
(1995) 12 MP CK 0041
In the Madhya Pradesh High Court
Case No : M.P. No. 70 of 1986

Noshirwan and Others

APPELLANT

Vs

Wealth-tax Officer and Another

RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 17

Citation : (1996) 222 ITR 302

Hon'ble Judges : A.K. Mathur, Acting C.J.

Bench : Single Bench

Advocate : G.M. Chaphekar, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.K. Mathur, J. 1. The petitioners by this petition have prayed that the notices issued u/s 17 of the Wealth-tax Act, 1957, by the respondent annexures "H", "H-1", "H-2", "H-3" and "J" may be quashed and the respondent be prohibited from further proceeding in pursuance of the abovementioned notices.

2. Petitioners Nos. 1, 2 and 3 are the sons of the late Shri Manoharji Godrej and petitioners Nos. 4 and 5 are his daughters. The petitioners are related as brothers and sisters belonging to the same family. The petitioners are Parsi by caste. Respondent No. 1 is the Wealth-tax Officer, A-Ward, Indore, and has jurisdiction to assess the petitioners under the Wealth-tax Act. The assessment years involved in the present petition are 1976-77, 1977-78 and 1978-79. The petitioners jointly own five properties-(1) Godrej Mansion, 110, Ushaganj, Indore, (2) Gul Mansion, 9, Maharani Road, Indore, (3) Flat No. 8, Mistry Court, Bombay, (4) Show Room at Imami Gate, Bhopal, and (5) a building situated on Bombay-Agra Road, Indore, All the aforesaid properties are being jointly owned by petitioners Nos. 1 to 5 along with their brother, Shri Bomy Godrej, as co-owners, so that each of the petitioners is owner to the extent of 1/6th share in the aforesaid properties. Besides 1/6th share in the aforesaid properties, petitioners Nos. 1 to 5 have their respective individual wealth. Petitioners Nos. 1

to 5 are assesseees under the Wealth-tax Act and have been paying wealth-tax.

3. In the assessment year 1972-73, petitioners Nos. 1 to 5 filed their individual returns of wealth which included their 1/6th share in the aforesaid joint properties. For the assessment years 1973-74 and 1974-75, the petitioners filed their wealth-tax returns and certain valuation was shown for the joint properties. For the years 1973-74 and 1974-75, the assessing authority passed orders on November 25, 1978, accepting the valuation as made by the Department Valuer in his report. Aggrieved by the aforesaid orders of assessment, the petitioners filed separate appeals before the Appellate Assistant Commissioner of Wealth-tax, but these appeals were rejected by the Appellate Assistant Commissioner, vide order dated December 11, 1979, and the valuation made by respondent No. 1 was affirmed. The petitioners thereafter filed separate appeals before the Income Tax Appellate Tribunal. The Tribunal, by order dated December 31, 1980, held that in respect of the properties which are rented out, the valuation should be made on the basis of rental method and it was wrong on the part of the Departmental authorities to value these properties on the basis of land and building method. The Tribunal disagreed with the valuation made by respondent No. 1 and allowing the appeals remanded the case to respondent No. 1 to determine the valuation of the joint properties in accordance with the directions given by the Tribunal. Respondent No. 1 thereupon passed fresh orders of assessment in respect of all the petitioners for the assessment years 1973-74 and 1974-75 on April 28, 1981.

4. In the meantime, petitioners Nos. 1 to 5 had also filed their wealth-tax returns for the assessment year 1975-76. Respondent No. 1 passed separate orders of assessment in respect of each of the petitioners increasing the valuation of the joint properties on the basis of the valuer's report. Petitioners Nos. 1 to 5 thereupon filed separate appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner by his separate orders dated July 9, 1981, allowed the appeals. However, we are only concerned in the present case with the assessment years 1976-77, 1977-78 and 1978-79. In these cases, the assessments were made on March 28, 1981, September 5, 1981, and March 5, 1985, respectively. Thereafter respondent No. 1 issued notices u/s 17(1) of the Wealth-tax Act on June 29, 1984, for reopening the assessment made on the aforesaid assessment and it is these notices which are sought to be challenged by the petitioners in this petition.

5. The principal submission made by learned counsel for the petitioners is that the assessment has been made on the basis of the valuation which has been determined on the basis of the criteria laid down by the Tribunal. When earlier an assessment order has been passed, subsequently that assessment cannot be reopened on account of change of opinion and secondly it is submitted that the assessment notices also are beyond jurisdiction as the petitioners had already disclosed all their wealth. Therefore, there is no concealment on the part of the petitioners as they have disclosed facts truly and correctly, as such Section 17(1)

(a) of the Wealth-tax Act will not come into play and so far as Section 17(1)(b) is concerned, on the basis of the information, the assessing authority cannot reopen because four years had passed. The period of limitation prescribed for issuing notice u/s 17(1)(b) is four years.

6. A reply has been filed by the respondent and it has been pointed out that on July 24, 1980, a report of the valuation of the property was received and in that it was found that the assessee has undervalued his property. Therefore, all these four notices were issued for reopening of the assessment. The notices have been issued because according to the assessing authority he has reason to believe that there was failure on the part of the assessee to disclose fully and truly the value of these properties for years 1976-77, 1977-78 and 1978-79. It is also pointed out in the return filed by the respondent that this valuation report was not available with the assessing authority when the assessment was made. It has also been clearly mentioned in paragraph 21 of the return filed by the respondent that this report made by the official valuer was not available to the Wealth-tax Officer at the time of making the assessment and, therefore, it escaped the notice and as such the assessing authority has power to reopen the assessment u/s 17(1)(a) and it is within the period of limitation.

7. I have heard learned counsel for the parties. Shri D. D. Vyas for the Revenue has specifically raised the objection regarding jurisdiction of this court to entertain the petition under article 226 of the Constitution of India and submitted that such matters should not be entertained directly under the writ jurisdiction as the proper course for the petitioners is to file a reply and seek remedy according to the provisions contained in the Act. In support of this contention, learned counsel has invited my attention to the case of Lalji Haridas Vs. R.H. Bhatt and Another, ; Surya Restaurant and Another Vs. Union of India (UOI) and Another, . As against this learned counsel for the petitioners has strenuously urged that this court can entertain such petition directly. Learned counsel has invited my attention to the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, and M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,

8. Before appreciating the merits, it will be proper to examine the question whether it would be proper to exercise the extraordinary jurisdiction under article 226 of the Constitution of India for entertaining this petition or not. A similar question came up before their Lordships of the Supreme Court in Lalji Haridas Vs. R.H. Bhatt and Another, wherein the provisions of the Saurashtra Income Tax Ordinance, 1949, was under consideration. There it was held that in the writ jurisdiction under Article 226 such questions should not be permitted to be raised. It has observed (at page 418) :

"Mr. Pathak for the appellant attempted to argue that the notice issued against the appellant is, on the face of it, invalid, because it is barred by time. We did not allow Mr. Pathak to develop this point, because we took the view that a plea of this kind must ordinarily be taken before respondent No. 1 himself. The

jurisdiction conferred on the High Court under Article 226 is not intended to supersede the jurisdiction and authority of the Income Tax Officer to deal with the merits of all the contentions that the assessee may raise before them, and so it would be entirely inappropriate to permit an assessee to move the High Court under Article 226 and contend that a notice issued against him is barred by time. That is a matter which the Income Tax authorities must consider on the merits in the light of the relevant evidence."

9. Similarly, the same view has been further reiterated by Chandravadan A. Taktawala and Others Vs. Commissioner of Wealth-tax, . This court also recently in the case of Surya Restaurant and Another Vs. Union of India (UOI) and Another, has taken the same view and has observed (headnote) :

"Held, dismissing the writ petition, that the reassessment notice was challenged on the ground that it did not furnish reasons and that the reasons which were furnished subsequently were irrelevant. Since the assessee was aware of the reasons for the issue of the notice and could appeal against it, the notice could not be quashed in writ proceedings,"

10. Therefore, this court recently has taken the view relying on earlier judgments of the Supreme Court that even such matters of reopening should not be entertained directly in writ jurisdiction and it is proper for the petitioners to agitate the matter before the authorities under the Act.

11. Shri Chaphekar has invited my attention to Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . There, their Lordships did not have occasion to deal with the entertainment of the petition directly before the High Court. However, their Lordships had taken a view that if the court finds that the action of the authority is without jurisdiction, then a quick relief by writ can be given prohibiting the authority to proceed without jurisdiction. Learned counsel has also invited my attention to a recent decision of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another, . In this case, the Allahabad High Court directly entertained a petition against a notice for reassessment u/s 147 read with Section 148 of the Income Tax Act. In this case, the question was not whether the writ jurisdiction should be directly exercised or not. Therefore, in this case, their Lordships did not examine whether it is proper to entertain the petition directly or not. Learned counsel also invited my attention to the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, . In that case also their Lordships have held that the reopening of an assessment must have a rational connection.

12. Now, coming to the facts of the present case, it is apparent that when the assessment orders were passed for the assessment years 1976-77, 1977-78 and 1978-79, at that time the valuation report of the Department was not before the assessing authority, therefore, it cannot be said that the assessing authority has not applied his mind for reopening of the assessment. But I would not like to express any opinion at this stage, because I am of the opinion that looking to the

facts, it will not be proper to exercise the jurisdiction of this court to directly interfere in such matters. It would be proper that the petitioners file a proper reply and take all the objections which the petitioners have taken here in this court, before the assessing authority who shall decide whether such reopening of assessment is sustainable or not. But, at this stage, I do not want to express any opinion. Suffice it to say that there is a proper remedy provided under the Act and the petitioners can successfully get their grievances redressed.

13. In this view of the matter, I am not inclined to interfere and uphold the objection that this petition should not be entertained under the extraordinary jurisdiction of Article 226 of the Constitution of India. Hence, this petition is dismissed with no order as to costs.