
(1984) 02 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 1831 to 1834 and 1965 to 1968 of 1976

Saroj Devi and Others

APPELLANT

Vs

Wealth-tax Officer

RESPONDENT

Date of Decision : 07-02-1984

Acts Referred:

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

Citation : (1984) 40 CTR 62 : (1984) 148 ITR 452

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Advocate : Rajesh Balia, for the Appellant; J.P. Joshi, for the Respondent

Judgement

Lodha, J.—In all these writ petitions, common questions of law are involved and, therefore, they are being disposed of by a common order. They relate to matters of proceedings u/s 17 of the W.T. Act (hereinafter called "the Act "). The relevant years in all these cases are assessment years 1969-70 and 1970-71. The original assessments under the Act of all these petitioners-assesseees were made on December 20, 1969, for the year 1969-70. For the year 1970-71, the assessment of Shri Jabarmal was made on February 27, 1971, and in the cases of other petitioners it was made on January 23, 1971.

2. Earlier, the assesseees had filed their returns for the year 1968-69 showing the net wealth including jewellery and gold and silver ornaments, the valuation of which was based on the certificate of M/s. Ramnik M. Javeri & Co. Bombay, approved valuer. This return was accepted by the WTO but exemption was not granted to the petitioners although they claimed that jewellery was exempt from wealth-tax u/s 5(1)(viii) of the Act at the relevant time.

3. Based on the same valuation, the assesseees filed their returns for the year 1969-70 and they were also accepted as per the assessment order, dated December 20, 1969. As already stated above, the claim of exemption of the assesseees-petitioners was initially rejected by the assessing authority, i.e., the

WTO, but later it was accepted on appeal but again on account of the amendment in Section 5(1)(viii) retrospectively w.e.f. April 1, 1963, the matter of Smt. Saroj Devi for the year 1969-70 was settled by a reassessment order, dated March 26, 1973, and those of the others by rectification orders, dated December, 27, 1971, and the jewellery and ornaments, accepting their valuation as furnished by the assesseees, were brought to tax. Similarly, the valuation of the jewellery shown in the returns filed for the year 1970-71 were accepted by the WTO.

4. Later, when the assesseees filed their returns for the year 1971-72, valuing their ornaments and jewellery at much higher figures in comparison to the valuations of the years 1969-70 and 1970-71, it appears that the wealth-tax authorities entertained a suspicion that the valuation disclosed by the assesseees for the years 1969-70 and 1970-71 were much too low and it also appears that some audit objections were raised in respect of the assessments of those years and the higher authorities directed the WTO to get the ornaments and jewellery revalued by the assesseees. It, therefore, appears that the WTO issued notices to the assesseees on November 16, 1973, asking them to explain the difference in the valuations and in that connection, he made three queries from the assesseees, viz., (i) whether they had added some jewellery, (ii) whether they had changed certain items and replaced them by other items, and (iii) what were the reasons for the steep increase in the valuation. The assesseees furnished their replies to these notices explaining that they had based the valuations on the report of the approved valuer and had also indicated the addition or decrease in the items whenever it took place while the returns were filed. They also alleged that there was a steep rise of price in selected jewellery in the year 1971 and in that respect they furnished the certificate of M/s. Chottalal Amulakh & Mohanlal of Calcutta, approved valuers. Even thereafter, the WTO, under the directions of the higher authorities, still required them, to get the jewellery revalued for the assessment years 1968-69 and 1971-72, by his notice, dated January 12, 1976. The petitioners objected to this and replied that the valuation had already been got made by approved valuers and the reports of the valuation had already been filed along with the returns. The WTO even then issued another notice, dated January 19, 1976, asking the assesseees to get the jewellery revalued for the assessment years 1969-70, 1970-71, 1972-73 and 1973-74. The petitioners again resisted this by their letters, dated January 22, 1976. The WTO even then did not desist and ultimately he issued notice u/s 17 of the Act to the assesseees on April 13, 1976, asking them to file their returns of net wealth chargeable to tax as he proposed to reassess the said net wealth for the relevant years already referred to above. The petitioners-assesseees resisted this and filed their objections on May 15, 1976. The WTO, however, did not pay heed to these objections and, therefore, the petitioners approached this court asking for quashing the notices to the petitioners issued by the WTO on April 13, 1976, and restraining him from taking any proceedings in pursuance of those notices.

5. The case of the petitioners is that proceedings u/s 17 could not have been

initiated against the petitioners in these circumstances because if the proceedings are deemed to be u/s 17(1)(b), they were clearly barred by time since more than four years from the end of the relevant assessment years had already expired before these notices were issued and thereafter the WTO had no jurisdiction to issue such notices u/s 17(1)(b). If the proceedings are deemed to be u/s 17(1)(a), then as the petitioners had already furnished the returns, the first part of that section is not applicable and as the petitioners were not guilty of not disclosing fully and truly all material facts necessary for assessment of their net wealth, the second part of Section 17(1)(a) was not attracted.

6. The Revenue has filed a return to the writ application and it has been stated that the notice u/s 17 has been issued under Clause (1)(a) of that section, as the petitioners-assesseees had not disclosed true and correct valuation of the jewellery in their returns of wealth and they had filed false and incorrect returns of valuation of their jewellery resulting in underassessment. An objection was also raised that the petitioners cannot invoke the jurisdiction of this court under Article 226 of the Constitution as they have not exhausted their remedies before the Department itself.

7. From the above facts, it is apparently clear that, according to the Department, the proceedings against the petitioners are sought to be taken u/s 17(1)(a) and that too for the alleged non-disclosure of true and material facts. Therefore, the question for consideration before me is now very much limited.

8. Before I come to the merits of the matter, I may at once state that the objection that the petitioners cannot invoke the jurisdiction of this court under art, 226 of the Constitution cannot be sustained in view of the observations of the Hon"ble Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, . In that case, a similar objection was raised but it was turned down by their Lordships in the following terms (p. 208):

" In the present case the company contends that the conditions precedent for the assumption of jurisdiction u/s 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief, it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

We have, therefore, come to the conclusion that the company was entitled to an order directing the Income Tax Officer not to take any action on the basis of the three impugned notices. "

9. We, have therefore, to see whether the action of the WTO in issuing notices u/s 17 in the above circumstances was within his jurisdiction or not and, in this connection, the observations of their Lordships in this very authority are very

material. The jurisdiction to issue notice u/s 17, is for all purposes the same as u/s 34 of the Indian I.T. Act, 1922. Referring to that Section 34, their Lordships observed that the two conditions, which are conditions precedent for these proceedings are; (1) that the ITO must have reason to believe that income, profits and gains chargeable to tax have been under-assessed and the second is that he must have also reason to believe that such under-assessment has occurred by reason of either, (i) omission or failure on the part of an assessee to make a return of his income, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. According to their Lordships, unless both these conditions are fulfilled, the assessing authority will have no jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question. Then their Lordships further pointed out that where the assessee discloses the primary facts fully and truly, he has done his duty and he has nothing further to do and, in that case, he cannot be proceeded against u/s 34(1) of the I.T. Act as the case was before their Lordships. This view has further been reiterated in *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, and also by our own court in *Purushottam Das Bangur Vs. Income Tax Officer, C-Ward and Others*, I am purposely not discussing the matter in detail as, in my opinion, the present cases are fully governed by these authorities I have already referred to above and no useful purpose would be served by multiplying the authorities. It is, therefore, clear that the assessee cannot be proceeded against u/s 17(1)(a) of the W.T. Act also if they have fully and truly disclosed all the material facts.

10. Now, what we have to see is whether in the present cases of the petitioners-assesseees, it can be said that the WTO had reason to believe that the assesseees had not disclosed fully and truly all material facts necessary for assessment for their net wealth. The assesseees had originally filed their returns for the year 1968-69 in which the valuation of the ornaments and jewellery was based on the valuation report, dated September 7, 1968. That valuation was accepted by the WTO. The assesseees repeated this valuation for the assessment years 1969-70 and 1970-71 with the necessary amendments on account of the change in the number of items. When the assesseees had furnished this information along with the returns, they had disclosed fully and truly all material facts necessary for the assessment and had thus done their duty as laid down by their Lordships of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, and *Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das*, . They cannot be said to have in any way failed to disclose fully and truly all material facts. If the assessing authority was not satisfied with the valuation disclosed by the assesseees, he could have made an enquiry before the assessment was made. His failure to do so cannot shift the burden on the assesseees. Later on, if on account of some other information, the WTO was of the opinion that the assessment was not correct and was an under-assessment, it only amounts to a change of his opinion but, on that basis, he

cannot proceed against the assessee u/s 17(1)(a). The fact that the assessee had given a higher valuation of their total wealth for the year 1971-72 does not necessarily lead to the conclusion that the estimate given by them for the years 1969-70 and 1970-71 were incorrect or untrue. Apart from the valuation given by the assessee for the year 1971-72, there does not appear to be any basis on which the WTO could have reason to believe that the assessee had not fully and truly disclosed all material facts. A reference to the notice issued by the WTO on November 16, 1973, would bear this out. Again in the later notices, dated January 12, 1976, and January 19, 1976, also, the WTO does not refer to any such reason except stating that some audit objections were pending and there were directions by the higher authorities to get the jewellery revalued. The audit objection or the direction of the higher authorities for revaluation also cannot furnish any material on the basis of which the WTO can be said to have reason to believe that the assessee had not disclosed fully and truly all material facts. In Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, a Division Bench of the Gujarat High Court, in similar circumstances, had observed as under (p, 829):

" The assessee had in his returns for the assessment years under reference disclosed the palace as one of his assets and offered its estimated value for wealth-tax. The WTO accepted the wealth returned by the assessee. Under these circumstances, it cannot be said that the assessee had omitted or failed to disclose fully and truly all material facts necessary for the assessment of his net wealth. It is true that in his return for the assessment year 1968-69, the assessee returned the market value of the palace at Rs. 3,77,200 on the basis of the valuer's report, but that by itself is not sufficient to establish that he omitted or failed to disclose fully and truly all material facts necessary for the assessment of his net wealth. The WTO was not bound to accept the value of the palace estimated by the assessee. He, however, chose to accept the value returned by the assessee. Under the circumstances, we agree with the view taken by the Tribunal that the assessee's case does not fall u/s 17(1)(a) of the Act."

11. The same view was expressed by the Madhya Pradesh High Court in Smt. Prabha Rajya Lakshmi Vs. Wealth-tax Officer, A-Ward and Another, . In that case the assessee declared the value of the lands for the assessment year 1970-71 at Rs. 36,000, which was accepted by the WTO for that year as also for the year 1971-72. In the next year, the assessee had sold 100 bighas of land for a sum of Rs. 20,000 and for the remaining land, the value was shown at Rs. 16,000 in the wealth-tax return of 1972-73. This was also accepted by the WTO. Then in the previous year relevant to the assessment year 1973-74, the assessee sold 75 bighas of land for a sum of Rs. 15,900 and the valuation of the remaining land was shown at Rs. 1,000 in the return. The WTO accepted this value. For the assessment year 1974-75, the assessee revised the valuation of the remaining land and showed it at Rs. 45,000, which was accepted by the WTO. Thereafter, the WTO, issued a notice, u/s 17 of the Act, on the ground that there had been omission or failure on the part of the assessee to disclose all material facts

necessary for the purpose of assessment of the wealth and there had been underassessment for the years 1972-73 to 1974-15. On these facts, the court observed as under (p. 183):

" It was not disputed that prior to the assessment years in question the petitioner had disclosed the value of her lands on the basis of the report of the approved valuer and the same was accepted by the WTO. In the assessment years in question, therefore, she declared the same value, after making deductions due to sales of parts of the land. She, therefore, declared the value on the basis of her earlier valuation and had also disclosed the fact about sales of parcels of the land during previous years relevant to assessment years in question. If the WTO doubted the correctness of the valuation, it was open to the Department to get the same valued by its own valuer or to have recorded evidence about the real market value of the lands on the valuation date. Section 17(1)(a) of the W.T. Act does not empower the Revenue to reopen the final assessment, even though by oversight, carelessness or inefficiency on the part of its officer, proper investigation was not carried out though all the primary facts which the assessee was required to place before him had been so placed. This is the considered view of the Supreme Court in *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, *Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others*, and *Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta*, . As the assessee had placed all the primary facts before the WTO for the assessment years in question with regard to the value of the agricultural land, there was no failure on her part which would entitle the WTO to take recourse to Section 17(IXa) of the Act for reopening the assessments. "

12. The Patna High Court in *Durga Sharan Udho Prasad Vs. Commissioner of Income Tax*, also has fallen in line with this view. In that case, the matter was u/s 147(a) of the I.T. Act of 1961, which is almost in pari materia with Section 17 of the Act, with which we are concerned. In the case before the Patna High Court, on a subsequent information given to the ITO by the Income Tax inspector on the basis of estimate of the cost of construction, the ITO proceeded u/s 147(a) of the I.T. Act and it was held that where there had been a full and truthful disclosure of all primary facts by the assessee, the subsequent information given to the ITO could not entitle him to act u/s 147(a). It was observed (p. 275) :

" At best, therefore, it could be a case of the Income Tax Officer's reason to believe that income chargeable to tax had escaped assessment in consequence of the information in his possession and not by reason of any omission or failure on the part of the assessee."

13. I am in respectful agreement with these views. In my opinion, these cases fully apply to the facts of the present cases because as already stated above, the assessee had disclosed all the items of jewellery and ornaments and had given their valuation on the basis of the approved valuer's report. They did not conceal

any primary facts and it was not their fault if the WTO did not make a proper enquiry about the valuation before he made the assessments. The subsequent audit objections or even the directions of the higher authorities could only amount to some information on the basis of which the WTO may have changed his opinion but a mere change of opinion would not empower him to proceed u/s 17(1)(a) of the Act. He can get jurisdiction u/s 17(1)(a) of the Act only when the two conditions as already referred to above are fulfilled. Since the second condition, namely, that he must have reason to believe that underassessment is by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year, is not fulfilled. Since the WTO had no jurisdiction to proceed u/s 17, the petitioner is entitled to relief at the hands of this court.

14. I, therefore, accept these writ petitions and quash the notices issued by the WTO u/s 17 of the Act against the petitioners for the years 1969-70 and 1970-71 and direct that the WTO will not take any proceedings in pursuance of those notices against the petitioners. In the circumstances of the cases, I shall make no order as to costs.