
(1979) 03 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 89 of 1979

M.C. Khunnah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 16A(4), 16A(5), 16A(6)

Citation : (1979) 118 ITR 414 : (1980) 3 TAXMAN 288

Hon'ble Judges : Yashoda Nandan, J;A.N. Varma, J

Bench : Division Bench

Advocate : Raja Ram Agarwal, for the Appellant; R.K. Gulati and Ashok Gupta, for the Respondent

Judgement

Yashoda Nandan, J.—This petition under Article 226 of the Constitution was dismissed by us in limine by our order dated 15th February, 1979, wherein we stated that we shall give our reasons in support of the order subsequently and we are proceeding to do so.

2. The petitioner is an assessee under the Wealth-tax Act--hereinafter referred to as "the Act"--for the assessment years 1972-73 to 1976-77. He filed his returns for the aforesaid assessment years and declared the value of three of his immovable properties consisting of land and buildings at Rs. 3,24,509. One of the three items of the properties disclosed by him in his return was Luxmi Building, 16/103, M.G. Marg, Kanpur. The WTO (respondent No. 3) passed an order making a reference for valuation of the aforesaid property to respondent No. 2, who is Valuation Officer I, income tax Department, Kanpur. The remaining two properties were referred for valuation to separate Valuation Officers and we are not concerned in this petition with those properties. Respondent No. 2 issued a notice dated 26th November, 1975, to the petitioner requiring him to show cause as to why the said property be not valued at Rs. 15,50,000. In pursuance of the notice under Sub-clause (4) of Section 16A of the Act, the petitioner

preferred objections on the 15th January, 1976. It is alleged that respondent No. 2 while hearing the objections asked the petitioner to return the notice issued by him dated 26th November, 1975, and assured him that he was satisfied with the objections raised by him and that he would accept the valuation of the authorised valuer, A.T. Patel, which the petitioner had filed along with his return. It is claimed, on the assurance of respondent No. 2, the petitioner returned to him the notice dated 26th November, 1975. Subsequently, a notice dated 1st June, 1977, was served on the petitioner by respondent No. 2 requiring him to show cause why the same property be not valued at Rs. 18,09,000. On the 18th July, 1977, the petitioner submitted a detailed reply in response to the notice and it is claimed that he filed further additional objections on later dates. After hearing the petitioner, respondent No. 2 submitted a report dated 18th September, 1977, to respondent No. 3 valuing the property at Rs. 18,09,000, the amount mentioned by respondent No. 2 in the notice dated 1st June, 1977. By means of an application dated 13th December, 1978, addressed to the WTO (respondent No. 3) the petitioner requested that an opportunity may be given to him to explain his objections before the Valuation Officer as the matter, according to him, was of a technical nature and the Valuation Officer had erred in valuing the property. On the 10th August, 1978, the petitioner submitted before the WTO a detailed objection to the report of the Valuation Officer. By means of a communication dated 14th December, 1978, respondent No. 3 informed the petitioner that the prayer made in his application dated 13th December, 1977, could not be acceded to because it would amount to referring back the case to the Valuation Officer. In this communication, the WTO expressed the opinion that no such fresh reference could be made to the Valuation Officer under the existing provisions of the Act. On the 24th January, 1979, the petitioner again filed an objection to the report of the Valuation Officer and while challenging the report made a request that he may be allowed to cross-examine respondent No. 2 so that the correct facts may be brought to the notice of respondent No. 3. It is alleged that till the date of the presentation of the petition in this court respondent No. 3 has not passed any orders and in any event had not communicated to the petitioner the result of his application dated 24th January, 1979, requesting for an opportunity to cross-examine respondent No. 2. On the allegations mentioned above, the petitioner has prayed for a writ, order or direction in the nature of certiorari quashing the notice issued to him dated 1st June, 1977, and the order of respondent No. 3 dated 14th December, 1978, declining to refer back the matter to the Valuation Officer,

3. The basic contention of the learned counsel for the petitioner in support of this petition is that having once issued a notice in exercise of powers u/s 16A(4) of the Act estimating the valuation of the property at Rs. 15,50,000 only, it was not open to respondent No. 2 to issue the second notice dated 1st June, 1977, requiring the petitioner to show cause as to why the property be not valued at Rs. 18,09,000.

4. The question consequently arising for consideration is as to whether even

though no order as contemplated by Sub-section (5) of Section 16A of the Act had been passed by the Valuation Officer he ceased to have jurisdiction to modify the earlier provisional estimate made by him and disclosed in the notice issued under Sub-section (4). The Valuation Officer derives jurisdiction to give a report under Sub-section (5) not by virtue of the notice issued by him under Sub-section (4) of Section 16A but as a consequence of the reference made to him by the WTO and continues to have jurisdiction to act on the basis of such a reference till such time as he has submitted a report under sub- Section (5). It is only after he has submitted a report under Sub-section (5) that he becomes functus officio. The notice issued to the assessee under Sub-section (4) is only a provisional estimate by the Valuation Officer and as long as he is seized of the proceedings, we see no compelling reason to hold that he cannot withdraw an earlier notice and issue a fresh notice disclosing a different provisional estimate of the property. No principle of res judicata, estoppel or other legal principle in our opinion acts as a bar to his doing so. All that the assessee is entitled to is a notice disclosing the proposed estimate so that he may be able to controvert the estimate and establish that the valuation given by him in his own return is correct. When the Valuation Officer withdraws an earlier notice and issues a fresh one containing a different provisional estimate no prejudice is caused to him and he is in no fashion embarrassed in establishing that the valuation disclosed in his own return is correct.

5. As far as the impugned order of the WTO is concerned, in our opinion, no exception can be taken to its legality. Respondent No. 2 had given his valuation report in accordance with Sub-section (5) of Section 16A of the Act on the 8th September, 1977. He ceased to have any jurisdiction after that date to review that report. There is no provision empowering the WTO to make a second reference to the Valuation Officer which might necessitate the Valuation Officer reopening the proceedings before him and reviewing his report already submitted.

6. The only other contention raised in support of this petition was that the WTO had acted illegally and in disregard of the principles of natural justice in not affording the petitioner an opportunity of cross-examining the Valuation Officer. As already stated under Sub-section (6) of Section 16A, the WTO has no option but to pass an order in conformity with the valuation report submitted by the Valuation Officer. Assuming that in cross-examination the petitioner could have succeeded in establishing the valuation report to be incorrect, it still would not have been open to the WTO to disregard the estimate of the valuation given by respondent No. 2 in his report. No useful purpose consequently would have been served by the WTO permitting cross-examination of respondent No. 2 in the proceedings before him.

7. There is yet another reason why the petition must fail. The WTO has no option but to accept and give effect to the valuation report of the Valuation Officer but the assessee in his appeal can challenge the correctness of the estimate of the valuation reported by the Valuation Officer. When the writ petition was presented

before us, the assessment had not been completed by respondent No. 3. After he has passed an assessment order in conformity with the valuation given by respondent No. 2 in his report, the petitioner can in appeal challenge its legality and correctness. He thus has an alternative remedy in case he is aggrieved by the proceedings before the Valuation Officer. Under Article 226 of the Constitution as it stands after its amendment by the 42nd Constitution Amendment Act, the petition is not maintainable.

8. For the above-mentioned reasons, there is, in our opinion, no merit in this petition.