

(1999) 11 AHC CK 0031

In the Allahabad High Court

Case No : C.M.W.P. No's. 423 of 1986 and 315 of 1990 26 November 1999

TRILOK CHANDRA SETH

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14

FINANCE ACT, 1988 — Section 25

Income Tax Act, 1961 — Section 120, 25, 263, 7, 8

Citation : (2000) 110 TAXMAN 289

Hon'ble Judges : S. Rafat Alam, J; M.C. Agarwal, J

Bench : Full Bench

Advocate : Shambhu Chopra, for the Petitioner and A.N. Mahajan, for the Appellant;

Judgement

Agarwal, J. -

These two petitions have been filed by the same petitioner and involve identical controversy. They were, therefore, heard together and are disposed of by this common judgment.

2. We have heard Shri Shambhu Chopra, the learned counsel for the petitioner and Shri A.N. Mahajan, the learned standing counsel for the respondents.

3. The petitioner is a HUF which is assessed to wealth- Tax". The petitioner carries on business in the name of Lala Kashi Nath Seth Jewellers. Writ Petition No. 423 of 1986 challenges the notice issued by the Commissioner of Wealth-tax u/s 25(2) of the Wealth Tax Act, 1957 Income Tax Act proposing to revise the petitioner's assessments for the assessment years 1982-83 and 1983-84. A copy of the notice dated 10/ 14-3-1986 is Annexure 5 to the writ petition. It states that in the wealth-tax assessment of the assessee (petitioner), the capital balance of the firm Lala Kashi Nath Seth Jewellers and Kashi Nath Jewellery House have been included in the assessable wealth as per balance sheet and the assessee's share in the firm Lala Kashi Nath Seth Jewellers, Bareilly, has

similarly been taken as per balance sheet. The Commissioner's contention was that the value of the assets of the said firm exceeded more than 20 per cent of the value as shown in the balance sheet and, therefore, as per rule 213(2) of the Wealthtax Rules, 1957 and as per the decision of the Hon'ble Supreme Court in Juggi Lal Kamlapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others, , the assessing officer should have determined the market value of these assets on the valuation date and since this has not been done, the assessment orders were erroneous and prejudicial to the interest of the revenue. The petitioner's contention is that the assessments were subjected to appeals before the Appellate Assistant Commissioner and the assessment orders, therefore, merged with the appellate orders and, consequently, the Commissioner had no jurisdiction u/s 25(2) to revise the assessment orders. The other contention raised in these writ petitions is that rule 213(2) is invalid. It is averred that according to commercial trade and practice based upon standard accounting practice adopted in preparation of balance sheet, the commercial value of the business as a whole is to be taken and not the market value of individual assets and if the provisions of rule 213(2) are mandatory, then they are violative of section 7 of the Act. It is also averred that rule 213 being against the principles of accountancy is unreasonable, arbitrary and violative of article 14. In the counter affidavit filed on behalf of the respondents, these contentions are controverted and it is asserted that by virtue of rule 213(2) and the decision of the Hon'ble Supreme Court (supra), the assessing officer should have taken the market value of the assets of the aforesaid businesses and since this was not done, the assessments are erroneous and prejudicial to the interest of the revenue.

4. Writ Petition No. 315 of 1990, as stated above, is by the same petitioner and pertains to the assessment years 1985-86, 1986-87 and 1987-88. For these years, the Assessing officer proposed to determine the market value of the business assets in terms of rule 2B and the petitioner rushed to this court and has filed this petition challenging the validity of rule 213(2) on the same grounds as in W.P. No. 423 of 1986. In both these writ petitions by interim orders dated 28-4-1986 and 15-3-1990, respectively, further proceedings before the Commissioner and the assessing officer, respectively, were stayed.

5. Let us first take up the question of merger which is relevant in Writ Petition No. 423 of 1986. In J.K. Synthetics Ltd. Vs. Additional Commissioner of Income Tax and Another, , a Division Bench of this court had held that where an assessment order is appealed to the Appellate Assistant Commissioner, the whole assessment order merges in the appellate order and thereafter it is only the appellate order that can be revised or rectified and this was so even if in the appeal the point on which rectification or revision is intended to be made was not involved. The learned counsel, therefore, contended that although the question of valuation of the assets was not raised in the appeal, yet since the appellate authority had the power of enhancement, the whole assessment was open before it and, consequently, the assessment order as a whole would merge in the

appellate order. The learned standing counsel, on the other hand, relied upon the amendment of section 25 of the Finance Act, 1988 by which an Explanation has been added to section 25(2) as under:

"Explanation.-For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) an order passed on or before or after the 1st day of June, 1988 by the assessing officer shall include an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an assessing officer conferred on, or assigned to him under orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by, the Board in this behalf u/s 120 of the Income Tax Act, read with section 8 of this Act;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the assessing officer had been the subject-matter of any appeal filed on or before or after the first day of June, 1988, the power of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

Thus, the amendment in sub-clause (c) has complete retrospective of feet and the power of the Commissioner under this sub-section shall be deemed always to have extended to such matters as has not been considered and decided in appeal. In the present case, admittedly, the question of valuation of the business assets was not dealt with by the appellate authority and, therefore, the amendment takes care of the arguments raised on behalf of the petitioner. A similar amendment was made in section 263 of the Income Tax Act, 1961 which is *pari materia* to section 25 of the Wealth Tax Act and the Hon"ble Supreme Court in COMMISSIONER OF Income Tax Vs. SHRI ARBUDA MILLS LTD., and in Commissioner of Income Tax, Kohlapur Vs. Jaykumar B. Patil, has held that by virtue of the amendment Commissioner has jurisdiction to revise those parts of the assessment order which have not been considered and decided in the appeal. Thus, in view of the amendment, referred to above, and the aforesaid judgments of the Hon"ble Supreme Court, the argument based on the theory of merger fails.

6. The next contention is that rule 2B(2) is invalid because it is against the standard and established accounting practice, etc. Rule 2B as it stood at the relevant time is as under:

"Adjustments in the value of an asset disclosed in the balance sheet.-(1) The value of an asset disclosed in the balance sheet shall be taken to be-

(a) in the case of an asset on which depreciation is admissible, its written down value;

- (b) in the case of an asset on which no depreciation is admissible, its book value;
- (c) in the case of closing stock, its value adopted for the purposes of assessment under the Income Tax Act, 1961, for the previous year relevant to the corresponding assessment year.

(2) Notwithstanding anything contained in sub-rule (1), where the market value of the an asset exceeds its written down value or its book value or the value adopted for purposes of assessment under the Income Tax Act, 196 1, as the case may be, by more than 20 per cent, the value of that asset shall, for the purposes of rule 2A, be taken to be its market value."

7. Section 3 of the Act is the charging section and the tax is levied in respect of the net wealth on the corresponding valuation date of every individual, HUR

The net wealth of an assessee consists of all his assets except those in respect of which the Act grants exemption, as reduced by the amount of liabilities and net wealth has been defined in section 2(m) of the Act as under:

"(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date which have been incurred in relation to the said assets."

Thus, for the levy of wealth-tax, the value of the various assets belonging to an assessee on the valuation date has to be determined. Section 7 of the Act says that subject to any rules made in this behalf, the value of any assets other than cash for the purposes of this Act, shall be estimated to the price which, in the opinion of the assessing officer, it would fetch if sold in the open market on the valuation date. Thus, generally the market value of each asset as on the valuation date has to be estimated and adopted for levying the wealth-tax. Sub-section (2), however, conferred discretion on the assessing officer authorising him to determine the net value of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein, as may be prescribed, instead of determining separately the value of each asset. Clause (a) of section 7(2) which is relevant is as under:

"(2) Notwithstanding anything contained in sub-section (1),-

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the assessing officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the asset of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed."

8. In the rules, the provision has been made for determining the market value of

the various assets, As stated above, section 7(2)(a) permitted the assessing officer to determine the net value of the assets of the business as a whole by making such adjustments therein as may be prescribed. The prescription has been made in rule 2A which says that where the Wealth Tax Officer determines under clause (a) of sub-section (2) of section 7 the net value of the assets of the business as a whole having regard to the balance sheet of such business, he shall make the adjustments specified in rules 2B, 2C, 2 D, 2E, 2F and 2G. It is in pursuance of rule 2A that the assessing officer has to make the necessary adjustment as mentioned in rule 2B(2), where the value of an asset exceeds by more than 20 per cent the value of such asset as shown in the balance sheet. Therefore, rule 2B(2), when read with the definition of net wealth and section 7, only carries out the purpose of the Act, which is to tax the market value of the asset and not its book value and, therefore, it cannot be said that the rules are repugnant and contradictory to the provisions of the scheme of the Act. As regards the allegation that the rule is against the standard accounting practice, the same has no force because taxes are levied in terms of statutory provisions and not accounting practices. The Hon'ble Supreme Court in *Juggi Lal Kamalapat Bankers*" case (supra) has held that the primary method of determining the value of the assets for the purposes of the Act is the one indicated in section 7(1) inasmuch as it provides that the value of any asset other than cash shall be estimated to be its market value on the valuation date. It was also held that the method provided in the Act and the Rules for adopting the balance sheet value was not binding or conclusive. It is well-known that the value of assets mentioned in the books of account may at times not be the real market value of the asset. In some cases, the real market value may be more and in others, it may be much less. Therefore, it is open to both sides to take recourse to the real market value and so far as the Assessing Officer is concerned, it is mandatory for him to adopt the market value if the difference in the value is more than 20 per cent. In the present case, it was not denied that the market value was more and exceeded the balance sheet value by more than 20 per cent. The Hon'ble Supreme Court in *Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras*, has held that the principles of accountancy do not override the provisions of tax statutes. Similarly, in *United Commercial Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal-III, Calcutta*, , the Hon'ble Supreme Court held that though by virtue of the Banking Regulation Act, 1949, a banker may be obliged to show in its balance sheet the valuation of stock-in-trade at cost, for the purposes of Income Tax, the assessee was entitled to value the stock-in-trade at cost or market value, whichever is less. In *Commissioner of Wealth-tax, Orissa Vs. Vysyaraju Badreenarayana Moorthy Raju*, , the Hon'ble Supreme Court held that the method of accounting is of no relevance for determining the value of the assets. In that case, the assessee was maintaining the accounts on cash basis and had not included the accrued interest in its net wealth. The Hon'ble Supreme Court held that such interest was includible in the net wealth of the assessee.

9. In view of the above discussions and the authoritative pronouncements of the Hon"ble Supreme Court, we do not find any invalidity in the provision of rule 2B(2) and, therefore, these writ petitions must fail.

10. Both the writ petitions are hereby dismissed with costs to the respondents which we assess at Rs. 2,500 each. The interim orders are vacated.