(1992) 02 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1598 of 1981

Shyam Sunder Dhoot APPELLANT

Vs

Wealth-tax Officer RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 186
Wealth Tax Act, 1957 — Section 17

Citation : (1993) 199 ITR 274

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Advocate : R. Mehta, for the Appellant; D.S. Shishodia, for the Respondent

Judgement

Milap Chandra Jain, J.—This writ petition has been filed for quashing the notice dated March 28, 1981 (annexure ''11'') issued u/s 17(1) of the Wealth-tax Act, 1957, in respect of the assessment year 1972-73, for restraining the non-petitioner from taking further proceedings in pursuance thereof and for holding that the non-petitioner has no jurisdiction to proceed against the petitioner in pursuance of the impugned notice. The facts of the case may be summarised thus.

2. The petitioner along with his mother, Smt. Rukma Bai, constituted a partnership firm, Messrs. Gulab Das [agannath, in terms of the partnership deed dated November 14, 1966. It was duly registered under the Indian Partnership Act, 1932. The Income Tax Officer granted registration to the said firm u/s 185 of the Income Tax Act thereinafter referred to as "the Act"). The firm was regularly registered as a registered firm till the year 1977-78. The partners of the firm, Messrs. Gulab Das Jagannath, i.e., Shyam Sunder Dhoot (the petitioner) and Smt. Rukma Bai, separately filed returns regularly under the Wealth-tax Act, 1957, including their share in the assets of the said firm. The Wealth-tax Officer accepted the returns and passed assessment orders accordingly till the year

1977-78. The Income Tax Officer initiated proceedings u/s 186 of the Act for cancellation of the registration granted to the said firm, Messrs. Gulab Das Jagannath, for the assessment years 1972-73 to 1977-78 and cancelled the registration holding that the petitioner''s mother, Smt. Rukma Bai, was merely a benamidar of the petitioner, that the amount invested by her in the said firm did not belong to her and that she did not enter into partnership with her son. He also directed that the entire income of the firm was to be assessed in the hands of the petitioner. Thereafter, the impugned notice was issued.

3. The non-petitioner admits almost all these facts in his reply.

4. It has been contended by learned counsel for the petitioner that the basis of the impugned notice (annexure-11) was the order cancelling the registration of the firm, Messrs. Gulab Das Jagannath, that this order was subsequently set aside by the Income Tax Appellate Tribunal by its order dated March 16, 1983, and the application made by the Department u/s 256(2) of the Act was dismissed by this court by its judgment dated May 22, 1984, reported as Commissioner of Income Tax Vs. Gulab Das, and that after the order cancelling the registration has been set aside, there remains no foundation for the notice (annexure-11) and it deserves to be quashed.

5. Learned standing counsel for the Revenue could not controvert the above contentions of learned counsel for the petitioner. He has to admit that the order cancelling the registration of Messrs. Gulab Das Jagannath was subsequently set aside by the Tribunal and the order of the Tribunal was confirmed by this court by its judgment dated May 22, 1984.

6. There is great substance in the writ petition. The non-petitioner has averred in paragraph No. 25 of his reply as follows :

"It has already been pointed out above that the Income tax Officer after holding an enquiry had arrived at a finding that Smt. Rukma Bai is a benamidar of the petitioner and further found that the firm cannot be regarded as a genuine firm and consequently cancelled its registration in exercise of his powers u/s 186(1) of the Income Tax Act, 1961. As the registration of the firm has been cancelled and Smt. Rukma Bai has been held to be a benamidar of the petitioner which is a new fact before the non-petitioner, the wealth of Smt. Rukma Bai should have been included in the hands of the petitioner and should have been assessed in the hands of the petitioner. In this view of the matter, the notice issued by the non petitioner is wholly justified and is in conformity with Section 17 of the Wealth tax Act, 1957."

7. It is thus the admitted case of the non petitioner that the basis of the impugned notice, annexure-11, is the order cancelling the registration of the firm, Messrs. Gulab Das Jagannath, that it has been set aside in appeal and that the appellate order has been confirmed by this court by its judgment dated May 22, 1984, reported in Commissioner of Income Tax Vs. Gulab Das, Thus, the foundation for the impugned notice no more exists. As such, the notice,

annexure-11, has to be quashed.

8. Consequently, the writ petition is allowed with costs. The notice, annexure-11, and the proceedings taken in pursuance thereof are quashed.

