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**(1979) 08 BOM CK 0008**

**In the Bombay High Court**

**Case No :** Miscellaneous Petition No. 1008 of 1974

Tulsidas Kilachand

APPELLANT

Vs

D.R. Chawla and Others

RESPONDENT

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**Date of Decision :** 06-08-1979

**Acts Referred:**

Wealth Tax Act, 1957 — Section 17(1), 17(1)(B)

**Citation :** (1980) 122 ITR 458 : (1979) 4 TAXMAN 248

**Hon'ble Judges :** M.L. Pendse, J

**Bench :** Single Bench

**Advocate :** D.M. Harish, for the Appellant; R.J. Joshi, for the Respondent

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## **Judgement**

Pendse J.

1. The petitioner, Shri Tulsidas Kilachand, was assessed for wealth-tax since 1957 as "individual" resident of India. The petitioner filed his wealth-tax return for the assessment years 1966-67 and 1967-68, and the property assessed for wealth-tax, inter alia, included immovable properties in which the petitioner was holding 1/4th undivided share along with his three brothers. The three properties are situated at Napean Sea Road, Patan, and Kandivli. The petitioner filed his wealth-tax return for the assessment year 1968-69 on January 17, 1969. The 1/4th share of the immovable properties was valued at Rs. 1,55,000 and in support of this valuation an authorised valuation report dated January 25, 1969, was filed. The petitioner filed his wealth-tax return for the assessment year 1969-70 on November 16, 1969, and the properties were valued at Rs. 1,52,250. It is required to be stated the valuation of properties for the assessment years 1966-67 and 1967-68 were less than what was valued for the subsequent years.

2. The respondent No. 1, the WTO, considered the returns for four years, that is, from assessment years 1966-67 to 1969-70 together and the assessments were completed by an order dated May 3, 1971. The respondent No. 1 accepted the valuation report and held that the share of the petitioner in the three properties

should be valued at Rs. 1,55,000. Accordingly, the respondent No. 1 completed the assessment of the petitioner for the relevant four years. Subsequently, on March 26, 1973, and February 4, 1974, the respondent No. 1 served two notices on the petitioner under s. 17(1)(b) of the W.T. Act, 1957, for reopening the assessment for the assessment years 1968-69 and 1969-70, respectively. The notices do not indicate the reasons which have prompted respondent No. 1 to re-open the assessment. The petitioner has filed this petition under art. 226 of the Constitution to challenge the legality and validity of these two notices. The petitioner died during the pendency of this petition on October 21, 1976, leaving behind a will and the legatees have filed an application to be brought on record. I granted the application for amendment.

3. On behalf of respondent No. 1, Mr. S. A. Kadri, the WTO, has filed a return in reply to the petition on July 30, 1979. In para. 10 of the return it is accepted that the WTO estimated the value of the 1/4th interest of the petitioner in the three immovable properties for the relevant years. Later on it is contended by respondent No. 1 that the petitioner did not disclose the immovable property situated at Kandivli in the wealth-tax returns for the years 1966-67 and 1967-68. The statement does not appear to be correct. But the impugned notices are not for these years but for the subsequent years. But the impugned notices are not for these years but for the subsequent years. The respondent No. 1 states in the return in para. 16 that after the completion of the assessment for the relevant four years, the WTO secured information from the valuation report dated July 12, 1972, prepared by the Executive Engineer (Valuation) of the I.T. department, Bombay, that the properties were not properly valued by the petitioner and, therefore, escaped proper assessment. It is the claim of the respondents that the notices were served on the petitioner to reopen the assessment under s. 17(1)(b) of the W.T. Act, 1957.

4. On behalf of the petitioner, it was contended, and in my judgment rightly, that the action of the respondents in threatening to re-open the assessment under s. 17(1)(b) is entirely illegal and misconceived. The provision of s. 17(1)(b) of the W.T. Act reads as follows :

"17. (1) If the Wealth-tax Officer -

(b) has, in consequence of any information in his possession, reason to believe, notwithstanding that there had been no such omission or failure as is referred to in clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise."

5. This provision enable the WTO to re-open the assessment if in consequence of any information in his possession he has reason to believe that the net wealth chargeable to tax has escaped assessment. It is also urged on behalf of the petitioner that the wealth-tax returns for the concerned two years were filed on January 17, 1969, and November 16, 1969, respectively, while the assessments

were completed long thereafter on May 3, 1971, and the WTO has ample time to ascertain the correctness of the statement made in the return and the accuracy of the valuation report. It was urged that, in view of the decisions of the Supreme Court in Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others, and in Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited, , the mere change of opinion of the officer does not confer jurisdiction to reopen the assessment. In my judgment, the submission is sound and must be upheld. It is now well settled that the jurisdiction to reopen the assessment orders which have become final can be exercised provided the officer has reason to believe from information in his possession that the earlier orders escaped the net wealth chargeable to tax. Mere change of opinion of the succeeding officer is not enough and especially when before passing the assessment order the officer could have easily ascertained the correctness of the statements made in the return. In the present case, the only information available with the respondent No. 1 is a valuation report dated July 12, 1972. The mere fact that the two valuers have given conflicting reports about the true value of the properties is not sufficient to reopen the assessment under s. 17(1)(b) of the W.T. Act. In my judgment, the action of respondent No. 1 has assumed jurisdiction illegally and irregularly. The two interim notices dated March 26, 1973, and February 4, 1974, require to be struck down.

6. In the result, the petition succeeds. The rule is made absolute in terms of prayer (a) of para. 27 of the petition. In the circumstances of the case, there will be no order as to costs.