
(1990) 07 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53 of 1988

Rajan Lal

APPELLANT

Vs

Wealth-tax Officer and Others

RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Wealth Tax Act, 1957 — Section 17, 17(1)

Citation : (1991) 187 ITR 150

Hon'ble Judges : B.P. Jeevan Reddy, C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant;

Final Decision : Partly Allowed

Judgement

B.P. Jeevan Reddy, C. J.

1. These writ petitions are filed by Sri Rajan Lal questioning the notices dated November 6, 1987, issued u/s 17(1) of the Wealth-tax Act, proposing to reopen the wealth-tax assessments of the petitioner relating to the assessment years 1979-80 to 1986-87. It would be sufficient if we state the facts of Writ Petition No. 53 of 1988.

2. The petitioner is a wealth-tax assessee. One of the assets held by him is an open plot of land measuring 300 sq. yards situated in Greater Kailash locality of New Delhi. He has been disclosing this asset and its value from the very beginning. Indeed, he has been increasing its value in each consecutive year. It was valued at Rs. 60,000 for the assessment year 1976-77, at Rs. 75,000 for the assessment year 1980-81 and at Rs. 3,00,000 for the assessment year 1986-87. On each occasion, his return was supported by the report of an approved valuer and the valuation placed upon the plot in question was accepted by the Wealth-tax Officer and assessments made. While so, the petitioner entered into an agreement with a third party, agreeing to sell the said plot of land for a

consideration of twenty-five lakhs of rupees. The agreement was entered into in the year 1986. With a view to enable him to execute a sale deed, he applied to the Income Tax Department for an Income Tax clearance certificate. From the contents of the application for the clearance certificate, the Wealth-tax Officer came to know that the said plot was being sold for rupees twenty-five lakhs. Thereupon he issued the impugned notices proposing to value the plot in question on the basis of the said consideration amount for all the assessment years 1979-80 to 1986-87.

3. The petitioner's contention is that there was no concealment or failure to disclose this asset or its value on his part in any of the said assessment years and, therefore, the notice issued proposing to revise the assessment in respect of the previous eight years is incompetent and beyond the jurisdiction of the Wealth-tax Officer.

4. With a view to satisfy ourselves as to the reasons for and the basis of the impugned notices, we called upon learned standing counsel for the Revenue to place the relevant record before us, which he has, accordingly, done. The record discloses the following reasons behind the impugned notices :

"Application for issue of certificate u/s 230A of the Income Tax Act received. The plot of land at Greater Kailash is being sold for rupees twenty-five lakhs. Its value as on March 31, 1986, has been shown at rupees three lakhs. For earlier years, the value has been shown even less. I have, therefore, reason to believe that, owing to omission on the part of the assessee to disclose all material facts necessary for assessment of his wealth, his net wealth has escaped assessment by way of under-assessment. Issue notices u/s 17(1)(a) for the assessment years 1979-80 to 1986-87.

(Sd.)

Wealth-tax Officer."

5. The impugned notice does not, however, specify whether it is issued under Clause (a) or Clause (b) of Section 17(1) as it stood on the date it was issued. It merely recited Section 17. But, from the fact that assessments for eight years are sought to be reopened, it would be evident that the notice is relatable to Clause (a) of Section 17(1). In any event, the reasons recorded in the relevant file put the matter beyond doubt.

6. Learned counsel for the petitioner, Sri Vikram Gulati, contended that there was no omission or failure on the part of the petitioner to disclose fully and truly all material facts necessary for assessment of his net wealth within the meaning of Clause (a) of Section 17(1) and, therefore, the Wealth-tax Officer has no jurisdiction to reopen his assessment under the said clause. He relied upon several decisions in support of his contention including the decision of the Delhi High Court in Avtar Singh Sandhu Vs. Wealth Tax Officer and another, . He submitted further that once it is found that the notice under Clause (a) of Section

17(1) is unsustainable in law, it cannot be sustained under Clause (b) of Section 17(1). In support of this proposition, he relied upon the decision of this court in RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., ,

7. Sub-section (1) of Section 17 of the Act as it stood on the date when the impugned notices were issued read as follows :

"17(1). If the Assessing Officer --

(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return u/s 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of underassessment or assessment at too low a rate or otherwise ; or

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in Clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise ;

he may, in cases falling under Clause (a) at any time within eight years and in cases falling under Clause (b) at any time within four years of the end of that assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section."

8. Section 17(1) of the Act corresponds to Section 147 of the Income Tax Act. Having regard to the fact that the petitioner had been disclosing the said asset in each of the relevant assessment years, with a report of an approved valuer, it cannot be said that there has been a failure or omission to disclose fully and truly all material facts necessary for assessment of his net wealth, within the meaning of Section 17(1)(a).

9. The question, however, is whether the contents of the application filed by the petitioner for grant of a clearance certificate (disclosing therein that the plot in question was agreed to be sold for a consideration of twenty-five lakhs of rupees) does not constitute information within the meaning of Section 17(1)(b). In other words, the question is whether the impugned notices can be sustained with reference to Section 17(1)(a), though it may be found that they are not sustainable u/s 17(1)(b) of the Act. We find that, in Avtar Singh Sandhu Vs. Wealth Tax Officer and another, , a Division Bench of the Delhi High Court was faced with an identical situation. In that case too, the assessee was filing returns

of wealth showing the value of a house property at a particular figure and it was being accepted by the Department and the assessments made accordingly. At a later point of time, the assessee applied for a tax clearance certificate u/s 230A of the Income Tax Act, with a view to enable him to sell the said property when he disclosed the price of the property at a far higher figure than was mentioned in his returns. On the basis of that information, the Wealth-tax Officer issued notice u/s 17 of the Act without indicating whether it was issued under Clause (a) or Clause (b) of Section 17. The assessments for the last eight years were sought to be reopened. In those circumstances, the Division Bench held that while the notice could not be sustained u/s 17(1)(a), it could be sustained u/s 17(1)(b). The Bench was of the opinion that the information contained in the application for the clearance certificate and the agreement enclosed therewith constituted information within the meaning of Section 17(1)(b). Accordingly, the notice was sustained to the extent of the previous four years. We are in respectful agreement with the said decision of the Bench of the Delhi High Court.

10. Sri Vikram Gulati, learned counsel for the assessee, however, contended that the course adopted by the Delhi High Court cannot be adopted in this case for two reasons :

(i) Though the impugned notices did not specify whether they are issued under Clause (a) or Clause (b) of Section 17(1) of the Act, it is clear from the record as well as from the fact that assessments of previous eight years were sought to be reopened that the notices were under Clause (a) of Section 17(1). Thus, there is no ambiguity about the clause under which the impugned notices were issued.

(ii) In RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., , this court held that a notice under Clause (a) of Section 34(1) of the Indian Income Tax Act, 1922, could not be converted into a notice under Clause (b) thereof inasmuch as both the clauses contemplated two distinct and mutually independent jurisdictions. This decision is binding on this Bench and, therefore, the impugned notices must be quashed in full.

11. In RAGHUBAR DAYAL RAM KISHAN Vs. COMMISSIONER OF Income Tax, U. P., , there arose a difference of opinion between two learned judges of this court, which was ultimately referred to R.S. Pathak J.(as he then was). A reading of the opinion of Pathak J. shows that having held that Clauses (a) and (b) of Section 34(1) contemplated two distinct and mutually independent jurisdictions, the learned judge dealt with the power of the Tribunal in an appeal before it. He refused to accept the proposition that the Legislature intended to confer an absolute jurisdiction upon the Tribunal in the matter of disposal of appeals and added (at page 606) :

"It is the assessment of the income made by the Income Tax Officer and considered by the Appellate Assistant Commissioner which is the subject of appeal before the Tribunal. It is not open to the Tribunal to exercise jurisdiction in matters lying outside the assessment process. It has all the jurisdiction which

the Income Tax Officer has in the matter of making an assessment. But it has no jurisdiction in matters preceding the assessment process Here I am concerned with the statutory power conferred upon the Income Tax Officer to determine the existence of certain conditions before he invokes the jurisdiction to assess or reassess. The power exercised by the Income Tax Officer at that stage does not form part of the assessment process. It precedes it and is distinct from it. It is not open to the Tribunal to enter into the sufficiency of the reasons upon which the Income Tax Officer had reason to believe that he should proceed to reopen the assessment. The Tribunal cannot sit in judgment over the sufficiency of these reasons. That is because the function has been entrusted entirely to the judgment of the Income Tax Officer. So far as the domain preceding the assessment is concerned, it is only the ground that there were no reasons at all for forming the belief and, therefore, for invoking the jurisdiction under Clause (a) or Clause (b) or that the Income Tax Officer did not form any belief at all that can form the subject of appellate examination Upon all these considerations it seems to me that the Tribunal, in an appeal before it, cannot exercise the functions of the Income Tax Officer and decide that an assessment can be sustained under Clause (a) or Clause (b) of Sub-section (1) of Section 34. If the Tribunal does not enjoy that jurisdiction, it does not have jurisdiction to convert an assessment made under Clause (a) to one under Clause (b)."

12. In the case before us, we are not concerned with the Tribunal's power, nor with the situation considered in the said decision of this court. We are at the stage of issue of notice itself. The question is whether the notice should be quashed in full on the ground that it appears relatable to Section 17(1)(a) of the Act. In this context, it must be remembered that the impugned notice does not say whether it is issued under Clause (a) or Clause (b). It, no doubt, proposes to reopen the assessments of the previous eight years. But, a reading of the "reasons recorded" (which have been extracted hereinbefore) does show that the Wealth-tax Officer was treating the contents of the application made by the assessee for the Income Tax clearance certificate as an information and, on that basis, seeking to reopen the assessments. It is not the clause which he mentions that is relevant; what is relevant is the substance of the "reasons recorded". Since the "reasons recorded" are relatable to Section 17(1)(b), it would be appropriate to sustain the notices under that clause, notwithstanding the fact that the Wealth-tax Officer has expressed an opinion that the case attracted his power u/s 17(1)(a).

13. Learned counsel for the petitioner also relied upon the decision of the Madhya Pradesh High Court in Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another, . In that case, counsel for the Revenue stated before the court that "the validity of the action of the Wealth-tax Officer has to be considered under the provisions of Section 17(1)(a) of the Wealth-tax Act." The court, therefore, proceeded to examine whether the notice in that case could be sustained u/s 17(1)(a). Finding that there was no failure or omission on the part of the assessee to disclose all material facts necessary for assessment of her net

wealth, the notice was held bad. The question whether the notice could be sustained under Clause (b) of Section 17(1) was not specifically gone into in the said case. In any event, we are inclined to prefer the reasoning of the Delhi High Court in *Avtar Singh Sandhu Vs. Wealth Tax Officer and another*, to the reasoning contained in the decision of the Madhya Pradesh High Court in *Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another*, .

14. Learned counsel for the petitioner also relied upon the decision of the Bombay High Court in *Acchut Kumar S. Inamdar Vs. P.R. Hajarnavis and Another*, and the decision of the Rajasthan High Court in *Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another*, . A reading of the judgment of the learned single judge of the Bombay High Court in *Acchut Kumar S. Inamdar Vs. P.R. Hajarnavis and Another*, shows that the entire discussion was whether the notice u/s 17(1) (a) could be sustained and it was held that it could not be. The question whether the notice could be sustained u/s 17(1)(b) in the alternative does not appear to have been raised or considered. In the case before the Rajasthan High Court, the assessments were sought to be reopened on the basis of the audit report. It was held that an audit report does not constitute information within the meaning of Section 17(1)(b). It was also held that the Valuation Officer's report u/s 16A cannot also constitute such information, nor can it be said on that basis that wealth has escaped assessment

15. Two other decisions relied upon by learned counsel for the petitioner are *Commissioner of Wealth Tax Vs. Shivaram Singh*, and *Smt. Rajeshwari Birla Vs. Wealth Tax Officer, "H" Ward and Others*, . So far as the Patna decision is concerned, the question arose in a reference u/s 256 of the Act. The Revenue conceded that the assessment was reopened u/s 17(1)(a) and not u/s 17(1)(b). The Tribunal had not considered the question of applicability of Section 17(1)(b). In those circumstances, it was held by the court that, at the stage of reference, it could not consider the applicability of Section 17(1)(b). So far as the Calcutta decision is concerned, the facts and the principle of that case are wholly unrelated to the facts and controversy in the case before use. We do not, therefore, think it necessary to deal with the same at any length.

16. We must make it clear that we are not dealing with a situation where valuation of an asset for previous assessment years was being made under Rule 1BB of the Wealth-tax Rules, that is, on the basis of rental valuation. Probably, such a case will stand on a different footing. We need express no opinion in that behalf.

17. For the above reasons, the writ petitions are allowed in part. The impugned notices shall be construed as having been issued under Clause (b) of Section 17(1) and not under Clause (a) thereof. Accordingly, the notices shall be confined to the assessment years 1983-84, 1984-85, 1985-86 and 1986-87. They are quashed in so far as they pertain to other assessment years. There shall be no order as to costs.