

(1988) 12 GUJ CK 0005
In the Gujarat High Court
Case No : W.T. Reference No. 23 of 1983

Prabhavati B. Solanki

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 156
Wealth Tax Act, 1957 — Section 15, 16, 16(1), 17A

Citation : (1988) 12 GUJ CK 0005

Hon'ble Judges : Rajesh Balia, J;A.R. Dave, J

Bench : Division Bench

Judgement

Balia, J.—The following two questions of law arising out of the Tribunal's order dated 11-6-1981 have been referred to this Court for its opinion by the Tribunal, Ahmedabad Bench "A", at the instance of the assessee :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that all the assessment orders for all the years under consideration were passed within the period of limitation ?

2. Whether the Tribunal was right in law in holding that the assessment orders passed by the WTO were valid and were within the prescribed period of limitation even though there was no computation of tax liability in the assessment orders passed by the WTO ?"

The reference relates to the assessment years 1971-72 to 1974-75 under the Wealth-tax Act, 1957 ("the Act").

2. Prior to 1-4-1975, the Act provided no limitation for completion of assessments under it. By insertion of section 17A by the Taxation Laws (Amendment) Act, 1975 with effect from 1-1-1976, for the first time period of limitation for completion of assessment was provided. For the period prior to 1-4-1975, the section as it originally was inserted provided that no order of assessment shall be made u/s 16 at anytime after the expiration of a period of -

(a) four years commencing on and from 1-4-1975 or one year from the date of the filing of a return or a revised return u/s 15, whichever is later, where the assessment year is an assessment year commencing before that date.

For all the assessment years under consideration, which ended prior to 1-4-1975, the assessment orders were made on 31-3-1979. Notice of demand in pursuance of the assessment orders were issued on 3/4-5-1979. The assessment order itself which formed part of the statement of case did not show computation of tax payable as per the assessment of net wealth. As the demand notices were issued after the expiry of 4 years from 1-4-1975, the assessee had raised an objection as to the validity of assessment orders before the AAC that the same were barred by time. The AAC had mentioned in passing that the assessment orders were required to be completed by 31-3-1979 and demand notices which had been filed by the appellant along with the appeal memos bore the date as 3-5-1979/4-5-1979 by which time the assessment had already become time-barred.

3. The Tribunal, while examining this issue noticed that there are three stages under the scheme of the Act before the liability of the assessee is communicated to the assessee :

- (i) computation of net wealth;
- (ii) computation of tax liability on the net wealth so computed; and
- (iii) the communication of the tax liability so computed.

It was further of the opinion that while first two stages are covered by limitation, the demand notice which is covered under the third stage is merely an intimation to the assessee of tax liability computed as a result of assessment order. It, therefore, did not agree with the AAC that the date of service of notices should also be within the period of limitation.

4. The question is no more res integra. It has been now settled by the Apex Court that the term "assessment" in the provision prescribing the period of limitation has been used in comprehensive sense which includes integrated process of computation of net wealth as well as computation of tax liability thereon. The communication of tax liability is not part of the assessment. We may refer to Kalyan kumar Ray Vs. Commissioner of Income Tax, West Bengal-IV, Calcutta, in this connection. A like question had arisen under the provisions of the Income Tax Act, 1961, and the Court has answered the question by holding that :

"Assessment" is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial as the former. The Income Tax Officer has to determine, by an order in writing not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and the demand notice has to be issued u/s 156 of the Income Tax Act, 1961, in consequence of such an order ..." (p. 634)

The reason which weighed for reaching this conclusion was that section 143(3) of the Income Tax Act which deals with the assessment of income mandates that the ITO shall, by an order in writing, make assessment of the total income or loss of the assessee and determine the sum payable by him on the basis of such assessment. Like provision was also contained in section 16 as it stood at the relevant period. Section 16(1) provides, the Assessing Officer ... shall assess the net wealth of the assessee and determine the amount of wealth-tax payable by him or the amounts refundable to him on the basis of such return.

5. Following this decision in Commissioner of Income Tax Vs. Purshottamdas T. Patel, , a Division Bench of this Court opined that the two actions need not be simultaneous; it may be taken separately and at a different time but the assessment is complete only when both the processes are over, namely, determination of net wealth and determination of tax payable on such net wealth. It is only when both the processes are complete that the assessment can be said to be completed. As a result, one must reach the conclusion that both the processes must take place prior to the expiry of the period of limitation.

6. In Kalyankumar Ray's case (supra), the Court had further observed,

"... The statute does not, however, require that both the computations (i.e., of the total income as well as of the sum payable) should be done on the same sheet of paper, the sheet that is superscribed "assessment order". It does not prescribe any form for the purpose. Once the assessment of the total income is complete with indications of the deductions, rebates, reliefs and adjustments available to the assessee, the calculation of the net tax payable is a process which is mostly arithmetical but generally time-consuming. If, therefore, the Income Tax Officer first draws up an order assessing the total income and, indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or sometime later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income Tax Officer that the process described in section 143(3) will be complete." (p. 634)

7. This being the law, if we examine the facts of the present case, we find that the assessment orders determining net wealth on which tax is payable have been signed on 31-3-1979 which itself does not show computation of tax payable on the net wealth assessed. Demand notice has been issued and served beyond the period of limitation. However, demand notice is not the order computing tax payable, It is an act subsequent to it. The determination of net taxable wealth has taken place on the last date before the expiry of the period of limitation. If tax computation has taken place after 31-3-1979, obviously assessments in relation to the assessment year ending before 1-4-1975 shall be barred by limitation. Neither the AAC nor the Tribunal has enquired whether computation of tax has taken place on 31-3-1979 or thereafter. It is a question of fact when computation of tax payable has actually taken place. In the absence of necessary finding to that effect, it is not possible for us to answer the question whether the

assessments in question were completed prior to 31-3-1979 or were barred by limitation. It will, therefore, be for the Tribunal, when it is required to pass a fresh order in the light of the decision of this Court on the questions of law referred to it, to examine this question and reach its conclusion.

8. The reference, accordingly, stands disposed of. No order as to costs.