

(1995) 04 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 3858 of 1989

Mohamed Nasim Abdul Razak Mistry

APPELLANT

Vs

Wealth Tax Officer

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 14, 16A, 17, 17(2), 25(2)

Citation : (1995) 128 CTR 41 : (1995) 216 ITR 104

Hon'ble Judges : Rajesh Balia, J;C.K.Thakker, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; B.J. Shelat, for the Respondent

Judgement

C.K. Thakker, J.—This petition is filed for quashing and setting aside the reassessment notices for the assessment years 1975-76 to 1979-80 issued by the Wealth-tax Officer, Ward 2(iv), Surat, u/s 17 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), dated April 27, 1989, and permanently restraining the respondent from taking further proceedings in pursuance of the above notices.

2. It is the case of the petitioner that he is the heir and legal representative of one Abdul Razak Bannumiya Mistry, who died on September 29, 1981. He was the assessee under the Act. He owned land bearing final Plots Nos. 95/A and 95/B admeasuring about 21,495 sq. mts. It was agricultural land but it lost its character as agricultural land from March 31, 1975. According to the petitioner, for the assessment year 1974-75, the land was valued as agricultural land at Rs. 2,54,947 as on March 31, 1974, on the basis of the valuation report of a registered valuer of the assessee. For the assessment year 1975-76, however, it was valued at Rs. 1,52,255 in view of the provisions of the Gujarat Vacant Land in Urban Areas (Prohibition of Alienation) Act, 1972, which came into force on August 12, 1972, and remained in force up to July, 1975. The above Act restricted transfer of land exceeding 1,000 sq. mts. The assessee entered into an agreement to sell the land on June 21, 1975, after the said Act ceased to

operate. The assessee also sold a few plots in January, 1976. By the time the assessment year 1976-77 came, Parliament enacted the Urban Lands (Ceiling and Regulation) Act, 1976, with effect from February 17, 1976. The remaining portion of the plot was valued by the assessee at Rs. 1,47,270 (at Rs. 5 per square metre) in view of the provisions of the Urban Lands Ceiling Act. For the assessment year 1977-78, the assessee valued the retainable area of 1,000 sq. metres at the rate of Rs. 57 per square metre being the rate at which he sold some plots in January, 1976.

3. The Wealth-tax Officer accepted the valuation of the assessee for the assessment years 1975-76 to 1978-79 by assessment order dated September 25, 1979. Similarly, he passed an order on February 27, 1980, for the assessment year 1979-80 accepting the valuation of the assessee. After the coming into force of the 1976 Act, the assessee applied for permission to sell the land in question which was granted by the State Government on September 17, 1979, and the assessee sold the land on April 15, 1980, at Rs. 7,04,000. Sale was effected in favour of one Payal Co-operative Housing Society. The Commissioner of Wealth-tax, Baroda, issued notice to the assessee on October 10, 1980, by exercising revisional power u/s 25(2) of the Wealth-tax Act, 1957, calling upon the assessee to show cause why the assessment order should not be set aside as the assessee had not adopted the correct market value of the said land. Replies were filed by the assessee. The Commissioner of Wealth-tax by an order dated August 15, 1981, set aside the assessment order and directed the Wealth-tax Officer to reframe the assessment orders after referring to the Departmental Valuation Officer the issue of valuation of the land u/s 16A of the Act. The assessee being aggrieved by the said order approached the Income Tax Appellate Tribunal. The Tribunal, by an order dated February 7, 1983, set aside the order of the Commissioner on the ground that he had failed to supply the material on the basis of which revisional powers were exercised. The matter was, therefore, remanded to the Commissioner. The Commissioner then supplied the necessary materials and adopted the value of the land at Rs. 7,41,200 for the assessment year 1975-76 and Rs. 7,04,000 for the assessment years 1976-77 to 1979-80. Again, the petitioner approached the Tribunal and the Tribunal by an order dated February 17, 1989, set aside the order passed by the Commissioner by allowing appeals and by holding that the valuation adopted by the Wealth-tax Officer required to be restored. Considering the provisions of the Acts and the impact of the prohibition contained in those Acts against the sale of the properties, during the operation of the said Act, the Tribunal decided the matter on the merits in favour of the petitioner. According to the petitioner, when a finding is recorded in his favour by the Tribunal there was no necessity for taking any action, but notices have been issued in purported exercise of the powers u/s 17 of the Act for reassessment on the ground that wealth has escaped assessment for the year 1979-80.

4. Notice was issued by this court (Coram : P. R. Gokulakrishnan C.J. and R. A. Mehta J.) on June 15, 1989, and then rule was issued. Interim relief was also

granted. Today, the matter is called out for final hearing.

5. Mr. K. H. Kaji, learned counsel for the petitioner, raised two objections. Firstly, he submits that the notices issued by the respondent are barred by section 17 of the Act and they are required to be quashed, being time-barred. Secondly, when the Tribunal has allowed the appeals filed by the petitioners and a finding of fact was recorded in his favour on the merits, it was not open to the respondent to issue notices.

6. Mr. B. J. Shelat, learned counsel for the respondents, on the other hand, supported the authorities. He submitted that considering the provisions of section 17(2) of the Act, read with the order of the Tribunal, it cannot be said that the notice was barred by time. On the merits, he submitted that when the notice is issued, it is open to the petitioner to approach the authorities and at this stage, the petition is premature and cannot be allowed.

7. So far as the first contention of the petitioner is concerned, sub-section (1) of section 17 of the Act, as it then stood read, as under -

"(1) If the Assessing Officer, -

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise;

he may, in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section."

8. According to Mr. Kaji, admittedly, the period expired on March 31, 1988, since the relevant period were the assessment years 1975-76 to 1979-80. Notice, according to Mr. Kaji, ought to have been served latest by March 31, 1988. Section 17 came to be substituted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. Relying upon the decisions of the Supreme

Court in the case of J.P. Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, and S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, , it was contended that the authority cannot take advantage of a subsequent amendment in law. In S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, , almost an identical situation arose and it was held that the amended provision cannot be pressed in service if by the time the amendment came into force, the period of limitation had expired. Mr. Shelat, no doubt, contended that in view of sub-section (2) of section 17 and the finding recorded by the Tribunal in paragraph 25 of the judgment, such notice could have been issued. In paragraph 25, the Tribunal observed that it was of the opinion that in the facts and circumstances attending on the question of valuation of the property in question in these cases, section 17 of the Act could have been attracted. Mr. Kaji, however, submitted that considering the other observations in the judgment including the observations in paragraph 19, the observations in paragraph 25 cannot be said to be a "finding or direction" as contemplated by section 17(2) of the Act. For such submission, reliance was placed on the decision of the supreme Court in Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi, . In the facts and circumstances of the case, however, we are not expressing a final opinion on the first question as, in our view, the petition can be disposed of on the second point.

9. In our opinion, Mr. Kaji is right in submitting that when the Tribunal recorded a finding in favour of the petitioner on the merits, no notice could have been issued by the respondents. Strong reliance was placed by Mr. Kaji in this connection on paragraphs 26 and 27 of the order of the Tribunal. Considering the merits of the matter, the Tribunal observed that the direction given by the Tribunal did not authorise the Commissioner to improve upon his order dated August 18, 1981, so as to bring the appellant, i.e., the present petitioner, to a position worse than that which was occupied by him. Again in paragraph 27, it was observed as under :

"The valuation adopted in those sales which were no doubt effected in pursuance of the agreement for sale dated June 21, 1975, could not have been substituted ignoring the facts of various provisions of the Act of 1972 and the Act of 1976 which clearly prohibited the transfer of excess land by an assessee. In that sense of the matter, we find that the order under appeal cannot be sustained on its merits also."

10. Thus, when the Tribunal decided the matter on the merits in favour of the petitioner, it was not open to the respondents to invoke the provisions of section 17 and issue notice for reassessment. Therefore, on that ground alone, the notices issued against the petitioner require to be quashed and set aside.

11. For the aforesaid reasons, the petition is allowed. The impugned notice dated April 27, 1989, annexure-C (collectively), are quashed and set aside and consequential proceedings, if any, are also ordered to be quashed and set aside. There shall be no order as to costs.