
(1987) 10 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No"s. 17 and 18 of 1978

Raj Paul Oswal

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 01-10-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Wealth Tax Act, 1957 — Section 16A, 16A(1)
Wealth Tax Rules, 1957 — Rule 3B

Citation : (1988) 67 CTR 60

Hon'ble Judges : S.S. Sodhi, J;D.S. Tewatia, J

Bench : Division Bench

**Advocate : B.S. Gupta, Sanjay Bansal and Suresh Kumar, for the Appellant;
Ashok Bhan and A.K. Mittal, for the Respondent**

Judgement

D.S. Tewatia, J.—The Income Tax Appellate Tribunal, Amritsar Bench, has referred the following question for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that a reference to the Valuation Officer by the Wealth-tax Officer u/s 16A of the Wealth-tax Act, 1957, was discretionary and not mandatory, even when the difference in wealth returned by the assessee and the wealth assessed by the Wealth-tax Officer was more than the limit prescribed under Rule 3B of the Wealth-tax Rules ?"

2. In order to appreciate the import of the question, only a reference to the admitted facts is necessary, which can be stated thus :

3. The assessment relates to the year 1971-72 (with 31st March, 1972, as the valuation date) and the year 1972-73 (with 31st March, 1973, as the valuation date). The assets involved were a one-third share in a house situated at Rani Jhansi Road and another property situated at Sohan Lal Lane exclusively owned by the assessee. For the former asset, the value returned by the assessee was Rs. 35,000. The Wealth-tax Officer accepted the value of the construction as

shown by the assessee. The Wealth-tax Officer assessed the value of the plot at Rs. 80 per square yard and consequently estimated the value of the 1/3rd share of the assessee at Rs. 82,630.

4. The property situated in Sohan Lal Lane was a plot and the value returned by the assessee as obtained on March 31, 1971, was mentioned as Rs. 1,92,564. The Wealth-tax Officer calculated the value of this plot at Rs. 80 per square yard which came to Rs. 3,08,160. The Wealth-tax Officer adopted for both the properties the same valuation for the subsequent assessment year 1972-73 and imposed wealth-tax accordingly for both the assessment years. The assessee challenged the said order in appeal. The Appellate Assistant Commissioner, adopting the rate of Rs. 51 per sq. yd. for the plot at Rani Jhansi Road and Rs. 46 per sq. yd. for the property at Sohan Lal Lane, respectively, reduced the estimated value of the two assets. This order satisfied neither side and, therefore, both the Revenue and the assessee approached the Tribunal in appeal against that order. The Tribunal dismissed both the appeals and maintained the status quo.

5. Before proceeding to examine the rival contentions, it would be appropriate at this stage to take notice of the relevant statutory provisions ;

6. Section 16A of the Wealth-tax Act, 1957, reads :

" 16A. (1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth-tax Officer may refer the valuation of any asset to a Valuation Officer--.

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value ;

(b) in any other case, if the Wealth-tax Officer is of opinion-

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf ; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.....

(6) On receipt of the order under Sub-section (3) or Sub-section (5) from the Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer."

7. Rule 3B of the Wealth-tax Rules, 1957, reads as follows :

" 3B. Conditions for reference to Valuation Officers.--The percentage of the value of the asset as returned and the amount referred to in Sub-clause (i) of Clause

(b) of Sub-section (1) of Section 16A shall, respectively, be 33 1/3 percent, and Rs. 50,000."

8. Admittedly, the estimated value of the assets exceeded the returned value of the said assets by more than what is envisaged by Rule 3B, *ibid*. The question, therefore, arises as to whether, in that eventuality, the Wealth-tax Officer had perforce to make a reference to the Valuation Officer for assessing the true value of the asset.

9. It has been contended on behalf of the assessee that once the estimated value exceeded the value returned by the assessee by more than what is envisaged in Rule 3B, then the Wealth-tax Officer had no option but to make a reference to the Valuation Officer.

10. Learned counsel for the assessee sought to buttress the above contention with the view which the Board of Revenue itself had taken of the provisions which had been newly introduced by the Taxation Laws (Amendment) Act, 1972, with effect from January 1, 1973, and conveyed to all the Wealth-tax Officers in the country, through Circular No. 96, dated November 25, 1972 (as reproduced in Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others,).

11. In our opinion, counsel for the assessee is right in his submission. Their Lordships of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, had occasion to consider that aspect of the matter. Their Lordships held that the rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it had received from contemporary authority, though it must give way where the language of the statute was plain and unambiguous. Their Lordships in this regard approvingly quoted the following lucid observation of Mookerjee J., in Baleshwar Bagarti v. Bhagirathi Dass ILR [1908] Cal 701:

" It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

12. Their Lordships did not remain content by merely holding that the view expressed by the Board in regard to a given provision of the Act could be of help in interpreting the said provision, but went one step further and, basing themselves on two earlier decisions of that court in Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, and Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal, Calcutta, held that the circulars in question were legally binding on the Revenue even if they were found not in accordance with the correct interpretation of the given provision.

13. It may be observed that if the legislative intent had been to accord total

discretion to the Wealth-tax Officer to make a reference to the Valuation Officer or not, in cases which were covered by Clauses (a) and (b) of Sub-section (1) of Section 16A of the Wealth-tax Act, then there was no necessity of providing the guidelines in Clause (a) or in Sub-clauses (i) and (ii) of Clause (b) of Sub-section (1) of Section 16A. The Legislature by prescribing the contingencies, in which, by implication, it would not be necessary to make a reference, must again, by necessary implication, be taken to have intended that the reference to the Valuation Officer was a must if the given contingencies did not exist.

14. It has been canvassed on behalf of the Revenue that the use of the expression " may " would indicate that the provision regarding a reference to the Valuation Officer is directory and not mandatory.

15. There is no doubt about the fact that the use of expressions " may " and " shall " to some extent serves as an indicium to the intention of the Legislature and helps in deciding whether the given requirement is directory or mandatory in character, but the use of the expression " may " or " shall " is never considered decisive in that regard.

16. We may emphasise that if the provisions of Section 16A of the Wealth-tax Act are to be interpreted, as canvassed on behalf of the Revenue to mean that it vests a discretion in the Wealth-tax Officer to make a reference to the Valuation Officer or not even when the case is covered by Clause (a) or (b) of Sub-section (1) of Section 16A of the said Act, then it would invest the provision with the vice of arbitrariness and thus render it ultra vires the provision of Article 14 of the Constitution of India.

17. The courts have to avoid a construction which may render a provision unconstitutional.

18. The Delhi High Court in *Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII*, and others, also took the above view. Kirpal J., who delivered the opinion for the Bench, however, added a rider that the Wealth-tax Officer is required to make a reference mandatorily only if the estimated value after being notified to the assessee was not acceptable and the assessee wanted a reference to be made.

19. Learned counsel for the Revenue, taking a cue from the aforesaid view of Kirpal J., contended that since the assessee in this case had not requested the Wealth-tax Officer to make a reference, the Wealth-tax Officer was not duty bound to make a reference.

20. In our view, there is no merit in the stand taken on behalf of the Revenue. In our view, the provisions of Section 16A(1), Clause (b), when read with Rule 3B, *ibid*, mandatorily require the Wealth-tax Officer to make a reference. With due respect to Kripal J., in our opinion, the Wealth-tax Officer was not required to convey his estimated value to the assessee and wait for his reaction. In our opinion, the moment the estimated value exceeded the returned value of the

asset by more than what is envisaged by Rule 3B, then he had no option but to make a reference and he is not to wait for a request from the assessee to make a reference. It would be a different matter if the assessee, on coming to know about the estimated value, whether as a result of the communication from the Wealth-tax Officer or on his own and, in writing, accepts the estimated value to be the correct value.

21. For the reasons aforementioned, we answer the question referred to us in the negative, i.e., against the Revenue and in favour of the assessee and remit the case back to the Tribunal to deal with it in accordance with law.