(1989) 03 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 758 of 1983

Nargis M. Baldiwala APPELLANT

Vs

M.N. Sawant, Second ITO and another RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 132(11), 132(5), 139, 147, 148
Wealth Tax Act, 1957 — Section 16(2)

Citation : (1989) 79 CTR 11 : (1990) 185 ITR 143

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

S.P. Bharucha, J.—This writ petition impugns a notice dated December 31, 1982. issued to the petitioner by the first respondent u/s 148 of the Income Tax Act proposing to reopen her Income Tax assessments for the assessment years 1979-80, 1980-81 and 1981-82, because he had reason to believe that her income chargeable to tax had escaped assessment within the meaning of section 147.

2. The petitioner was born in Tanzania and came to India upon her marriage in November, 1975. A search was conducted of her premises and safe deposit lockers in January, 1982, and gold ornaments and jewellery were seized. On April 14, 1982, an order was made by the first respondent u/s 132(5) retaining the seized assets and ordering the addition of an amount of Rs. 3,40,190 credited to the petitioner''s savings account on the ground that it was an unexplained receipt. On December 7, 1982, an order was made u/s 132(11) of the Act by the Commissioner of Income Tax (Investigation) which accepted the petitioner''s explanation in respect of the seized articles as also the sum of Rs. 3,40,000. The order dated April 14, 1982, was, accordingly, vacated.

3. On April 21, 1982, and September 21, 1982, the petitioner was issued notices to file wealth-tax and Income Tax returns for the assessment years 1979-80 to 1982-83 and 1982-83, respectively, by the Income Tax Officer/Wealth-tax Officer

of Survey Circle.

4. On August 6, 1982, the petitioner was given an intimation by the Commissioner of Income Tax (Investigation) that her case would now be attended to by the Income Tax Officer/Wealth-tax Officer, Assessment Circle. On September 8, 1982, the petitioner filed revised returns before the Income Tax Officer/Wealth-tax Officer, Assessment Circle.

5. A notice was then issued to the petitioner by the Income Tax Officer/Wealth-tax Officer, Survey Circle, to appear before him and file particulars.

6. On September 24, 1982, the Inspecting Assistant Commissioner, Assessment Circle, sought from the petitioner details of outstanding proceedings. On October 8, 1982, the petitioner furnished the details of pending proceedings before the Income Tax Officer/Wealth-tax Officer, Assessment Circle and Survey Circle.

7. On December 21, 1982, the petitioner''s assessment to Income Tax by the Income Tax Officer/Wealth-tax Officer, Survey Circle, for the assessment year 1982-83 was completed and it was found that she had a total income of Rs. 805. On December 31, 1982, the petitioner''s wealth-tax assessments for the assessment years 1979-80 to 1982-83 were completed by the Wealth-tax Officer, Survey Circle.

8. On the same date i.e., December 31, 1982, the petitioner was served with the notices u/s 148 that are impugned in this petition by the first respondent who was the Income Tax Officer, Assessment Circle. By letter dated January 5, 1983, the first respondent informed the petitioner that her case had been transferred to his charge. On February 4, 1983, the first respondent asked the petitioner to produce her books of accounts, if maintained, her bank pass book and evidence to show that amounts were remitted to her from abroad from income earned abroad. The demand was made in respect of the assessment years 1979-80 to 1982-83. On February 23, 1983, the petitioner''s advocate wrote to the first respondent stating that he had no jurisdiction to issue the impugned notices u/s 147 and also to request him to convey to them the reasons for the proposed reopenings.

9. This petition was then filed. The respondents were at the stage of admission, precluded from taking any action upon the notices u/s 148.

10. There is an affidavit-in-reply. The relevant paragraphs thereof are 13, 14, and 15 and they read thus :

"13. With reference to sub-paragraph (vii) of the petition, I say that I issued summons to four parties to whom the petitioner claimed to have advanced the money. I also issued summons to the petitioner to start the proceedings under the Wealth-tax Act which making the enquiries sent the petitioner and the said parties failed to attend on the date of appointment (Sic.).

14. I say that I found that the persons from whom the purchase of gold

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ornaments and jewellery have been allegedly made were not traceable (sic.). The alleged dealers are also not registered dealers under the Gold Control Act. I, therefore, reopened the assessments for the assessment years 1979-80 to 1981-82 u/s 147 of the Act and issued notices u/s 148 of the Act for all these years.

15. With reference to sub-paragraphs (viii) of the petition, I say that notices u/s 148 were issued and served on the petitioners on January 5, 1983. The petitioners were also served with the notices u/s 16(2) of the Wealth-tax Act, 1957. Both the hearings were fixed on February 15, 1983. Although Shri S. N. Shipochandler, Chartered Accountant, attended on this date, he never mentioned the fact that the assessments for these years were already completed by the 10th Income Tax Officer, Survey Circle-I."

11. It is not often that the court looks to see who has made an affidavit-in-reply and I dare say that that is true also of counsel. For quite some time, arguments at the bar proceeded upon the basis, having regard to what is stated in the aforesaid paragraphs, that the affidavit-in-reply had been made by the first respondent. Chance brought to notice the fact that the affidavit-in-reply reply was in fact made by one Ibrahim Ahmed Khan, Income Tax Officer, Ward 21(6). It appears that the intention was that the first respondent should make the affidavit and his name is in typescript. It is scored off in ink and the name and designation of Khan are substituted. For the rest, the affidavit is exactly as drafted for declaration by the first respondent. It is not in dispute that Khan had nothing whatsoever to do with the issuance of the impugned notices u/s 148. Khan is, therefore, guilty of perjury for having made the false statements in paragraph 13 and 14 aforementioned. I do not, however, propose to take action against him for, though he has acted irresponsibly and in a manner in which one does not expect an officer as highly placed as him to do, the fault also lies with whoever it be in the office of the Central Government''s Advocates who contacted Khan and made him subscribe to the affidavit without making all appropriate alterations.

12. There is, in the circumstances, no statement on the record or an affidavit which can be relied upon or otherwise, of the reasons which led the first respondent to issue the impugned notices u/s 148 and, therefore, the petition must succeed.

13. I must note that while counsel and the court were proceeding upon the basis that the affidavit-in-reply had been made by the first respondent, there was some discussion as to whether the reopenings were proposed under the provisions of clause (a) or clause (b) of section 147. There being, as I thought, an affidavit-in-reply, I agreed to look at the statement in the Revenue''s file that the first respondent was obliged to make under the provisions of sub-section (2) of section 148 before issuing the impugned notices. The file was produced.

14. It is beyond belief that the reasons could have been stated in the manner

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they are. The statement commences upon the pro forma, upon engrossed paper, of an order sheet and is written in ink between its printed lines so that it is virtually indecipherable. The second page of the statement is on the reverse of that sheet. The third page thereof is a blank sheet of white paper. Upon the reverse thereof is the fourth page. Or the third page depending upon how one looks at it, of the statement. At a certain stage on that page the first respondent (as I think) has initialled that statement. Therefore, he states that he has reason to believe that by reason of the omission or failure on the part of the assessee to make a return u/s 139 and to disclose fully and truly all material facts necessary for her assessment, the income chargeable to tax for the assessment year 1979-80, Rs. 25,000, for the assessment year 1980-81, Rs. (blank) and for the assessment year 1981-82, Rs. 31,200 has escaped assessment. Hence, the assessments for the years 1979-80, 1980-81 and 1981-82 are reopened under "section 147(b)" of the Income Tax Act, 1961. Below this appear once again the initials with the date December 31, 1982. Below this again is the endorsement "Issue notice u/s 148 for the assessment years 1979-80, 1980-81 and 1981-82" and again the initials with the same date.

15. One would have thought that the Revenue would spare to the Income Tax Officer enough paper to record a statement which is statutorily required and which, as it would by now have enough occasion to know, is the subject-matter of scrutiny by courts and tribunals. One would have expected that the Income Tax Officer would know that there is no clause (d) to section 147. One would have also expected that the Income Tax Officer would know that there is no clause (d) to section 147. One would have also expected that where the facts are as complicated as here, with the authority responsible for the petitioner''s assessments shifting from Survey Circle to Assessment Circle and so on from time to time, there would be more detailed explanations of the reasons for the reopenings than what has been said out in the affidavit-in-reply. Assuming for the moment that the affidavit had been made by the first respondent, it would be inadequate also because it does not say that he had found reason to believe that the petitioner''s income had escaped assessment. This is a pre-requisite prescribed by section 147 and if a notice u/s 148 is to be sustained, the court must be satisfied in that behalf.

16. The petition is made absolute in terms of prayers (a) and (c). The respondents shall pay to the petitioner the costs of the petition.

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