(1986) 01 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1183 of 1985

Mukhtiar Singh Sandhu APPELLANT

Vs

Wealth-tax Officer and Another RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1986) 55 CTR 196 : (1987) 1 ILR (P&H) 51 : (1986) 160 ITR 521

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; Ashok Bhan and Ajai Mittal, for the Respondent

Judgement

I.S. Tiwana, J.—The petitioner impugns the notices issued to him u/s 17 of the Wealth-tax Act, 1957 (for short, "the Act"), for the assessment years 1975-76 to 1978-79 on a wide variety of grounds. Though the only reason mentioned in the impugned notices is that the petitioner''s wealth had " escaped assessment " for these years, yet what is stated in this regard in the written statement is as follows :

" The assessee is an agriculturist. The agricultural land was acquired by the Military Authorities on October 5, 1974.

2. As the assessee was divested of land on October 5, 1974, he had the right to receive enhanced compensation which was an asset as on January 31, 1975. The value of this asset has not been shown in the return which is estimated at Rs. 5 lakhs. I have, therefore, reasons to believe that by the assessee''s failure to disclose fully and truly all material facts necessary for assessment, wealth has escaped assessment."

2. It is not in dispute before me that at the time the petitioner filed his return for the assessment year 1975-76, his application u/s 18 of the Land Acquisition Act, challenging the adequacy of the compensation awarded to him, was pending with

the District Judge, Faridkot. Before the finalisation of the assessment of that year, vide order dated March 28, 1980 (annexure P-1), the District Judge had enhanced the compensation by Rs. 1,11,541, vide his award dated June 2, 1979. The petitioner again challenged this award of the District Judge in this court and as a result thereof, the compensation was enhanced to Rs. 7,90,968.94 including the amount of solatium and interest. It is again not in dispute that while filing the return with regard to the above-noted assessment years, the petitioner had not mentioned anything with regard to the pendency of his application u/s 18 of the Land Acquisition Act. He, of course, could not mention anything about the filing of the appeal in this court against the award of the District Judge as the same was filed much later than the filing of the return for the assessment year 1978-79.

3. The solitary submission of Mr. Jhingan, learned counsel for the petitioner, is that since the Wealth-tax Officer, Ferozepur (B-Ward), was fully aware of the amount of compensation received by the petitioner for his acquired agricultural land and he subjected that wealth to tax, vide his order, annexure P-1, it cannot now be said by the respondent authorities that by reason of the enhancement of the amount of compensation by the District Judge or this court, the petitioner was guilty of not disclosing " fully and truly all material facts necessary for assessment of his net wealth " which as per Section 17(1)(a) of the W.T. Act, is a pre-condition for the reopening of the assessments made against him. He further maintains that in the absence of fulfilment of this pre-condition, the entire action of the respondent authorities in issuing the impugned notices is without jurisdiction. As against this, as already pointed out, the whole case of the respondent authorities is that the petitioner had failed to mention in his returns for the relevant years about the pendency of proceedings u/s 18 of the Land Acquisition Act and had he done so, the assessments made against him would have been otherwise. Having heard the learned counsel for the parties at some length, I do not feel impressed with the submission made on behalf of the respondents. In support of the above-noted stand, the learned counsel for the respondents seeks firm reliance on a judgment of the Andhra Pradesh High Court in Mrs. Khorshed Shapoor Chenai Vs. Assistant Controller of Estate Duty, wherein it has been observed that the pendency of such proceedings u/s 18 of the Land Acquisition Act is a primary fact and the disclosure of the same by an assessee is obligatory. It has been further opined that in case such a fact had been disclosed in that case, the Assistant Controller of Estate Duty might not have accepted the value or the estimated value of the acquired land. Though this judgment was the subject-matter of an appeal before their Lordships of the Supreme Court in Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, and was actually set aside, yet the specific question as to whether the seeking of a land reference and its pendency in a civil court is a primary fact non-disclosure of which would amount to failure or omission to disclose facts leading to escapement from assessment, was not adjudicated upon and was left open. However, the following very material observations to settle

the above-noted question have been made by their Lordships in this judgment (at pp. 31 and 32) :

" In our opinion, the High Court was right in holding that there are no two separate rights--one a right to receive compensation and the other, a right to receive extra or further compensation. Upon acquisition of his lands under the Land Acquisition Act, the claimant has only one right which is to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector u/s 11 and by the civil court u/s 26 of the Land Acquisition Act.........The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in a civil court.........This, however, does not mean that the civil court''s evaluation of this right done subsequently would be its valuation as at the relevant date either under the Estate Duty Act or the Wealth-tax Act. It will be the duty of the assessing authority under either of the enactments to evaluate this property (right to receive compensation at market value on the date of relevant notification) as on the relevant date (being the date of death under the Estate Duty Act and valuation date under the Wealth-tax Act). "

4. In the light of these observations, I am of the view that under the Act, once the Wealth-tax Officer has evaluated the right to receive compensation or subjected the actual amount of compensation received by the assessee by then to tax, he cannot later on vary his opinion in the light of the further enhancement allowed by the civil court under the Land Acquisition Act. I may not, however, be taken to express the opinion that even in subsequent years, whenever the assessee actually gets an enhanced amount of compensation, the authorities under the Act would not be able to subject that amount of wealth to tax, I am clearly of the opinion that in the given facts and circumstances of this case, it cannot possibly be held that the enhanced amount of compensation was wealth in the hands of the petitioner in the years in question, i.e., 1975-76 to 1978-79. He thus deserves to succeed.

5. At the initial stage of hearing, it was contended by Mr. Ashok Bhan, learned senior advocate for the respondent authorities, that this court may not choose to adjudicate upon the merits of this case and should relegate the petitioner to his remedies under the Act as, according to the learned counsel, the issuance of the impugned notices by the respondent authorities was not without jurisdiction. The learned counsel, however, conceded that the question as to whether the petitioner should be relegated to his remedies under the Act was dependent on my above-noted conclusion, i.e., whether the petitioner can be held guilty of not disclosing " fully and truly all material facts necessary for assessment of his net wealth ". Since my conclusion on this question, as already indicated above, has gone against the respondent authorities, this submission of Mr. Ashok Bhan obviously is untenable and is rejected.

6. In the light of the above discussion, I allow this petition and set aside the

impugned notices but with no order as to costs.

