

(2009) 04 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 3365 of 1987

Rohini Cedric Santos

APPELLANT

Vs

Mrs. Prachi Sinha, Wealth Tax Officer and Another

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 17, 17(1)

Citation : (2009) 227 CTR 506 : (2009) 318 ITR 158 : (2009) 184 TAXMAN 77

Hon'ble Judges : J.H. Bhatia, J;F.I. Rebello, J

Bench : Division Bench

Advocate : B.D. Damodar, instructed by Kanga and Co, for the Appellant; None, for the Respondent

Judgement

F.I. Rebello, J.—This petition is against the notice dt. 29th March, 1987 whereby the WTO has issued a notice u/s 17 of the WT Act, 1957 on the ground that he has reason to believe that the net wealth chargeable to tax for the asst. yr. 1978-79 has escaped assessment.

The petitioner on receipt of the notice by her communication dt. 24th April, 1987 requested for the reasons based on which the notice u/s 17 of the WT Act has been issued. Reminder was sent on 7th Oct., 1987. The petitioner has received no reply.

2. It is the case of the petitioner that the petitioner had filed return of net wealth for the asst. yr. 1978-79. A revised return was filed on 19th June, 1979. The respondent No. 1 completed the assessment of the petitioner for the asst. yr. 1978-79 by order dt. 24th Feb., 1983 which was received by the petitioner on 21st March, 1983. The assessment was completed by respondent No. 1 u/s 16(3) of the WT Act. The petitioner aggrieved by the order passed by the WTO preferred an appeal to the CWT(A). By order dt. 7th Aug., 1984 the CWT(A) was pleased to allow the appeal and directed the respondent No. 1 to redetermine the value of the shares. The Revenue aggrieved by the order of the CWT(A) preferred an appeal before the Tribunal. The learned Counsel informs that the

appeal has been dismissed.

3. At the hearing of this petition on behalf of the petitioner it is submitted that the notice does not disclose whether it was issued u/s 17(1)(a) or Section 17(1) (b) of the WT Act, it be u/s 17(1)(b) the same is bad in law being barred by limitation. Secondly, it is submitted the WTO (i) must have reason to believe that wealth-tax liability escaped assessment and (ii) he must have reason to believe that such escapement of net wealth is by reason of the omission or failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for this assessment for the relevant year. It is also submitted that once assessment has been completed u/s 16(3) the question of respondent No. 1 has reason to believe that the net wealth had escaped assessment then Section 17(1)(a) would not arise. Various other contentions have been raised.

4. Our attention is also invited to an order passed by this Court in Writ Petn. No. 3364 of 1987 decided on 6th Feb., 2002 in the case of very-same assessee under the GT Act on the issue of reasons to believe.

5. No reply has been filed by the respondents denying the averments.

6. In the first instance there is no material before us as to whether the notice has been issued u/s 17(1)(a) or 17(1)(b). If it be u/s 17(1)(b) it clearly is barred by limitation.

7. Even u/s 17(1)(a) the AO while issuing the notice must have formed opinion based on reasons to believe. Though the petitioner has sought the reasons no such material was furnished to the petitioner nor is there any affidavit filed before this Court setting out the reasons. Our attention was also invited to the judgment of the Supreme Court in the case of Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle "B", Nagpur, to contend that when there is no counter-affidavit filed, the Court has to accept the allegations made in the petition. In our opinion, the absence of any material before us to show what are the reasons to believe for the WTO to issue the notice u/s 17(1) the said notice would be without jurisdiction and consequently liable to be set aside.

8. In the light of the above, petition made absolute in terms of prayer Clause (a).