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In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 13 of 1985

M.V. Kibe APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:
Wealth Tax Act, 1957 — Section 16A, 17(1), 27(3)

Citation : (1987) 63 CTR 158 : (1988) 169 ITR 40

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

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

Judgement

G.G. Sohani, J.—As directed by this court u/s 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following questions of law to this court for its opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of the assessments u/s 17(1)(a) of the Act was justified ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Appellate Assistant Commissioner had jurisdiction to direct the Wealth-tax Officer to refer the matter to the Valuation Cell, as provided by Section 16A of the Act ? "

2. The material facts giving rise to this reference, briefly, are as follows :

3. The assessee is a Hindu undivided family and the assessment years in question are 1967-68 to 1973-74. The assessments framed for these years were reopened by the Wealth-tax Officer u/s 17(1)(a) of the Act on the ground that at the time of the original assessment, the assessee had not shown the capitalised value of rent receivable from the property in question. Aggrieved by the order of reassessment, the assessee preferred an appeal before the Appellate Assistant

Commissioner. It was contended on behalf of the assessee that there was disclosure of all primary facts by the assessee and the Wealth-tax Officer had no jurisdiction to reopen the assessments u/s 17(1)(a) of the Act. This contention was not upheld by the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, however, remanded the matter to the Wealth-tax Officer for making fresh assessment after referring the matter to the Valuation Officer, as provided by Section 16A of the Act. Aggrieved by that order, the assessee preferred appeals before the Tribunal which were dismissed. The applications submitted by the assessee for making a reference to this court were also rejected. Hence, the assessee filed an application u/s 27(3) of the Act before this court which was allowed. That is how the aforesaid questions of law came to be referred to this court for its opinion.

4. As regards question No. 2, we have already held by our order passed today in M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., (Misc. Civil Case No. 300 of 1984), that the Appellate Assistant Commissioner had no jurisdiction to direct the Wealth-tax Officer to refer the matter to the Valuation Cell, as provided by Section 16A of the Act. In view of that order, our answer to the second question referred to this court would be in favour of the assessee and against the Department.

5. As regards the first question, the contention advanced on behalf of the assessee was that the assessee had disclosed all primary facts necessary for the purpose of assessment and that failure on the part of the Wealth-tax Officer to seek further information from the assessee would not justify reopening of the assessments u/s 17(1)(a) of the Act. To appreciate this contention, it is necessary to refer to the relevant facts.

6. In the return filed by the assessee for the relevant assessment years, the assessee had appended a note as follows :

"The sale price of the plot, which is deposited in the bank, is also not shown as it is already included in the price of the immovable property. "

7. The assessee had thus disclosed in the return that a plot of land was sold in the assessment year ; that the sale price was deposited in the bank and that in spite of sale of the plot, the area of that plot was included in the immovable property valued by the assessee in the return. The Wealth-tax Officer, while reopening the assessment, recorded his reasons, which form part of the record of Misc. Civil Case No. 112 of 1981-- M.V. Kibe Vs. Commissioner of Wealth Tax, . Those reasons are as follows:

"Issue notice u/s 17, The assessee has not shown the capitalised value of rent receivable from the property from which upset price has been charged. The total rent receivable from that property is Rs. 720 p.m. The yearly value of the interest comes to Rs. 8,640. The capitalised value of this property, which has been given on lease for 99 years, comes to Rs. 1,50,000. This amount of wealth has escaped assessment for the assessment years 1967-68 to 1973-74 due to

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failure on the part of the assessee to disclose full and true particulars. Therefore, I am satisfied that taxable wealth has escaped assessment for the above years. Reopen the case u/s 17 for the assessment years 1967-68 to 1973-74."

8. Now it is well-settled, as observed by the Supreme Court in Indo-Aden Salt Mfg. and Trading Co. Pvt. Ltd. Vs. Commissioner of Income Tax, Bombay, , that the obligation of the assessee is to disclose only primary facts and not inferential facts. There must be full and true disclosure of all material facts. What facts are material would depend upon the facts and circumstances of each case and there must be escapement of tax or underassessment due to such failure or omission. In the instant case, the assessee had disclosed that a plot of land was sold and that the price thereof was deposited in a bank. This value was not separately shown as the assessee had returned the value of the entire land which included the plot sold by the assessee. If the Wealth-tax Officer doubted the'' correctness of the valuation, it was open to him to discard that value and determine the market value in accordance with law. For arriving at the market value, the assessee could have been directed to furnish further details with regard to the plot of land sold or leased out and the premium or the price received in that behalf. Section 17(1)(a) of the Act does not empower the Wealth-tax Officer to reopen a final assessment if proper investigation was not made though all the primary facts, which the assessee was required to place before him, had been so placed. In the circumstances of the case, therefore, the Tribunal was not right in holding that reopening of the assessments u/s 17(1)(a) of the Act was justified.

9. For all these reasons, our answers to the questions referred to this court are in the negative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.

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