to four persons at the rate of Rs. 3.50 per sq. ft. for a total price of Rs. 6,02,483. This land was enclosed on one side by the wall (parkota) of the palace which had projecting towers (boorj). The said purchasers also desired that the strip of land lying along the parkota between the projecting towers admeasuring in all 9,066 sq. ft. also is a part of the palace land and should be conveyed to them along with the land sold. The petitioner-assessee made it clear in the sale deed itself that the strip of land though lying between the projecting towers (boorj) is outside the (parkota) wall and he cannot guarantee any title to the said land as a part and parcel of the Ranjit Vilas Palace. However, since the purchasers were prepared to take a chance even without any warranty of title and holding the vendor free from any obligation in respect of the same, the petitioner agreed to convey the said strip of land without charging any price therefor. This has been specifically mentioned in para. V(a) of the schedule to the sale deed as also the map enclosed therewith. Therefore, according to the petitioner, the said land is not any separate land lying outside the Ranjit Vilas Palace, but is really a part of the land of the palace lying along the parkota and situated between the projecting towers which have spread on all sides of the palace and this land was conveyed as forming part of the palace without any warranty of title and without charging any

price for the same. Therefore, there was no question of showing this land in the wealth-tax return for assessment year 1974-75 as belonging to the assessee apart from Ranjit Vilas Palace; that when the part of the land was sold as aforesaid by the sale deed dated June 22, 1976, the sale proceeds were subjected to capital gains in the hands of the assessee in the Income Tax return for the assessment year 1977-78 and the sale deed was also produced; that the ITO who is also the WTO was thus fully aware of the position and he had raised no objection in regard to the land of 9,066 sq. ft. referred to above, which is mentioned in the sale deed. It is further stated in the affidavit that the petitioner has no independent title to the said 9,066 sq. ft of land and thus there is no omission or failure on his part in not disclosing the said land in the wealth-tax returns for the assessment year 1974-75.

8. The learned counsel for the petitioner submitted that it is not in dispute that u/s 5(1)(iii) of the W.T. Act, Ranjit Vilas Palace is exempt from wealth-tax. He, therefore, submitted that if the said land is treated as a part and parcel of the palace, then obviously he is exempted in respect of that land also and, therefore, there is no question of omission or failure on the part of the assessee in any way. In the alternative, he also submitted that the situation of the palace is such that on the corners of the palace, the boorjs are projecting ; that in between the two boorjs which is just outside the compound wall on one side, this open land is lying as also on the other side, and just adjoining to this land is the road. He, therefore, submitted that the petitioner not being sure about his title in respect of this land has made his position clear in the sale deed and, therefore, even on that count, the WTO, without making any prima facie enquiry, should not have issued the notice u/s 17 of the said Act to reopen the assessment.

9. The learned counsel further submitted that the WTO had no reason to believe that the petitioner has omitted or failed to include the above-said piece of land in his wealth-tax returns. The learned counsel further submitted that in the face of the clear-cut terms of the sale deed, if the WTO had any doubts, he ought to have at least made a preliminary enquiry from the purchasers of the land or some other enquiry, on the basis of which prima facie he could come to the conclusion that he had reason to believe that this is a case of escaped assessment. But, as in the past, he has issued the notice in a mechanical manner for which there was no justification and in support of his submissions placed reliance on the decisions in Lokendra Singh Vs. Income Tax Officer and Another, ; Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another, as also the decision in Misc. Petition No. 27 of 1982 [Lokendra Singh Rathore Vs. Wealth-tax Officer, "A" Ward and Another,], decided by a Division Bench of this court on December 7, 1983.

10. On the other hand, the learned counsel for the Revenue submitted that at present the WTO has only issued notice and no further action having been taken, it was for the assessee to satisfy the WTO that there is no question of escaped assessment. He, therefore, submitted that this court cannot go into the

sufficiency or adequacy of the material and substitute its own opinion for that of the WTO on the point as to whether action should be initiated for reopening the assessment. According to the learned counsel, when in the sale deed, annexure-K, though the petitioner may not have sold the land in question for consideration, at least it is apparent that he has gifted the same treating it to be his own and consequently there is a prima facie case on the basis of the sale deed to indicate that the land in question belongs to the petitioner and this piece of material was sufficient as a good reason for the belief of the WTO. In support of his submissions, the learned counsel placed reliance on the decisions H.A. Nanji and Co. Vs. Income Tax Officer, "A" Ward and Others, ; Grahams Trading Co. (India) Ltd. Vs. Income Tax Officer, Central and Others, ; Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and Raj Bahadur Bhatnagar Vs. Commissioner of Income Tax, . The learned counsel, therefore, submitted that if the WTO had the jurisdiction to issue the notice, it is not for this court to interfere therewith in exercise of the writ jurisdiction nor has it to find out whether there was sufficiency or not for issuing the said notice.

11. After hearing the learned counsel and after considering the facts and circumstances of the case as also the case law cited, we are of the opinion that this petition deserves to be allowed for reasons stated hereinafter. It is not in dispute that the Ranjit Vilas Palace has been exempted from the provisions of the W.T. Act, according to Section 5(1)(iii) of the said Act. It is also not in dispute that this place also includes certain open lands. It is also not in dispute that on the four outer corners of the palace there are boorjs which are protruding on the street and that in between the two boorjs lies an open strip of land and it is this land which is situated in between the two boorjs parallel to the above wall of the palace that the petitioner treated as a part and parcel of the palace. But as he was not sure about the same, he has made a specific mention to that effect in the sale deed. In these circumstances, in our opinion, it was necessary for the WTO to make a prima facie enquiry as to whether in fact there are grounds for him to believe that the petitioner has omitted or failed to mention this land in the wealth-tax returns in that assessment year. In the Supreme Court decision in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, which was a case under the provisions of Section 147(a) of the I.T. Act, 1961, similar to those under the provisions of Section 17 of the W.T. Act, it has been held that :

" the reason for the formation of the belief..... for the reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. At the same time we have to bear in mind that it not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from the assessment."

12. Therefore, for taking action under this section, the WTO must have reason to believe that property has escaped assessment. Assessment in this context would refer to the entire process of computing the principal value and making an assessment. The expression used is "reason to believe" and not "reason to suspect". Action can be taken only when there is an honest and reasonable presumption based on reasonable grounds and not mere guess, gossip, suspicion or rumour. There should be a direct link or nexus with the information or material with the officer and the formation of the belief as to the escapement of net wealth in a particular assessment year. It is no doubt true that while the existence of grounds for such reason is necessary to give jurisdiction to the Taxing Officer, the adequacy of the grounds is not a matter for the court to go into. But the WTO cannot institute fresh enquiries with the object of finding out facts entitling him to reopen the assessment. Action under this section does not lie where the WTO merely changes his opinion. The word "belief" is a stronger word for which there should be some rational basis.

13. Annexure-AA filed on behalf of the respondent also does not indicate that the WTO had applied his mind carefully while reducing his reasons to believe in writing, but the same has been done in a mechanical manner merely on the basis of certain averments made in the sale deed which have also been apparently clearly explained therein. From the correspondence on record with the Municipality, Ratlam, relating to this land in question about which both parties have placed copies of documents on record, it would also appear that there is a bona fide dispute regarding this strip of land and, therefore, the petitioner never claimed the same to be his own as such in executing the sale deed annexure-K, though it was also urged that if this land is treated as part and parcel of the palace, then obviously that land is also exempted u/s 5(1)(iii) of the W.T. Act.

14. We are, therefore, of the opinion that the WTO has issued the said notice in a mechanical manner without applying his mind in a rational way in order to come to a prima facie conclusion that he had reason to believe that there has been a deliberate omission or failure on the part of the assessee which would require issuance of such a notice as contemplated by Section 17 of the said Act as per annexure-AA.

15. In the result, this petition succeeds and is allowed, with no order as to costs. The notice issued u/s 17 of the W.T. Act, annexure-H dated November 27, 1981, by respondent No. 1, the WTO, Ratlam, is quashed. The outstanding amount of security deposit be returned to the petitioner in person on verification.