
(1989) 06 CAL CK 0042
In the Calcutta High Court
Case No : C.R. No. 5191 (W) of 1977

Subhakaran Rajgharia

APPELLANT

Vs

Commissioner Wealth Tax

RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Wealth Tax Act, 1957 — Section 12A, 16A, 25(2)

Citation : (1989) 79 CTR 28 : (1990) 185 ITR 233 : (1990) 48 TAXMAN 3

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Pal, R.N. Murarka and A.K. Dey, for the Appellant; A.C. Moitra and R.C. Prosad, for the Respondent

Judgement

Susanta Chatterji, J.—The present rule was issued on October 3, 1977, at the instance of the writ petitioner, Subhakaran Rajgharia, praying, inter alia, for issue of a writ of mandamus commanding the respondents to cancel, withdraw and/or rescind the notice dated September 20, 1977, and the notices, proceedings and orders relating thereto u/s 25(2) of the Wealth -tax Act, 1957, for the assessment years 1966-67 to 1971-72.

2. It is stated that on and from March 1, 1965, the trust under the deed of settlement dated March 22, 1954, came to an end and the petitioner ceased to be a trustee in respect of the properties of the trust. On and from March 1, 1965, Smt. Radha Devi Rajgharia took over charge of the said trust properties as full owner thereof and as her own estate. Since March 1, 1965, the petitioner and/or any other erstwhile trustees under the said settlement were not and are not the owners and hence not assesseees or representative assesseees within the meaning of the Wealth-tax Act, 1957, in respect of the said properties. It is further alleged that by two separate orders of assessment both dated April 23, 1976, made u/s 16(3) of the said Act, respondent No. 2, Wealth-tax Officer, "C"-Ward, District III(2), Calcutta, assessed the present petitioner as trustee of the estate of Smt. Radha Devi Rajgharia for the assessment years 1964-65 and 1965-66. For the

assessment year 1964-65, the net wealth was valued by the said respondent No. 2 at Rs. 2,10,335. In so assessing, respondent No. 2 valued the premises at No. 5, Hungerford Street, Calcutta, at Rs. 1,31,012 as mentioned in the writ petition. Then, on or about September 22, 1979, the petitioner was surprised to receive from respondent No. 1 a notice dated September 20, 1977, purportedly issued by him under Section; 25(2) of the said Act for the concerned impugned assessment years, being 1964-65 to 1971-72 treating the petitioner as the trustee to the estate of Smt. Radha Devi Rajgharia alleging therein that respondent No. 2 completed the wealth tax assessments for the assessment years 1964-65 to 1971-72 on April 23, 1976, and May 14, 1976, erroneously and prejudicially to the interests of the Revenue as stated. Stating all those facts in detail, the petitioner has come up to this court to seek relief on the ground that the assessment orders and the valuations made therein by respondent No. 2 in exercise of his statutory powers and duty u/s 7 of the said Act in accordance with a well-laid method of valuation in law could not be said to be erroneous or prejudicial to the interests of the Revenue within the meaning of Section 25(2) of the said Act. The main thrust of the allegation of the petitioner is that inasmuch as the valuation was made by the said respondent No. 2 in conformity with the well recognised method of valuation and was made bona fide and is not perverse and there are no conditions, facts and materials on the basis whereof it could be said that the said valuation and assessments thereon were erroneous and prejudicial to the interests of the Revenue and, therefore, respondent No. 1 is acting and proceeding illegally and without jurisdiction.

3. Dr. Pal, learned advocate for the writ petitioner, has strongly argued that the petitioner is challenging the notice issued u/s 25(2) of the Wealth-tax Act, 1957, by the Commissioner of Wealth-tax. The duty assessed in respect of the assessment years for 1964-65 and 1965-66 in respect of premises No. 5, Hungerford Street, Calcutta, purchased on December 28, 1963, at a price of Rs. 1,31,012 is bad as the whole structure was demolished and a new construction was made. Such new construction was started from the assessment year 1966-67 and this is recorded in the assessment order for 1966-67. Learned advocate has canvassed before this court that in view of the above factual revision, it cannot be disputed that the Commissioner of Wealth-tax had issued the notice u/s 25(2) of the Wealth-tax Act on that basis. The reasoning is that the valuation of the immovable property at No. 5, Hungerford Street, Calcutta, is not in conformity with the provisions of Section 7 of the Wealth-tax Act. He has laid great emphasis upon the report of the Valuation Officer. He has drawn the attention of the court to the definition of Valuation Officer in Section 2(r) of the Wealth-tax Act. According to this section :

""Valuation Officer" means a person appointed as a Valuation Officer u/s 12A, and includes a Regional Valuation Officer, a District Valuation Officer, and an Assistant Valuation Officer."

4. It appears from Section 16A of the Wealth-tax Act, 1957, that "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 the 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 the 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."

5. Dr. Pal, learned advocate for the petitioner, contended that the Valuation Officer as referred to u/s 16A read with Section 12A of the Wealth-tax Act would clearly convince that the report as placed in this case does not fulfil such requirements and the report of the alleged Valuation Officer as relied on by the Commissioner of Wealth-tax is absolutely unwarranted and uncalled for. There is nothing on record to refer to the report of the alleged Valuation Officer, which is contrary to and/or in violation of the provisions of law. The attention of this court has been drawn to a number of decisions, Smt. Uma Debi Jhawar Vs. Wealth Tax Officer and Others, , being one of them. M. N. Roy J. has been pleased to hold that Section 16A of the Act which was inserted by the Income Tax (Amendment) Act, 1972, provides for the reorganisation of the valuation machinery under the Act for the purpose of assessment. u/s 16A, the Wealth-tax Officer may, for the purpose of making assessment, refer the valuation of any asset to the Valuation Officer, and the Wealth-tax Officer may make the reference even for an assessment in respect of any assessment year commencing before the date of the coming into force of the section. Originally, the Wealth-tax Officer was provided with unequivocal power to refer the question of valuation in any case at his discretion. But, after the insertion of Section 16A, 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, after the insertion of Section 16A, in cases where the value of the asset has been assessed by a registered valuer, a reference may be made to the Valuation Officer if the Wealth-tax Officer considers that the estimate made by the registered valuer requires an upward revision, i.e., where the value returned, after estimation by a registered valuer, is less than its market value. It was held that a reference u/s 16A as aforesaid, 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 Act or only in respect of the assessment year for which the assessment is pending.

6. Similarly, in Satyendra Chunder Ghose Vs. Wealth Tax Officer and Others,

Bimal Chandra Basak J. has been pleased to hold that the words used in Section 16A of the Wealth-tax Act, 1957, empower the Wealth-tax Officer to refer the matter of valuation of an asset to a Valuation Officer for the purpose of making assessment. It includes a case where no assessment has been made and it also includes a case where the assessment has become final. In the said case, the matter had been reopened u/s 17 of the Act, because that would be a case of "for the purpose of making an assessment." However, it would not include the case where the assessment is complete and such assessment has not been reopened u/s 17 and in such a case, the Wealth-tax Officer cannot refer the valuation of an asset to the Valuation Officer. The power u/s 16A of the Act to refer the valuation of an asset to the Valuation Officer cannot be exercised only in order to decide whether an assessment already completed should be reopened u/s 17 or not. It will, therefore, appear from another decision reported in *Tulsidas Kilachand Vs. D.R. Chawla and Others*, that a mere change of opinion of the succeeding Wealth-tax Officer is not enough to reopen an assessment u/s 17(1)(b) of the Act, specially when, before passing the assessment order, the Wealth-tax Officer could have easily ascertained the correctness of the statements made in the return. Where the Wealth-tax Officer had completed the assessment on the basis of the valuation given by the authorised valuer in his report and as submitted by the petitioner in support of his return and thereafter the Wealth-tax Officer received a valuation report prepared by the Executive Engineer (Valuation) of the Department that the properties concerned were not properly valued by the petitioner and issued notice u/s 17(1)(b) of the Wealth-tax Act with a view to reopening the earlier assessments, the court, upon consideration of the points of law, quashed the notice on the condition and finding that the mere fact of two valuers giving conflicting reports was not sufficient for the Wealth-tax Officer to reopen the assessment.

7. Learned advocates, Mr. Moitra with Mr. Prasad, for the respondents-authorities have argued that the valuation report is a question of fact and cannot be questioned and the writ court cannot interfere in the facts and circumstances of the case. It is pointed out by referring to *Himland Exports (Pvt.) Ltd. Vs. Income Tax Appellate Tribunal and others*, that no question of law was involved in the decision arrived at by referring to the valuation report and it is essentially a question of fact. Initiation of proceedings by the Competent Authority did not depend on the presumption of the Valuation Officer's report. Further, another decision was referred to being *Commissioner of Wealth Tax Vs. Himalaya Trading Co.,* , wherein it was also observed that the question regarding valuation of the properties is purely a question of fact and no question of law arises.

8. Having considered the lengthy submissions on behalf of the learned advocates for the respective parties, and having gone through the provisions of Sections 16A and 25(2) of the Wealth-tax Act and also by looking to the cases cited at the Bar, this court finds that the Valuation Officer's reports must be considered in the light of Section 12A and Section 16A of the Act, These reports must be considered while the assessment is pending. If there is any report beyond the

scope of Section 16A of the Act, the same cannot be referred to in the manner as sought to be done in the instant case.

9. Regard being had to the admitted facts and circumstances of the case, this court finds that the steps taken by the respondents to issue the impugned notice cannot be supported and sustained. For the foregoing reasons, the writ petition is allowed, The rule is made absolute. There will be no order for costs.

10. Let a writ of certiorari issue quashing the notice dated September 20, 1977, and proceedings u/s 25(2) of the Wealth-tax Act.

11. There will be no order for costs.