

(1983) 05 CAL CK 0008
In the Calcutta High Court

Case No : Civil Rule No's. 11643 (W) to 11646 (W) of 1975

Purushottam Das Bangur

APPELLANT

Vs

Wealth Tax Officer and Others

RESPONDENT

Date of Decision : 12-05-1983

Acts Referred:

Wealth Tax Act, 1957 — Section 17

Citation : (1984) 39 CTR 106 : (1984) 148 ITR 651

Hon'ble Judges : D.K. Sen, J

Bench : Single Bench

Advocate : D. Pal, R.K. Murarka and A.K. De, for the Appellant; Ajit K. Sengupta and Rupen Mitra, for the Respondent

Judgement

D.K. Sen, J.—Purushottam Das Bangur, the petitioner herein, is the karta of an HUF known as Purushottam Das Bangur HUF.

2. The said family is an assessee under the W.T. Act, 1957. For the assessment year 1970-71, wealth-tax return of the said family was filed on September 29, 1970, showing a net wealth of Rs. 11,58,454 on the relevant valuation date, being March 31, 1970. The wealth of the petitioner consisted, inter alia, of shares in various joint stock companies held by the said family being both quoted and unquoted shares.

3. The quoted shares were valued as on the date of valuation at the market rate prevailing, based on the official market quotation list of recognised stock exchanges. The unquoted shares were valued according to valuation reports of valuers.

4. An order of assessment was passed on September 29, 1972, by the WTO, Central Circle-1, Calcutta, whereby the family was assessed to wealth-tax on a net wealth of Rs. 15,22,360.

5. An appeal preferred from the said assessment by the petitioner challenging, inter alia, the valuation of unquoted shares of two companies and the

disallowance of exemption u/s 5(1)(viii) of the W.T. Act in respect of jewellery was allowed by an order, dated August 17, 1973, from which a further appeal has been preferred by the WTO before the Income Tax. Appellate Tribunal.

6. The WTO, "P" Ward, District I (i), Calcutta, to whom the case and the file of the petitioner was transferred in October, 1973, thereafter, issued a notice, dated March, 25, 1975, u/s 17 of the W.T. Act as follows :

"I have reason to believe that your net wealth chargeable to tax for the assessment year 1970-71 has escaped assessment within the meaning of Section 17 of the Wealth-tax Act.

I, therefore, propose to reassess the said net wealth that has so escaped assessment.

I hereby request you to deliver to me within 35 days of the receipt of the notice a return in the attached form of your net wealth chargeable to tax along with such other particulars as are required to complete the form for the said assessment year."

7. The petitioner is aggrieved by the aforesaid and has sought to challenge the same in this application under art. 226 of the Constitution. The petitioner contends that the said notice and the proceedings u/s 17 of the W.T. Act initiated thereby, are without, or in excess, of jurisdiction and are illegal and void. The petitioner contends, further that there was no material whatsoever on the basis of which the WTO could entertain any belief that part of the wealth of the said family had escaped assessment. All materials and relevant facts, it is alleged, had been fully and correctly disclosed before the assessment and were considered by the WTO concerned. It is contended that the conditions precedent for the assumption of jurisdiction u/s 17 of the said Act do not exist in the instant case, and that the Revenue is seeking to make a roving and fishing investigation. It is alleged that the WTO concerned intended to reopen the original assessment acting on a mere change of opinion on the same facts and materials. It is also alleged that the impugned proceedings had been initiated at the dictation of a superior officer without any application of mind by the WTO concerned and without exercise of an independent judgment.

8. The petitioner moved this application on the May 12, 1975, when a rule nisi was issued calling upon the respondents, namely, the WTO, "P" Ward, District I (i), Calcutta. The WTO, Central Circle I, the Commissioner of Income Tax, West Bengal, and the Union of India, to show cause why appropriate writ should not be issued directing them to withdraw or cancel the said notice, dated March 25, 1975, to forbear from giving any further effect thereto or taking any further steps thereon and for quashing the same.

9. Narendralal Bhattacharya, the officer who issued the impugned notice, dated March 25, 1975, has affirmed an affidavit on September 2, 1976, which has been filed in opposition to the petition. It is, inter alia, alleged in this affidavit that in

the wealth-tax assessment for the year 1970-71, 925 ordinary shares of Maharaja Shree Umaid Mills Ltd. held by the assessee were shown to be of the value of Rs. 84 per share and it was alleged that the said shares were quoted. The above valuation was stated to be in terms of quotations in the recognised stock exchanges of India and was accepted on above representation.

10. It is alleged that investigations were made by the Special Cell of the Director of Inspection (Investigation), regarding the genuineness of the quotation of the shares of the said company subsequently. By a letter, dated March 18, 1975, the Director of Inspection (Investigation), Special Cell, informed the Commissioner of Wealth-tax as follows :

"Maharaja Shree Umaid Mills Ltd. is a company of Bangur group assessed by the ITO--B-Ward, Jodhpur. Although the book value of an equity share of Rs. 100 paid up of this company rose from Rs. 332 to Rs. 401 from the year 31-12-67 to 31-12-70 and the earning per share rose from Rs. 12.32 to Rs. 44 per share during the same period, the quotations of the shares, in the Calcutta Stock Exchange, where it is listed, fell from Rs. 110 to Rs. 85-50. For the calendar years 1971, 1972 and 1973, the earning per share was Rs. 24.82, 34.76 and 76.50 respectively. During the same period the book value rose from Rs. 445 in the year 1971 to Rs. 524 in 1973. In spite of this increase, stock market quotations have remained below Rs. 96 per share.

The total paid up equity capital of this company is Rs. 72,00,000 divided into shares of Rs. 100 each. The total number of shareholders has fluctuated between 22 as on June, 1968 to 38 as on June, 1973. A list of the equity shareholders for the years 1968-73 is enclosed as annexure "A". This indicates that the shareholders are mainly members of the Bangur family or their investment companies. The question of the share being freely dealt in a stock exchange does not arise because of absence of floating stock with the public.

That the shares of this company have been circulating within the group itself is clear from the list of share transfers of the company for the period 15-6-68 to 14-5-73 which is enclosed as annexure "B".

Information was obtained from the Calcutta office of the Stock Exchange Division, Department of Economic Affairs, Ministry of Finance, about the details of the quotations of this company.

The value of the share of this company as calculated by the break-up method and the maintainable profit method, i.e., by capitalising the average profits of the 5 years at the rate of 9%, is as follows:

31-12-68 31-12-69

(a) Break-up method 348 377

(b) Maintainable profit method 77 100

The comparison of the share quotation of Maharaja Shree Umaid Mills Ltd. with

the share quotations of three other similar companies, namely, Shreenivas Cotton Mills Ltd., Ashoka Mills Ltd. and Aruna Mills Ltd. shows that in spite of the fact that Maharaja Shree Umaid Mills Ltd. has better financial results and a higher book value per share than the remaining three companies, the quotations are abnormally low as compared to those of the other three companies of its group. In this connection, annexure "C" may please be seen which indicates the comparative financial data relating to these four Companies.

. The close nature of shareholding of Maharaja Shree Umaid Mills Ltd., the infrequency of the quotations and the small turnover of the shares coupled with the fact that the quotations are far below the intrinsic worth of the shares indicates that the quotations have been manipulated and cannot be considered to reflect the value that the shares of this company could really fetch, if sold in the open market. The share transfer chart (Annexure "B") proves that the transfers are within the group itself and the turnover of the shares as disclosed in the records of the Calcutta Stock Exchange and, as mentioned in para. 6 above, are completely at variance with the pattern of the company.

A list of individuals/HUFs holding shares of this company indicating the places of assessments, as far as is known to this Directorate, is enclosed herewith as annexure "D". A list of companies of the Bangur group is also enclosed as annexure "E". This will help the location of cases where action has to be considered.

It is requested that a copy of this letter may kindly be passed on to the Income Tax Officers concerned with the assessments of the shareholders of this company, so that they may examine whether the value being returned by the shareholders in their wealth-tax assessments and the value at which the shares are being transferred reflect the fair market value of the shares. The Income Tax Officers may be asked to apply their minds to the facts of each case and take such action as they may deem fit."

11. It is alleged that the said letter was communicated to the WTO concerned by D.I. (Investigation) on March, 25, 1975. It is alleged that the WTO after perusing the materials contained in the said letter came to be of the prima facie opinion that the shares of the said company have not been quoted regularly and that the quotation at the relevant date was far below the fair market value of the shares and did not reflect such value correctly. The WTO also came to hold the belief that, in view of the infrequency of quotations, the said shares came within the definition of Rule 1A(1) of the W.T. Rules, 1957, and that their value would have to be determined as per Rule 1D of the said Rules. On that basis, the value of the shares of the said company would be much more than that declared by the assessee.

12. It is alleged that, in the circumstances, the WTO had bona fide reasons to believe that the assessee failed or neglected to disclose fully or truly all material facts pertaining to the value of the said shares as a result whereof a part of the

net wealth chargeable to tax escaped assessment.

13. In any event, the information in the said letter, dated March 18, 1975, gave the WTO reasons to believe that net wealth chargeable to tax in the assessment year escaped assessment.

14. At the hearing, learned counsel for the petitioner reiterated the contentions in the petition and cited the following decisions in support thereof.

(a) *Tulsidas Kilachand Vs. D.R. Chawla and Others*, . In this case, the WTO had made an order of assessment accepting the valuation of certain properties in the valuation report of an authorised valuer submitted by the assessee. Thereafter, the WTO sought to reopen the assessment u/s 17(1)(b) of the W.T. Act, 1957, on the basis of a subsequent valuation report of the Executive Engineer (Valuation) of the Department. The proceedings were challenged in an application under Article 226 of the Constitution in the Bombay High Court where it was held by a learned judge that the mere fact that two valuers had given conflicting reports as to the value of the properties was not sufficient to reopen the assessment. This would amount to a mere change of opinion of the WTO.

(b) *Gobindlal Bangur Vs. Wealth Tax Officer and Another*, . In this case, the wealth-tax assessment of the assessee was sought to be reopened and the proceedings were challenged in an application under Article 226 of the Constitution. It was held by this court that the WTO had initiated the impugned proceedings mechanically following the directions in, one of the letters issued by an officer of the special investigation branch without applying his mind and on that ground the impugned proceedings were quashed.

(c) *Purushottam Das Bangur Vs. Income Tax Officer, C-Ward and Others*, . In this case, the assessee who was assessed to Income Tax in the assessment year 1969-70 claimed that he had suffered long-term capital loss on sale of bonus shares of Maharaja Shree Umaid Mills Ltd. in the said assessment year. The loss claimed was allowed to be carried forward. Later, the ITO sought to reopen the assessment u/s 147(b) of the I.T. Act, 1961, on the ground that the income of the assessee chargeable to tax in the said assessment year had escaped assessment. The ITO acted on the basis of a letter, dated March 21, 1974, of the Deputy Director of Inspection (Investigation) Special Cell, where it was, inter alia, alleged that quotations in respect of the shares of the said company were the result of extremely limited and manipulated transactions within one group and did not reflect the fair market value of the shares.

15. The assessee challenged the proceedings in an application under Article 226 of the Constitution in the Rajasthan High Court. A Division Bench of the High Court held that, ex facie, the letter of the Deputy Director did not contain any information within the meaning of Section 147(b) of the Act and could furnish no reasonable grounds for the belief that any income of the assessee had escaped assessment. The letter merely recorded the suspicions which were not enquired into further by the ITO who merely changed his opinion in respect of the

assessment. The assessment proceedings was quashed.

16. Learned advocate for the Revenue contended to the contrary and submitted that, in the instant case, information in the usual course was received by the WTO on the basis of which he invoked Section 17(1)(b) of the W.T. Act. In the instant case, there was no direction or command from the higher authorities as in the case of *Gobindlal Bangur Vs. Wealth Tax Officer and Another*, . He submitted further that the instant case was covered by a Full Bench decision of this court in *Sm. Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, . In this case, a completed assessment was sought to be reopened on the basis of a letter from the Directorate of Inspection (Investigation), Special Cell, addressed to the Commissioner. This letter was endorsed by the IAC to all Income Tax and Wealth-tax Officers for information. It was held by the Full Bench that the reopening of the assessment was valid. Sabyasachi Mukharji J., as his Lordship then was, observed that the said notice could be upheld u/s 17(1)(b) of the W.T. Act. In fact, there were materials before the officer concerned which could be described as facts which would go to establish or corroborate the plea that the transactions were colourable and collusive and could be treated as new information.

17. In the facts of the instant case, it cannot be held that there was any specific or categorical direction from the higher authority to the WTO to proceed in any particular manner as was found in the case of *Gobindlal Bangur Vs. Wealth Tax Officer and Another*, . It appears that the communication, dated March 18, 1975, issued by the Deputy Director of the Directorate of Inspection (Investigation), Special Cell, New Delhi, was circulated to the ITOs and WTOs concerned in respect of assessment of shareholders concerned of the company.

18. The communication came in the usual course and the officers concerned received the same in discharge of their official duties. It cannot be said that such information was received from any doubtful source or was of such nature that the ITOs could ignore it. As held in *Sm. Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, , a communication of this nature could be treated as information within the meaning of Section 17 of the W.T. Act.

19. I note that in the communication of the Deputy Director in to instant case items of specific information were recorded, whereas in the case before the Rajasthan, High Court the communication did not contain any material information whatsoever with particulars.

20. The decision of the Full Bench of this court is binding on me. At this stage the court is not called upon to evaluate the veracity or validity of information received by the ITO. All the defence and contentions of the assessee remain open to be adjudicated in the proceedings.

21. For the above reasons, the petitioners' application fails. The rule is discharged. All interim orders are vacated. There will be no order as to costs. The

operation of this order will remain stayed for six weeks from the date at the instance of the learned advocate for the petitioners. Re: C.R. No. 11644-46(W) of 1975.

22. Let the order passed in C.R. No. 11643(W) of 1975 govern the above rules and all the rules are disposed of on those terms.