

(1990) 06 KAR CK 0055

In the Karnataka High Court

Case No : Tax Referred Case No. 18 and 19 of 1983

M.S. Vasudev

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 18-06-1990

Acts Referred:

Income Tax Act, 1961 — Section 147

Wealth Tax Act, 1957 — Section 16, 17, 17 (1) (b), 27 (1)

Citation : (1991) 100 CTR 44 : (1991) 191 ITR 181

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; G. Chandrakumar, for the Respondent

Judgement

M. Rama Jois, J.—These are two references u/s 27(1) of the Wealth-tax Act, 1957 ("the Act" for short).

2. The question referred for our opinion in both the references, which is common, is as under :

"Whether, on the facts and in the circumstances of the case, the reassessment could be held to be valid u/s 17(1)(b) of the Act, though it was reopened u/s 17(1)(a) of the Wealth-tax Act ?"

3. The brief facts of the case, necessary for answering the reference, are these :

The assessee is the same in both the references. The assessment years concerned are 1974-75 and 1975-76. During the pendency of these assessment proceedings on February 17, 1976, the Assessing Officer called for a valuation report in respect of a building called "Harsha Mahal" from the Official Valuer u/s 16 of the Wealth-tax Act. However without waiting for the valuation report, the Wealth-tax officer completed the assessment for both the assessment years on April 2, 1976. The wealth of the assessee was determined at Rs. 2,53,100. This included the value of the building "Harsha Mahal" at Rs. 5,65,000. This valuation had been arrived at by the Wealth-tax Officer by applying the multiplier of 15 to

the annual rental value. Subsequently, on June 8, 1977, the valuation report as on the date relevant for both the assessment years was sent by the official valuer. He valued the building at Rs. 8,21,500 as on March 31, 1974 and at Rs. 10,05,000 as on March 31, 1975. The successor Wealth-tax Officer considered this report as fresh information available in respect of the building property and commenced reassessment proceedings u/s 17(1)(a) of the Act. Accordingly, a notice was issued to the assessee. The assessee filed fresh returns on November 2, 1977, declaring his net wealth at Rs. 2,55,600 as on the date of valuation for the assessment year 1974-75 and at Rs. 2,60,100 as on the date of valuation relevant to the assessment year 1975-76. The Wealth-tax Officer completed the reassessment adopting the valuation report furnished by the official valuer for the two assessment years. Aggrieved by the reassessment orders, the assessee preferred appeals before the Appellate Assistant Commissioner of Income Tax, Range II, Bangalore. The Appellate Assistant Commissioner was of the view that, as the valuation reports u/s 16 of the Act had not been received before the assessment order was passed, it was not binding on the Assessing Officer. The appellate authority was also further of the view that, as the Wealth-tax Officer, in the absence of a report of the official valuer u/s 16 of the Act, had valued the house property on the basis of rental income by applying the well-known method of multiplier of 15, the matter could not have been reopened u/s 17 of the Act. He also held that the opinion in the valuation report which was not binding, at the best, could be treated as a mere change of opinion and, therefore, could not constitute a basis for reopening the assessment u/s 17 of the Act. The Revenue took the matter in appeal before the Tribunal. The Tribunal gave a categorical findings that the provisions of section 17(1)(a) of the Act would not APPLICANT as the assessee had disclosed the facts fully and truly. The Tribunal, however, held the assessee's case would fall u/s 17(1)(b) of the Act as there was information which constituted a basis to say that a portion of the wealth of the assessee had escaped assessment. The Tribunal found that as the reference had been made by the Wealth-tax Officer to the Valuation Officer when the assessment proceeding was pending, though the report was received subsequently, it could be used for making a reassessment u/s 17(1)(b) of the Act. Accordingly, the Tribunal set aside the order of the Appellate Assistant Commissioner and remitted the case for consideration on other points raised in the appeals. Thereafter, at the instance of the assessee u/s 27(1) of the Act, the question set out in the second paragraph has been referred for our opinion.

4. Sri S. P. Bhat, learned counsel appearing for the assessee, contended that it was true that a report of an official valuer u/s 16 of the Act, unlike the valuation made by a Registered Valuer, was binding on the assessing authority, provided such a report had been called for and received by the assessing authority before making the assessment. In the present case, he pointed out that, admittedly, the report of the Official Valuer u/s 16 of the Act had not been received. Any subsequent report, learned counsel maintained, would not be binding. He maintained that the provisions of sub-section (6) of section 16 of the Act make

the report of an Official Valuer binding on the assessing authority, provided the assessment proceedings were pending. He submitted that the report received subsequently could, at best, be regarded as a change of opinion regarding the value of the property and that it was a well-settled position in law that a mere change of opinion would not constitute a basis for reopening the assessment either u/s 17(1)(a) or u/s 17(1)(b) of the Act. In support of this proposition learned counsel relied upon a decision of the Supreme Court in *Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad*, . In the said case, the Supreme Court held that though there was failure on the part of the assessing authority at the time of original proceedings to draw correct inferences under Mohammedan law, his subsequent opinion about the correct position under Mohammedan law would not constitute a basis for invoking the jurisdiction u/s pH 147 of the Income Tax Act which is similar to section 17 of the Wealth-tax Act. In the said judgment, the Supreme Court pointed out that such a mere change of opinion or inference which could be taken or drawn on the principles of Mohammedan law could not be taken as the basis for reassessment proceedings u/s 147 of the Income Tax Act. If, in the present case, the assessing authority was making a reassessment of the liability under the Wealth-tax Act on the basis of a mere change of opinion regarding the value of the building, the contention urged by learned counsel for the assessee would have been unexceptionable.

5. Sri Chandrakumar, learned counsel for the Revenue, however, contended that, having regard to the undisputed facts of the case, the valuation report which had been called for on February 17, 1976 during the pendency of the assessment proceedings and which was received on June 8, 1977, subsequent to the passing of the assessment orders, would certainly constitute information regarding the valuation of the building, and, therefore, reassessment could be made, if not u/s 17(1)(a) of the Act, u/s 17(1)(b) of the Act. In support of this contention, learned counsel relied on the judgment of this court in *K.G. Kemptur Vs. Second Wealth Tax Officer*, . In the said case, this court held that, unlike a valuation made by a registered valuer, a valuation made by a Valuation Officer to whom reference is made u/s 16A of the Act, was binding on the Wealth-tax Officer and he was bound to complete the assessment in conformity with the valuation made by the Valuation Officer and, therefore, the said material would constitute information within the meaning of section 17(1)(b) of the Act on which the Wealth-tax Officer could reopen the assessment. It was laid down that, while it was open to the assessee to contest the correctness of the report of the Valuation Officer in appropriate legal proceedings, as far as the Wealth-tax Officer was concerned, it was binding. Similar view was also taken in *Amrut Talkies Vs. Second Income Tax Officer*, . It was a case u/s 147 of the Income Tax Act. The question for consideration was whether the assessment which had been made on the basis of a report of a registered valuer regarding cost of construction of a theatre can be reopened on the basis of a subsequent report of the Official Valuer estimating the cost of construction at a higher rate and

whether the latter constitutes "information" for purposes of reassessment u/s 147(b) of the Act. Following the judgment in K.G. Kemptur Vs. Second Wealth Tax Officer, referred to above, the question was answered in the affirmative.

6. Learned counsel for the Revenue also relied on a judgment of the Supreme Court in Assistant Controller of Estate Duty, Hyderabad Vs. Nawab Sir Mir Osman Ali Khan Bahadur, H.E.H. the Nizam of Hyderabad and Others, . This case arose under the provisions of the Estate Duty Act and, interpreting the corresponding provisions of the Estate Duty Act, that is section 59, the Supreme Court held (headnote) :

"The opinion of the Central Board of Revenue regarding the correct valuation of securities for purposes of estate duty, expressed in an appeal preferred by the accountable person, is "information" within the meaning of section 59 of the Estate Duty Act, 1953, and cannot be regarded as mere opinion."

7. Learned counsel also relied on a judgment in T.M. Kousali Vs. Sixth Income Tax Officer, in support of the proposition that even if proceedings were initiated u/s 147(a) of the Income Tax Act which corresponds to section 17(1)(a) of the Wealth-tax Act, and if it is found that the assessment cannot be reopened under that provision, recourse can be had to section 147(b) of the Income Tax Act, corresponding to section 17(1)(b) of the Wealth-tax Act, provided the initiation of proceedings was within the period of limitation prescribed under clause (b). As stated earlier, this aspect has been specifically considered by the Tribunal. It found that though the proceedings for reassessment were initiated u/s 17(1)(a) of the Act, proceedings cannot be sustained under that provision as the assessee has not committed any default in furnishing all the basic and primary facts. Therefore, on the basis that there was valid information regarding a higher value of the building property, proceedings or reassessment could be taken u/s 17(1)(b) for which the period of limitation was four years and, in the present case, as the reopening was done within the period of four years from the date of assessment orders, which was April 2, 1976, it was competent for the authorities to complete the reassessment u/s 17(1)(b) of the Act and that has been done in this case.

8. In the result, we make the following order :

We answer the question referred for our opinion in the affirmative and against the assessee.