

(1991) 08 DEL CK 0035
In the Delhi High Court
Case No : C.W. No. 1107 of 1984

Sohan Singh Basi

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Citation : (1991) 99 CTR 223 : (1991) 99 CTR 218 : (1991) 45 DLT 417 :
(1991) 192 ITR 431 : (1991) RLR 485

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Bishamber Lal, Ms. Geetanjali Misra and I.B. Gaur, for the Appellant;
Rajendra, B. Gupta, R.C. Pandey, D.N. Malhotra, R.K. Chaufla, D.C. Taneja and
R.N. Verma, for the Respondent

Judgement

Kirpal J.

1. The challenge in this writ petition is to the notice issued u/s 17 of the Wealth-tax Act, 1957, on February 25, 1984, seeking to reopen the assessment of the petitioner for the year 1975-76.

2. Briefly stated, the facts are that the petitioner had filed his return of wealth-tax disclosing a total wealth which was taxable at Rs. 1,95,906. In Part 6 of the return, the petitioner had disclosed that he had shares worth Rs. 20,500. The name of the company of which shares were held was not disclosed. However, a statement of wealth-tax as on March 31, 1975, was filed. This indicated that the petitioner had 200 equity shares of Rs. 100 each of Continental Construction Pvt. Ltd., valued at Rs. 20,000 and 5 equity shares of Rs. 100 each in Basi Agriculture Farm valued at Rs. 500. During the assessment proceedings, the income and expenditure account as well as the balance-sheet of the petitioner was filed with the Wealth-tax Officer. A certificate on behalf of Continental Construction Pvt. Ltd., dated December 6, 1978, was also produced which certified that the petitioner was holding 200 equity shares of Rs. 100 each of the said company as on March 31, 1975. It seems that a revised return was also filed wherein the

value of the shares was indicated as Rs. 20,500.

3. On the basis of the return which was filed and the discussion which was held with the representative of the petitioner, the Wealth-tax Officer assessed the petitioner to wealth-tax by passing an order u/s 16(3) of the Wealth-tax Act. The Wealth-tax Officer accepted the value of the movable property as declared which included the value of the shares of Continual Construction Pvt. Ltd.

4. The impugned notice u/s 17 was then issued on February 25, 1984, and served on the petitioner on March 7, 1984. The reason for issuing the notice u/s 17 was that, on the basis of the balance-sheet of Continental Construction Pvt. Ltd., the break-up value of the shares came to Rs. 2,935,69 and there had Therefore, been an escapement of wealth from assessment.

5. On behalf of the petitioner, it is contended that he had furnished to the Wealth-tax Officer all material facts and, Therefore, there was no reason or justification for the issuance of the notice u/s 17. The respondents, however, contended that it was the duty of the petitioner to indicate as to how he had arrived at the value of the shares at Rs. 100 each and as this was not indicated, the petitioner had failed to disclose all material facts.

6. It is now well-settled that, if the assessed discloses all primary and material facts, then a notice purporting to reopen an assessment cannot be issued (see Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,). According to section 17(1)(a) as it stood at the relevant time, a notice seeking to reopen the assessment could be issued, inter alia, on the ground that the assessed has not disclosed fully and truly all material facts necessary for the assessment of his net wealth. Shri Rajendra contends that the use of the word "necessary" in the said section indicates that the petitioner should have disclosed to the Wealth-tax Officer, the break-up value calculated in accordance with the provisions of rule 1D of the Wealth-tax Rules.

7. In our opinion, what the assessed has to do is to disclose all primary and material facts which can enable the Wealth-tax Officer to make an assessment. The primary and material facts must be those which are in the possession or knowledge of the assessed. What are primary and material facts must depend on the facts of each case. As far as the value of the shares is concerned, for including in the net wealth, all that is relevant, in our opinion, is for the assessed to show the company of which shares are held and the number of shares which the assessed holds. Furthermore, the assessed is also required to value the shares. In the present case, all the three things have been shown. The petitioner has indicated that he holds 200 shares of Continental Construction Pvt. Ltd., and that he had valued them at the face value of Rs. 100.

8. It is no doubt true that if rule 1D was sought to be applied, then the Wealth-tax Officer would have tried to ascertain or work out the break-up value of the said shares. But the question which arises is as to whether it was incumbent upon the petitioner to inform the Wealth-tax Officer as to how the Wealth-tax

Officer should value the shares. The petitioner was only duty bound to disclose material facts which he did. If the contention of Shri Rajendra is accepted, it would mean that the petitioner would have been required to give justification for the value which he had fixed on the shares, viz., Rs. 100 each. The petitioner had valued his shares at Rs. 100. He was under no obligation to give the reason as to why he had adopted such a value unless asked to do so by the Assessing Officer. Merely because the value returned by him may not have been the correct market value calculated in accordance with rule 1D, it is no ground for our holding that the petitioner had not disclosed all the material and relevant facts. In this connection, reference may usefully be made to two decisions, one is Smt. Rajeshwari Birla Vs. Wealth Tax Officer, "H" Ward and Others, . That was also a case where the question arose with regard to the valuation of unquoted shares. The assessed had filed a wealth-tax return valuing the unquoted shares and assessment had been made. Thereafter, a circular was issued whereby the mode of valuation was sought to be changed. Notices were then issued u/s 17 of the Wealth-tax Act seeking to reopen the assessment. The single judge of the Calcutta High Court came to the conclusion that the assessed had disclosed all primary and material facts and, Therefore, there was no justification for issuing a notice u/s 17.

9. In the case of Achut Kumar S. Inamdar Vs. P.R. Hajarnavis and Another, , the assessed had disclosed in his wealth-tax return that he was a partner of a firm which owned immovable property. The value of the assessed's share was indicated and assessment was made. Subsequently, the Wealth-tax Officer issued a notice u/s 17(1)(a) seeking to reopen the assessment on the ground that the property in question which was land in that case has been undervalued. While quashing the notice issued u/s 17, the learned single judge of the Bombay High Court observed that the assessed had disclosed material facts necessary for the assessment. It was held that merely because the valuation stated by the assessed in his return was inaccurate it was not sufficient to assume jurisdiction and issue a notice u/s 17 of the Act. It was further held that the failure to produce the balance-sheet of the land development firm of which the assessed was a partner along with the return, did not amount to non-disclosure of the primary facts, as there is no mandatory provision under the Act requiring the assessed to produce its evidence along with the return.

10. We are in complete agreement with the decision of the Bombay High Court. What, in effect, learned counsel for the respondents seeks to agitate is that the petitioner has justified his valuing the shares at Rs. 100 each at the time when the original assessment was made. That, in our opinion, was not a duty which was cast by law on the petitioner. The petitioner was undoubtedly required to disclose fully or truly the extent of his shareholding in the company which, in this case, was a private limited company and the fact that the shares were unquoted and lastly the value which the petitioner placed on those shares. It is alleged that the shares were undervalued by the petitioner. Even if this be so, this is only an allegation by the Department based on the break-up value ascertained by it. The

petitioner chose to value the shares as per their face value but, according to the Department, the law required the value to be determined on break-up basis. Now, if a different method of valuation is adopted on the basis of the law, then it cannot be said that merely because the correct law has not been applied, the assessed had not disclosed material facts. What the petitioner is required to disclose are the facts and not the law. The petitioner is to disclose the facts and it is for the Wealth-tax Officer to apply the law. If, on an appropriate application of law, the value of the shares as disclosed has to be altered, then the Wealth-tax Officer would be justified in doing so. But that would not mean that, if the correct law has not been applied though material facts have been given, then because the Wealth-tax Officer has not applied the correct law, a notice u/s 17(1)(a) is to be issued. In our opinion, for not applying the correct law and, thereafter, correctly determining the value of the unquoted shares, the Wealth-tax Officer may have been justified in invoking the provisions of section 17(1)(b) but there would be no occasion to apply section 17(1)(a). A similar question did arise before this court in the case of Ganga Saran and Sons (Huf) Vs. Income Tax Officer, Company Circle-IV, New Delhi and another, . In that case, a property had been sold. The sale price was determined as per the consideration shown in that sale deed. Subsequent to the assessment, information was received that the market value of the property in question was much higher. The Income Tax Officer sought to reopen the assessment by issuing a notice u/s 147(a). A Division Bench of this court held that clause (a) of section 147 was not attracted because it was not the duty of the assessed to inform the Income Tax Officer that the property which had been sold at a price might not be commensurate with the market price on the date of the sale. This court, however, held that the impugned notice could be upheld under the provisions of clause (b) of section 147. The facts in the present case are *pari materia* similar to the case of Ganga Saran and Sons (Huf) Vs. Income Tax Officer, Company Circle-IV, New Delhi and another, and, applying the aforesaid ratio, we have no hesitation in coming to the conclusion that primary and material facts were disclosed by the petitioner in the present case and, Therefore, notice u/s 17(1)(a) could not be validly issued.

11. For the aforesaid reasons, the writ petition is allowed and the impugned notice dated February 25, 1984, issued u/s 17(1)(a) is quashed. There will, however, be no order as to costs.

12. Petition allowed.