

(1998) 09 MP CK 0069
In the Madhya Pradesh High Court
Case No : L.P.A. No. 66 to 75 of 1994

Union of India and Others

APPELLANT

Vs

Vijaya Raje

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Wealth Tax Act, 1957 — Section 17

Citation : (1999) 1 MPLJ 674

Hon'ble Judges : Shambhoosingh, J;B.A. Khan, J

Bench : Division Bench

Advocate : P.K. Saxena, for the Appellant; S.C. Bagdia, for the Respondent

Final Decision : Allowed

Judgement

B.A. Khan, J.

The million dollar question that arises in these appeals directed against a common judgment passed in a bunch of writ petitions is: whether the Assessing Officer was competent to make a reference to the Valuation Officer for determining the value of the Asset/s u/s 16A(i), in reassessment proceedings u/s 17 of Wealth Tax Act, 1957?

The facts leading to the controversy lie in a narrow compass. Appellant No. 2 initiated reassessment proceedings against Respondent and put her on notice for A.Y. 1981-91 in exercise of power u/s 17. He thereafter referred the matter to Appellant No. 3 for valuation of the property in question. Pursuant thereto this Appellant issued notice to Respondent u/s 16A(i).

Respondent felt aggrieved of the two notices and filed writ petitions assessment yearwise calling in question these notices but limiting attack only to the notice issued by the valuation officer (Appellant No. 3). Her case was that both the references and consequential notices were illegal and incompetent because such a reference could only be made in original assessment and not in reassessment proceedings. Reliance in support was placed on K.M. Vishnudas Prabhu, K.M.

Ramdas Prabhu and K.M. Shankar Prabhu (HUF) Vs. First Wealth Tax Officer and Another, Onkarji Kasturchand (HUF) Vs. Wealth Tax Officer, "D" Ward and Others, and Sharmisthabai Holkar Vs. Commissioner of Wealth-tax, .

The revenue fell back upon provisions of Section 2(c)(b) to justify the reference taking the stand that since assessment included reassessment, reference to valuation officer was valid and competent.

The writ court dwelling on the scheme of the Act and on interpreting provisions of Sections 16A and 17 took the view that such a reference could be made to the valuation officer only in original assessment and not in reassessment proceedings u/s 17 and scheme of the Act. While doing so it placed whole hog reliance on the judgment of this Court in Onkarji's case and a S.B. judgment of Karnataka High Court in K.M. Ramdas's case 160 ITR 706 which it mistakenly treated as a division bench judgment of this Court. It accordingly quashed the reference and the notice issued by Appellant No. 3 but saved that of Appellant No. 2. Hence these appeals.

Both sides have projected their rival positions in a repeat exercise. Learned Counsel for Appellant Mr. Saxena reiterated that only condition precedent for exercise of power to make reference was pendency of assessment proceedings and since assessment included reassessment also in terms of Section 2(c)(b) reference to valuation officer was valid. He also pointed out that the writ Court had placed wrong reliance on the D. B. judgment of this Court in Onkarji's case and S.B. judgment of Karnataka High Court in Ramdas's case.

Mr. Bagadia for the Assessee, on the other hand dwelt on the scheme of the Act to contend that reference to valuation officer was provided u/s 16A(i) and once assessment was closed under Sub-section (3) of Section 16, no further reference could be made. Because resort to multiple references vis-a-vis the same cut off date could breed conflicting estimates, besides causing prejudice and harassment to the Assessee. He urged that since estimate of valuation officer was binding on the assessing officer, therefore, repeated references for valuation could lead to adverse consequences for the Assessee.

8-9. We find the rival versions and also the view taken by the writ court wide off the mark. This is evident from the object and scheme of the Wealth Tax Act, 1957 itself which provides for charging of Wealth Tax on net wealth of every individual. Hindu Undivided family and company and also establishes a machinery for it. Chapter IV of the Act deals with making of assessment. Sections 14 to 18B fall under this and lay down the manner and method for making such assessment of chargeable wealth tax. Section 14 provides for filing of return and 15 for revised return. Section 16 envisages the process of making assessment. Sub-section (3) of the section empowers the Assessing officer to assess the net wealth of the Assessee and determine the sum payable by him on the basis of such assessment by an order in writing. Section 16A, which is material for our purposes enables the Assessing Officer to make a reference to

the valuation officer for determination of value of any asset/s of the Assessee in the situations contemplated therein. Lastly Section 17 confers power on the Assessing Officer to assess or to reassess such chargeable net wealth of the Assessee which had escaped assessment. Other provisions of this Chapter and Chapter V also deal with the assessment in different situations but it would be unnecessary to dilate on these for purposes of present controversy.

At this stage, it would be advantageous to extract relevant portions of Sections 16A and 17 of the Act which are reproduced hereunder:

16A. (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, (where under the provisions of Section 7 read with the rules made under this Act, or, as the case may be, the rules in Schedule III, the market value of any asset is to be taken into account in such assessment,) the (Assessing Officer) may refer the valuation of any asset to a Valuation Officer-

(a).... ..

(b).... ..

(2).... ..

(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 (Assessing Officer) and to the Assessee.

(4).... ..

(5).... ..

(6) On receipt of the order under Sub-section (3) or Sub-section (5) from the Valuation Officer, the (Assessing 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.)

(1) If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment for any assessment year (whether by reason of underassessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and Section 17A, serve on such a person notice requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section

referred to as the relevant assessment year), and the provisions of this Act shall so far as may be, apply as if the return were a return required to be furnished u/s 14:

A combined reading of the sections under chapter IV and v. shows that Section 16A is a general provision. It is neither aligned with nor linked to Section 16 which empowers the Assessing officer to make assessment or Section 17 under which he assesses and reassesses the chargeable net wealth that had escaped assessment.

Section 16A, as would be evident from its terms is an enabling provision which enables the Assessing officer to refer the valuation of any asset to a valuation officer for the purpose of making an assessment under the Act. It furnishes an aid, an instrument and a tool to the Assessing officer for use in case of need and at his discretion for making a good and fair assessment. He need not use it necessarily. It is optional for him to take recourse to it as and when he deems necessary and in the situations and circumstances contemplated by the provision which require formation of opinion by him.

What is important and noteworthy is that the Assessing officer resorts to making the reference to the valuation officer for purposes of making an assessment under the Act as distinct from making an assessment under Sections 16, 17, 20, 21, or so. His options are not restricted to original assessment u/s 16 only. The legislature in that case would have used the expression "under Section 16", in place of "Under the Act". Therefore, two expressions for the purpose of making an assessment" and under the Act" assume crucial importance and leave no scope for doubt that such reference was competent and available for making of any assessment under the Act even where it contemplated more than one type of assessment.

Proceeding on this premise, Section 17 could not be excluded from its purview and treated on a different footing. After all this provision also dealt with assessment and conferred added power on the Assessing Officer to assess and reassess such net wealth of the Assessee which had escaped assessment. Therefore, if the Assessing Officer needed the assistance and service of the valuation officer in this also, nothing debarred him from referring the valuation of any asset to him because he was again engaged in the same exercise of making an assessment under the Act and its Section 17also.

Mr. Bagadia's concern about multiplicity of such references and likelihood of their adverse fallout was more imaginary than anything else. It was not that the assessing officer would embark on a reference spree on the drop of his hat. His option to resort to it was circumscribed by the conditions laid down in the provision. He was not free to go for it at his whim. He was under a statutory duty to form an opinion given regard to the circumstances warranting such reference.

The writ court also seems to have lost the track in examining the issue in its proper perspective. Its reliance on a D.B. Judgment of this Court in Onkarji's

case and a S. B. Judgment of Karnataka High Court in Ramdas's case was grossly misplaced. Both judgments are distinguishable and were dealing with different fact situations where reference was made to valuation officer in the absence of any assessment proceedings.

Regard being had to all this, we hold that the Assessing officer was competent to refer the valuation of any asset/s of the Assessee to the valuation officer even in proceedings u/s 17 of the Wealth Tax Act. The reference made by Appellant No. 2 was therefore, competent and the resultant notice issued by Appellant No. 3 valid. The Assessee was, however, free to take appropriate remedy in law against the order of valuation officer or that of the Assessing officer as the case may be, if so advised.

The appeals are resultantly allowed and the impugned judgment of the writ court dated 20-9-1994 quashed.

A copy of this order shall be retained in the record of the aforesaid connected appeals for ready reference.

C.c. within 10 days.