
(1982) 03 CAL CK 0023
In the Calcutta High Court
Case No : Civil Rule No. 6929 (W) of 1976

Smt. Uma Debi Jhawar

APPELLANT

Vs

Wealth Tax Officer and Others

RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 12A, 14(2), 16A

Citation : (1982) 136 ITR 662

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Advocate : D. Pal, R. Murarka and P.L. Khaitan, for the Appellant; Samar Banerjee and R. Prashad, for the Respondent

Judgement

M.N. Roy, J.—The petitioner purchased a plot of land being premises No. 42B, Garcha Road, subsequently numbered and renamed as 51E, Gariahat Road (hereinafter referred to as the "said premises"). The area of the said premises has been stated to be 1 bigha, 19 cottahs, 11 chitaks and 3 sq. ft. Such purchase was made from one Smt. Latika Ghose of 80/5B, Lansdown Road, Calcutta. The petitioner has stated that in or about July, 1966, she started construction of a building on the said premises and such construction was completed in or about October, 1968, at a total cost of about Rs. 2,46,363.11. It has also been stated by the petitioner that she was all along and since the assessment year 1958-59, assessed under the provisions of the W.T. Act, 1957 (hereinafter referred to as the "said Act").

2. It has further been stated by the petitioner that in the course of assessment proceedings under the provisions of the I.T. Act, 1961, for the assessment year 1967-68, she furnished to the ITO concerned, who is also the WTO concerned, being respondent No. 1, the details of the cost of construction of the building, along with a valuation report dated 21st November, 1968, from M/s. J. Ganguli & Co., an approved valuer of this court. It has been stated that in the I.T. assessment for the assessment year 1969-70, the officer concerned assessed the

petitioner on the difference between the cost of construction as mentioned hereinbefore and the valuation as made by the approved valuer. The difference as mentioned above was found to be Rs. 48,182 and, on appeal, such determination and the assessment as made, was set aside.

3. It would appear that for the assessment years 1962-63 to 1972-73, the petitioner filed before the appropriate officer, the said valuation report dated 21st November, 1968, and the officer concerned referred the matter of valuation of the property to the valuation cell of the I.T. dept. for the purpose of assessment of the petitioner. The Valuation Officer concerned, by his report dated 20th July, 1972, valued the said premises for the assessment years 1962-63 to 1966-67. The petitioner has given the particulars of valuation per cottah as per her valuer's report and that of the valuer of the department, for the assessment years 1962-63 to 1972-73. She has further stated that, thereafter, the respondent-officer, assessed for the assessment years 1962-63 to 1972-73, u/s 16(3) of the said Act. Section 16 of the said Act deals with assessment and Sub-section (3) thereunder lays down that the WTO, after hearing and considering such evidence as the person may produce and such other evidence as he may require on any specified points, and after taking into account all relevant material which the WTO has gathered, shall, by order in writing, assess the net wealth of the assessee and determine the amount of wealth-tax payable by him or the amount refundable to him on the basis of such assessment. It has further been stated that in the assessment, the officer concerned adopted the value of the said premises on the basis of the valuation as made by the valuer for the revenue and valued the building thereon, on the basis of the valuation of the petitioner.

4. The assessments, as made, were appealed against and by an order dated 16th April, 1974, the appeals were dismissed, holding, inter alia, that the valuation as made by the valuer of the revenue was appropriate and thus the assessments made on that basis were also due and proper. On still further appeals, such order as made, was maintained, by an order dated 24th June, 1975.

5. It has been alleged by the petitioner that in spite of such assessments under the said Act and the I.T. Act, 1961, the authorities concerned, who are respondents herein, were seeking to review and revise the valuation for the purposes of both the Acts as mentioned above and with that end in view, on 31st July, 1975, they caused an investigation into the matter, to be made by one of their inspecting officers. It has been stated that on such steps and on the asking for that purpose, the petitioner duly filed and furnished all the relevant informations in detail, in respect of the acquisition of the said premises and the, construction as made thereon, together with the necessary valuations. It appears that, thereafter, on 12th January, 1976, the petitioner was served with the notice as impeached in this proceeding and by that notice, she was informed by the Valuation Officer, respondent No. 3, that the WTO concerned, respondent No. 2, by a reference dated 2nd January, 1976, had referred the question of

determination of the fair market value of the said premises and the structure, for the purpose of the said Act u/s 16A. The said section was incorporated with effect from 1st January, 1973, by the T.L. (Amend.) Act, 1972 (45 of 1972), and deals with reference to the Valuation Officer. The terms of that section are quoted as under :

Section 16A : "Reference to Valuation Officer.--(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth-tax Officer may refer the valuation of any asset to a Valuation Officer--

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value ;

(b) in any other case, if the Wealth-tax Officer is of opinion--

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

(2) For the purpose of estimating the value of any asset in pursuance of a reference under Sub-section (1), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessee u/s 14 or Section 15, he shall pass an order in writing to that effect and send a copy of his order to the Wealth-tax Officer and to the assessee.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee u/s 14 or Section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections.

(5) On the date specified in the notice under Sub-section (4), or as soon thereafter as may be, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any

specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the Wealth-tax Officer and to the assessee.

(6) On receipt of the order under Sub-section (3) or Sub-section (5) from the Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer."

6. The petitioner, by that notice as mentioned above, was required to furnish certain information with necessary details.

7. It was the contention of the petitioner that since her assessment for the assessment years 1969-70 to 1972-73, under the said Act, were already made and completed prior to the date of issuance of the notice, as impeached, there was or could be no purpose whatsoever in asking for the valuation to be made of the property in question u/s 16A of the said Act as on 31st March, 1969, 31st March, 1970, 31st March, 1971, and 31st March, 1972. It was contended that the concerned reference, as made, and that too for the periods, as mentioned, was wrongful, without jurisdiction, illegal and void. In fact, it was claimed that such reference was resorted to not only on irrelevant and extraneous considerations but also with the ulterior motive to have a fresh valuation done and then to reopen proceedings against the petitioner on such evidence. The petitioner, without prejudice and under protest, co-operated with the Valuation Officer concerned in the matter of valuation of the property in question and has stated that she has furnished the requisite information and details, as were asked for and necessary. She has stated also that she has brought to the notice of the said officer, the valuation as made by her approved valuer and so also the valuation, as was made for and on behalf of the revenue. She has further stated that she has brought to the notice of such officer the earlier orders passed by the officer and authorities under the said Act and also those under the I.T. Act and contended that, in any event, a revaluation as on the relevant valuation dates as mentioned hereinbefore should not be made higher than and different from the valuation, as already made in the concerned assessments. The Valuation Officer did not, however, agree with such submissions of the petitioner and proceeded to revalue the property in question as on the dates as mentioned above and ultimately estimated the fair value of the said premises and the building thereon as on 31st March, 1971, and 31st March, 1972, to the following effect :

Assmt. Year Value of land

Value of building

As per assessment	As per respondent No. 3	As per assessment	As per respondent No. 3
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1969-70	4,22,384	4,86,710	1,94,545	2,61,020
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1970-71 4,22,384 5,35,650 1,94,545 3,19,500

1971-72 4,22,304 5,84,590 1,94,545 3,27,000

1972-73 4,22,384 6,42,780 1,94,545 3,27,000

8. The petitioner has stated further that the officer concerned, in the said valuation, not only made the valuations for the periods as mentioned above, but also made valuations for the assessment years 1969-70 to 1972-73.

9. The petitioner also claimed and contended that the assessments under the said Act, for the assessment years 1969-70 to 1972-73, having already been completed in the manner as indicated above and she having been duly assessed in respect of the property as in issue and the circumstances as mentioned hereinbefore, including the appellate proceedings, the initiation as sought to be made, was void, irregular and inoperative. It was also contended that as, up to the date of the impugned notice dated 12th January, 1976, no assessment or reassessment proceeding against the petitioner was pending under the said Act for the assessment years 1969-70 to 1972-73, the respondent concerned had also no competence or jurisdiction and authority under the said Act, to revalue the fair market value of the property in question as on 31st March, 1969, 31st March, 1970, 31st March, 1971, and 31st March, 1972, relevant for the assessment years 1969-70 to 1972-73. It was claimed by the petitioner that there was no, or could be any, reason and purpose whatever under the said Act, for such revaluation, as was sought to be made and in fact, such revaluation was not required or necessary for the subsequent assessment years 1973-74 and onwards. As mentioned earlier, the petitioner all throughout claimed that such revaluation was sought to be made for reasons which were anything but real. It was specifically contended that a reference u/s 16A of the said Act, by the officer concerned, could be made only in respect of and for the purpose of making and completing a pending assessment under the said Act, or only in respect of the assessment year for which an assessment was pending, and, in the garb of seeking to value any property for the purpose of making such a pending assessment, the authorities concerned could not invoke or utilise and use the provisions of Section 16A, for the purpose of valuation in a completed assessment as in this case. It was in short contended by the petitioner that as her assessment for the assessment years 1969-70 to 1972-73 had been completed prior to 12th January, 1976, as mentioned above, and such assessment became final as no assessment or reassessment proceedings in respect of the assessment years in question were pending under the said Act, so the action as taken, initiated or proposed, was unauthorised, invalid and illegal and the reference as made was incompetent.

10. It was also and specifically contended by the petitioner that the conditions precedent and necessary to confer jurisdiction upon the officer concerned, to make the reference u/s 16A in this case, did not exist or were not satisfied. It was also claimed that in making the concerned reference, and before that, the

authority concerned did not duly or at all form the requisite opinion u/s 16A(i) of the said Act, and the said officer in fact had no reasons or materials, on a consideration or on the basis whereof, he could form the requisite and necessary opinion under the section. As mentioned hereinbefore, the reference was claimed to be made with ulterior motives and oblique purposes, and more particularly, for the purposes as indicated hereinbefore.

11. The rule was made ready as regards service on 6th October, 1977, and even though there has been an appearance on behalf of the respondents, through the learned advocate as mentioned hereinbefore, they have not filed any affidavit-in-opposition.

12. Mr. Murarka, appearing in support of the rule, on the above pleadings and after placing the relevant records as disclosed, submitted that the proceeding as initiated was not only without any basis, but the same was absolutely unauthorised and without or in excess of jurisdiction, as there was no pending proceeding, for which resort may be taken to the provisions of Section 16A of the said Act. He claimed that the provisions of Section 16A as aforesaid could be resorted to in relation to pending proceedings and since nothing was pending before the officer concerned, he acted improperly and in excess of his jurisdiction or in abuse of the same in the instant case. The above submissions were made, basing them mainly on the opening phrase "for the purpose of making an assessment" as in Section 16A(1). In support of his submissions, Mr. Murarka referred to the determinations in the case of Brig. B. Lall Vs. Wealth-tax Officer, A-Ward and Another, . In that case, reassessment proceedings were started against the assessee for the years 1969-70 to 1973-74, based, some on audit objection and some others on the report u/s 16A of the Valuation Officer, who had valued the property as on April 1, 1974. The assessees had in the original assessment proceedings submitted reports by approved valuers for each of the years under consideration and the assessments had been made after notice to the assessee and discussion with the authorised representative. Writ petitions were filed to quash the notices for reassessment. The department did not produce the report of the Valuation Officer or the audit objection and it has been observed that Section 16A was not introduced in the W.T. Act, 1957, in isolation but it was part of the entire scheme of amendments which associated the Valuation Officer with the valuation of assets at the stage of assessment to wealth-tax and put fetters and limitations on the authority of the WTOs in making their own valuations after they had referred it to the Valuation Officer during the pendency of an assessment or reassessment and the opening phrase "for the purpose of making an assessment" in Section 16A(1) and the phrase "proceed to complete the assessment in conformity with the order under Sub-section (3) or Sub-section (5) of the Valuation Officer" in Sub-section (6) of Section 16A shows that the pendency of an assessment including a reassessment is a sine qua non for the giving of jurisdiction to the WTO to make a reference u/s 16A. Section 16A had no relevance and cannot be applied after the assessment is completed and before reassessment has commenced, that is, to consider the

question whether the completed assessment is based on an undervaluation. The Valuation Officer's report u/s 16A can neither constitute information within the meaning of Section 17(1)(b) nor provide a reason for the belief that income had escaped assessment due to the assessee's failure to disclose material facts u/s 17(1)(a). The report u/s 16A cannot lead to the reopening of an assessment u/s 17(1) as the report submitted by the Valuation Officer would be in an invalid reference and the report must be treated as non est and void ab initio. There is no provision or even a remote legislative intent to arm the WTO with the power to refer the question of valuation of a property, in a completed assessment, after he has accepted the valuation of a registered valuer or otherwise of the assessee, simply for the purpose of finding out whether his suspicion that the completed assessment is based on an undervaluation is correct, so as to enable him to create a ground or foundation either for a reasonable belief u/s 17(1)(a) or for information u/s 17(1)(b). In either case, the reference, in such circumstances, would be based on a sort of roving or fishing enquiry for either confirming or removing his suspicion. This is not permissible u/s 16A. It was further held on the facts of that case, amongst others, that there had been no non-disclosure of material facts necessary for a reassessment. The Valuation Officer's report u/s 16A could not form the basis for reassessment proceedings. Moreover, the Valuation Officer's report obtained for 1974 could not be applied for all the years under consideration. A bald reference to audit objections would not be sufficient and could not form the basis for reassessment proceedings. The reassessment proceedings had not been validly initiated and the notices were liable to be quashed. A taxing statute always receives a strict interpretation. There is no room for intendment in a taxation law. The court cannot read into a taxing provision any words which are not there or exclude words which are there.

13. In support of his submissions as aforesaid, Mr. Murarka also referred to the observations of the Madhya Pradesh High Court at Indore in the case of Onkarji Kasturchand (HUF) Vs. Wealth Tax Officer, "D" Ward and Others, . Apart from producing the report, Mr. Murarka also produced the xerox copy of the said determinations, as the said report is not easily available. In that case, for the assessment year 1975-76, the assessee filed his return of net wealth but before the filing of the same, a reference was made by the WTO on 12th December, 1977, u/s 16A regarding the valuation of "Smriti Talkies" owned by the assessee. The petitioner filed a petition under Article 226 of the Constitution before the High Court, contending that on the date when the reference was made, the petitioner had not filed a return for the assessment year 1975-76 nor any notice was served on the petitioner to file a return for that year and no assessment of the petitioner for the assessment year 1975-76 was pending when a reference to the Valuation Officer was made by the WTO. As such, it was claimed that the reference was premature and the same, as well as the subsequent proceedings before the Valuation Officer deserved to be quashed. In the facts and circumstances as disclosed, the High Court, after referring to the provisions of Section 16A, observed that a bare reading of the section was sufficient to

indicate that the jurisdiction to make a reference to a Valuation Officer is conferred on a WTO "for the purpose of making an assessment". The provisions of Clause (b)(ii) of Section 16A(1) are also governed by the opening words of Section 16A(1), viz., "for the purpose of making an assessment". It was also observed that the proceedings for making an assessment under the Act commences when a return is made or a person fails to make a return in response to a notice u/s 14(2) of the said Act. On such facts, it was thus observed that when the assessment of the petitioner for the year 1975-76 was admittedly not pending before the WTO, he had no jurisdiction to make a reference to the Valuation Officer and the reference and the subsequent proceedings before the Valuation Officer were without jurisdiction and were liable to be quashed.

14. Section 16A has been inserted by Clause (9) of the T.L. (Amend.) Act, 1972. Such amendment Act has provided for the reorganisation of the valuation machinery under the said Act for the purposes of assessment. Such amendment was incorporated with the object of strengthening the valuation machinery on an elaborate basis, giving statutory powers to the "Valuation Officer" to be appointed by the Government u/s 12A(1) of the said Act. u/s 16A of the said Act, the WTO concerned may, for the purpose of making an assessment, refer the valuation of any asset to a Valuation Officer. Such officer may make the necessary reference even for the assessment in respect of any assessment year commencing before the date of the coming into force of the said section. Originally such officer as mentioned above was provided with unequivocal power to refer the question of valuation in any case at his discretion. But on such amendment as incorporated a distinction has been made between the case in which the valuation is based on the estimate of a registered valuer and the cases in which it is not so based. So, under the present provisions, in cases where the value of the asset has been estimated by a registered valuer, reference may be made to the Valuation Officer if the WTO considers that the estimate by the registered valuer requires an upward revision, i.e., where the value returned after estimation by the registered valuer is less than its market value. In any other case, such a reference may be made, if the officer concerned considers it necessary to do so on account of the nature of the assets and other relevant circumstances or if he is of the view that the fair market value of the assets exceeds the value of the assets as returned by more than such percentage of the value of the assets as returned or by more than such amount as may be prescribed in this behalf.

15. The above power of the officer concerned in the matter of making a reference to a Valuation Officer could be exercised only when the assessment of the assessee would be pending or is pending before the officer concerned. It should be noted that a proceeding for making an assessment under the said Act commences when a return is made or a person fails to make a return in response to a notice u/s 14(2) of the said Act. If the circumstances as mentioned above are not fulfilled or satisfied then the reference, of the assets for a valuation, by the officer concerned would be without jurisdiction. In fact, such view appears to

get support from the two determinations as cited at the Bar and I am also of the further view that if these grounds are not in existence or are not satisfied, then the conditions precedent for making such a reference, as in this case, would not also be available. Before making a reference, as in this case, the officer concerned, in my view, was also required to be satisfied on the existence of such facts as mentioned above or to form an opinion on such fact. Agreeing with the submissions of Mr. Murarka, I further find that a reference u/s 16A of the said Act by the officer concerned, and that too on the language of the section, could be made only in respect of and for the purposes of making and completing a pending assessment under the said Act or only, in respect of the assessment year, for which the assessment is pending and since, in the instant case, the assessments for the assessment years 1969-70 to 1972-73 were completed, prior to the date of the impugned notice, viz., 12th January, 1976, such assessments became final as no assessment or reassessment proceedings in respect of those assessment years were pending under the said Act. As such, the initiation of the proceedings, on the views which I have expressed, and which also get support from the two determinations as mentioned above, was irregular, wrongful and without jurisdiction.

16. Such being the position, the rule should be made absolute and ordered accordingly. There would be no order for costs.