

(1978) 02 AHC CK 0055
In the Allahabad High Court
Case No : Writ Petition No. 207 of 1977

Smt. Rani Rajendra Kumari Ba	Vs	APPELLANT
Wealth-tax Officer		RESPONDENT

Date of Decision : 01-02-1978

Acts Referred:

Income Tax Act, 1922 — Section 34(3)
Income Tax Act, 1961 — Section 150
Wealth Tax Act, 1957 — Section 17, 17(1), 17(2)

Citation : (1979) 118 ITR 320

Hon'ble Judges : Satish Chandra, J; M.B. Farooqi, J

Bench : Division Bench

Advocate : V.B. Upadhya, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

Satish Chandra, J.—The WTO issued notices u/s 17 of the W.T. Act, 1957, for the assessment years 1966-67, 1967-68, 1968-69 and 1969-70. These notices were served on the petitioner on 28th March, 1977. The petitioner has challenged these notices, principally on the ground that they are barred by limitation.

2. For each of these years, the petitioner had filed returns under the W.T. Act. In due course, the WTO had passed assessment orders on these returns. Being of the opinion that the petitioner's house at 22, Katghar Road, Allahabad, was under-assessed, the WTO issued notices for these four assessment years as well as for the assessment year 1965-66 u/s 17 of the W.T. Act on 24th September, 1973. The petitioner contested these notices, but overruling the objections, the WTO, on 22nd January, 1975, passed five separate assessment orders in respect of each of the five years.

3. In the original assessment proceedings the value of the house at 22, Katghar Road, was taken to be Rs. 16,640. In the reassessment proceedings, the value was taken at Rs. 4,66,020. The value of the mining lease rights was also upgraded and computed at Rs. 2,52,000.

4. The assessee went up in appeal, but the appeals were dismissed by the AAC. The assessee thereupon filed appeals before the Tribunal, The Tribunal held that on 24th September, 1973, the WTO had recorded the following reason for taking action u/s 17(1) of the W.T. Act:

"Issue notice u/s 17(1) of the Wealth-tax Act as the value of the property at 22, Katghar Road, has been under-assessed for not furnishing full particulars by the assessee."

5. The Tribunal held that the assessee had disclosed fully and truly all material facts necessary for assessment in respect of the property at 22, Katghar Road, Allahabad, as well as its value. The notices u/s 17(1) were based upon a mere change of opinion, and on change of opinion reassessment proceedings cannot be held to be valid. The Tribunal further held that since the WTO did not possess jurisdiction to initiate reassessment proceedings, he could not make any reassessment in regard to the valuation of mining lease rights. On these findings, the assessments made u/s 17 were held liable to be quashed.

6. Having recorded these findings, the Tribunal proceeded to consider the case on merits. After discussing the relevant material, the Tribunal came to the conclusion that for the assessment years 1965-66 to 1967-68, the value of the land was liable to be estimated at Rs. 11 per square yard and for the assessment years 1968-69 and 1969-70 at Rs. 13 per square yard. To this the cost of the building and the godown as given in the departmental valuer's report will have to be added. On the question of mining lease rights, the Tribunal held that the assessee's interest in the mining lease was an "asset" within the meaning of Section 2(e) of the W.T. Act and was liable to wealth-tax. The WTO had valued the interest in mining lease at Rs. 2,52,000 on the basis of multiplying the average annual income by 12. The Tribunal considered the facts and directed the officer to adopt the multiplier of 8 for 1965-66 and 1966-67, multiplier of 10 for 1967-68 and 1968-69 and the multiplier of 11 for 1969-70. Ultimately, the Tribunal observed:

"We have quashed the assessment orders made by the Wealth-tax Officer u/s 17(1) of the Wealth-tax Act and, therefore, findings given on quantum are of academic nature."

7. In the result, the appeals were allowed.

8. This decision was rendered by the Tribunal on February 19, 1977. Thereafter, the WTO issued fresh notices u/s 17, which were served on the petitioner on March 28, 1977.

9. u/s 17(1), a notice can be issued at any time within eight years in cases falling under Clause (a), and at any time within four years of the end of the assessment year in cases falling under Clause (b). The impugned notices did not specify the clause of Section 17 under which they had been issued.

10. Mr. V. B. Upadhyaya, learned counsel for the petitioner, submitted that even if

the notices are assumed to have been issued under cl. (a), eight years" period of limitation expired on 31st March, 1975, in respect of the assessment year 1966-67 and on 31st March, 1976, for the year 1967-68. For these years, the notices issued on 28th March, 1977, were beyond time.

11. Learned counsel for the department contended that Sub-section (2) of Section 17 was applicable, and under it a notice can be issued without any limit of time. Sub-section (2) applies to a case of reassessment "in consequence of or to give effect to any finding or direction "contained in an order disposing of an appeal, reference, etc. According to him, the Tribunal had given specific findings with regard to the correct valuation of the Katghar house as well as the mining lease rights, and in order to give effect to these findings the present notices have been issued.

12. Section 17(2) is in pari materia with the second proviso to Section 34(3) of the Indian I.T. Act, 1922, and Section 150 of the I.T. Act 1961. In each of these three provisions the material phrase used is "in consequence of or to give effect to any finding or direction" contained in an order passed by way of appeal, reference or revision.

13. The Supreme Court in *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, considered the second proviso to Section 34(3). It held that the expressions "finding" and "direction" meant a finding necessary for giving relief in respect of the assessment for the year in question and a direction which the appellate or revisional authority, as the case may be, was empowered to give under the sections mentioned in that proviso. A finding could, therefore, only be that which was necessary for the disposal of an appeal in respect of assessment of a particular year. An appellate authority might hold that the income was not the income for the relevant year and thereby exclude that income from the assessment for the year under appeal. He might incidentally find that the income belonged to another year, but that was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.

14. This view was reiterated by the Supreme Court in *N. Kt. Sivalingam Chettiar Vs. Commissioner of Income Tax, Madras*, . It was further held that the earlier decision of the Supreme Court applies also to an express direction of the AAC. In other words, the direction must also be one which was necessary for the disposal of the case for that assessment year.

15. In *Commissioner of Income Tax, U.P. Vs. Mohd. Shakoore Mohd. Bashir*, , the Supreme Court reiterated the same principle. In that case the AAC had held that the association of persons consisting of the heirs of Z was not liable to tax in respect of the income inasmuch as the business had been gifted to S and B in 1942 itself. He set aside the ITO's order and directed him to assess the income from the various sources in the hands of the respective persons to whom they arose. The Supreme Court held that only the finding that the association of

persons consisting of all the heirs of Z was not liable to tax in respect of the business, was a finding which was necessary for the disposal of the appeal. The finding that the business had been gifted to S and B in 1942 was only an incidental finding and not a finding necessary for the disposal of the appeal. It was also held that the directions given by the appellate authority were also not necessary for the disposal of the appeal.

16. In the present case the Tribunal held that proceedings u/s 17 were initiated on the ground that the Katghar house had been under assessed. This was on a change of opinion. They were held to be without jurisdiction and were quashed. The additional findings as to the quantum of the value of the Katghar house were clearly not necessary for the disposal of the appeal in order to give relief to the appellant. The appellant had obtained complete relief on the basis of the finding that the WTO had no jurisdiction to initiate the proceedings u/s 17.

17. The same is the position with regard to the finding as to the value of mining lease rights. The Tribunal had held that since initiation of proceedings was without jurisdiction, the WTO had no power to reassess the value of mining lease rights. The Tribunal, however, went on to compute the value of those rights. This finding was unnecessary for the disposal of the appeal.

18. Thus, the case was not covered by Sub-section (2) of Section 17. The notices could not be held to be in consequence of, or to give effect to, the finding of the Tribunal. In this view the notices issued for the assessment years 1966-67 and 1967-68 were barred by time. Further, the notices for the assessment years 1968-69 and 1969-70 were outside the purview of Clause (a) of Section 17, under which reassessment could be done only if the wealth has escaped assessment by reason of omission or failure to file a return, or because the assessee had failed to disclose fully and truly all material facts necessary for assessment of the wealth. In view of the finding of the Tribunal that the notices were based on change of opinion, Clause (a) was inapplicable. The WTO had, therefore, no jurisdiction to issue notices under Clause (a) for any of the four years in question in relation to the Katghar house.

19. Learned counsel for the department invited our attention to Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., . In that case the Supreme Court considered the question as to when can a question of law be said to arise out of the Tribunal's order within the meaning of Section 66(1) of the 1922 Act. That is not the problem before us. Here, we have to consider the scope of the words "finding or direction" occurring in Section 17(2) of the W.T. Act, on which the Supreme Court has specifically ruled that the finding or direction must be absolutely necessary for the disposal of the appeal. This case is, therefore, not helpful.

20. On a change of opinion reassessment proceedings could possibly be initiated under Clause (b) of Section 17 provided the officer initiates the proceedings in consequence of any information in his possession obtained subsequent to the

original assessment orders. The prescribed period of limitation for issuing a notice under Clause (b) is four years of the end of the assessment year in question. All the four assessment years in question ended beyond four years from the date of the notice, that is, 28th March, 1977. Thus, the attempt to reassess under Clause (b) of Section 17(1) is without jurisdiction in respect of all the four years and in respect of both the matters, namely, the value of Katghar house and the value of the mining lease rights.

21. In respect of the value of mining lease rights, the notices are within time under Clause (a) for the years 1968-69 and 1969-70. The question whether the notices, in so far as they relate to reassessment of the value of the mining lease rights, fall within the purview of Clause (a) or whether they are based on change of opinion has not been the subject-matter of any finding by the Tribunal. This question has also not been debated before us. We are hence not in a position to go into the question.

22. Learned counsel for the petitioner further submitted that since the finding of the Tribunal has become final, the officer could not initiate reassessment proceedings again in respect of the same matter. He relied upon Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh, . It is not necessary to go into this point in so far as Katghar house is concerned. In relation to the value of the mining lease rights, the point does not arise because there has been no finding by the Tribunal that proceedings for it could not be initiated, or that the initiation of proceedings in respect of this at the time was without jurisdiction.

23. In the result, the petition succeeds and is allowed in part. The respondent is restrained from proceeding further in pursuance of the impugned notices in so far as the Katghar house owned by the petitioner is concerned. The notices issued for the assessment years 1966-67 and 1967-68 are quashed. The proceedings based on the notices for the years 1968-69 and 1969-70 shall proceed only in relation to the value of the mining lease rights. The petitioner will be entitled to costs.