

Rama Shankar Gupta Vs Commissioner of Wealth Tax

Court: Allahabad High Court

Date of Decision: Sept. 7, 2004

Acts Referred: Income Tax Act, 1961 " Section 147, 147(b), 154, 17, 22
 Wealth Tax Act, 1957 " Section 17, 27(1), 35, 36, 5(1)(viii)

Citation: (2004) 141 TAXMAN 596

Hon'ble Judges: R.K. Agrawal, J; K.N. Ojha, J

Bench: Division Bench

Advocate: Vikram Gulati, for the Appellant; A.N. Mahajan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.K. Agrawal, J.

The income tax Appellate Tribunal, Allahabad has referred the following questions of law u/s 27(1) of the Wealth-tax

Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was legally correct in holding that the provisions of

section 17 and not the provisions of section 35 of the Wealth-tax Act, 1957 were applicable to the case?

2. Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was legally correct in holding that the assets other

than jewellery could be revalued in the course of the respondent assessee-assessment proceedings u/s 17 of the Wealth-tax Act, 1957?

The reference relates to the assessment year 1970-71, for which the relevant valuation date was 31st March, 1970.

The respondent is an

individual. In the assessment originally made on 16th December, 1970, he claimed exemption on the value of the jewellery u/s 5(1)(viii) of the Act,

which was accepted by the Wealth-tax Officer, on the basis of a decision of the Apex Court in the case of Commissioner of Wealth-tax, Gujarat

Vs. Arundhati Balkrishna, . The assessment was made on 16th December, 1970. Subsequently, section 5(1)(viii) of the Act was retrospectively

amended by the Finance (No. II) Act, 1971 with effect from 1st April, 1963, whereby the exemption on the value of jewellery was withdrawn. In

consequence of this retrospective amendment, the Wealth-tax Officer had reason to believe that the assessee"s net wealth liable to tax, had

escaped assessment. The Wealth-tax Officer, therefore, reopened the already completed assessment by issue of notice u/s 17 of the Act. In the

reopened assessment, the Wealth-tax Officer not only included in the assessee's net wealth the value of the jewellery determined at Rs. 66,700 -

but also re-determined the value of the assessee's partnership interest in the firms New Kanpur Flour Mills, Nagarmal & Co., the value of share in

the property at 24/73, Birhana Road, Kanpur, and the value of shares in the companies. The result was that while the net wealth as originally

assessed was Rs. 4,16,910 in the re-assessment the net wealth was determined at Rs. 14,91,951.

2. The assessment went in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, while upholding the reopening

of the assessment, held that since the assessment was reopened because of the exclusion of the value of jewellery from the assessee's net wealth at

the time of the original assessment, the Wealth-tax Officer was not justified in proceeding to make a fresh assessment by revising the value of

assets from what was taken in the original assessment on the basis of the report of the Valuation Officer for subsequent years by projecting it

backwards to arrive at their value for the year under appeal, since this was a mere change of opinion in regard to the valuation of the assets from

what was held at the time of the original assessment. The Appellate Assistant Commissioner, therefore, upheld only the addition on account of the

value of jewellery to the extent of Rs. 66,700 and held that the other additions by revising the value of the assets from what was determined at the

time of making the original assessment were not justified.

3. Feeling aggrieved, the Department came in appeal before the Tribunal. The respondent also preferred a cross-objection on the ground that the

Appellate Assistant Commissioner should not have upheld the reopening of the assessment u/s 17 of the Act and in any case he ought to have dealt

with the other grounds of appeal before him. The Tribunal after considering the arguments advanced by the respective parties, had upheld the

reopening of the assessment and further held that the Wealth-tax Officer while making re-assessment cannot be confined only to the addition on

account of value of the jewellery and could have re-valued the other assets at an amount different from what was determined at the time of original

assessment. The Tribunal had further directed the Appellate Assistant Commissioner to deal with other grounds regarding valuation of some of the

assets made by the Wealth-tax Officer in re-assessment.

4. We have heard Sri Vikram Gulati, the learned counsel for the applicant, and Sri A.N. Mahajan, the learned Standing Counsel appearing for the

Revenue.

5. The learned counsel for the applicant submitted that as a result of the legal fiction incorporated with retrospective operation and the amendment

of section 5(1)(viii) of the Act by the Finance (No. II) Act, 1971 with effect from 1st April, 1963, the omission of the value of the jewellery from

the net wealth of the applicant was a mistake apparent from the record which could only be rectified by having recourse to the proceedings u/s 35

of the Act and not u/s 17 of the Act. He relied upon the following decisions:

(i) The Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax and Another etc. Vs. V.M. Ravi Namboodiripad, etc., ;

(ii) Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, ; and

(iii) Commissioner of Wealth-tax Vs. Sheela Devi Goel, .

6. Sri Mahajan, the learned counsel for the Revenue, has submitted that section 5(1)(viii) of the Act was retrospectively amended by the Finance

(No. II) Act, 1971 with effect from 1st April, 1963 whereby the exemption on the value of the jewellery was withdrawn. The Wealth-tax Officer

has granted exemption on the value of the jewellery which, in view of the retrospective amendment, was not admissible and, therefore, the wealth

insofar as the exemption granted on jewellery, had escaped assessment of tax. He further submitted that it is not correct to say that if an item can

be subjected to tax by taking recourse to the proceedings u/s 35 of the Act, being a mistake apparent on the record, the jurisdiction u/s 17 of the

Act is not ousted and, therefore, the Tribunal had rightly upheld the reopening of the assessment. According to him, once the assessment is

reopened, the entire assessment is at large and de novo assessment is to be made. The other items can also be re-valued in the course re-

assessment proceeding u/s 17 of the Act.

7. Having heard the learned counsel for the parties, we find that in the present case the Wealth-tax Officer had initially granted exemption on the

value of the jewellery u/s 5(1)(viii) of the Act. The aforesaid provision was retrospectively amended by the Finance (No. II) Act, 1971 with effect

from 1st April, 1963. In view of the retrospective amendment made in the provisions, the exemption which has been allowed, would be deemed to

have wrongly allowed and, thus, a case of wealth having escaped the assessment to tax u/s 17 of the Act would arise. It is well-settled that the

circumstances under which an order u/s 147 and an order u/s 154 of the income tax Act, 1961, analogous to sections 17 and 35 of the Act, can

be passed, are not mutually exclusive and may overlap. There is no conflict between the two sections so as to suggest that the provisions of one

section will not apply where the provisions of the other section is applicable as held in HIRA LAL SUTWALA Vs. COMMISSIONER OF

Income Tax, U.P. and V.P., ; Mrs. Gladys S. Koder Vs. Income Tax Officer, A-Ward, ; Sirsa Industries Vs. Commissioner of Income Tax and

Another, ; Indra Singh and Sons Private Ltd. Vs. Union of India (UOI) and Another, ; G. Sreerama Murthy Vs. Income Tax Officer, A-Ward, ;

C. Commissioner of Income Tax, Gujarat II Vs. Himatlal Bhagubhai, ; R. Madhavan Nair Vs. Commissioner of Income Tax, ; Bihar State Road

Transport Corporation Vs. Commissioner of Income Tax and Others, and Income Tax Officer, Company Circle, Bangalore Vs. Margarine and

Refind Oil Co. Ltd., . The Assessing Officer has jurisdiction to take action under either of the two sections as the circumstances may require.

8. In the case of V.M. Ravi Namboodiripad (supra) the Apex Court was considering the question as to whether after the amendment of the sub-

section (3) and omission of sub-section (4) of section 3 of the Kerala Agricultural income tax Act, 1950, with retrospective effect from April 1,

1958, by the Act No. XII of 1964, the assessment could have been rectified taking recourse to the power of rectification u/s 36 of the said Act or

the Agricultural income tax Officer could only have exercised the power of re-assessment u/s 35 of the said Act. The Apex Court has held that the

Agricultural income tax Officer was empowered to make the rectification u/s 36 of the Act. The Apex Court had not held that if a case falls, both

under the provisions of re-assessment and rectification, recourse to any one of the provisions cannot be taken. It had justified the action u/s 36 of

the said Act.

9. In the case of Indian & Eastern Newspaper Society (supra) the Apex Court has held that the information of an audit party on a point of law

could not be regarded as information enabling the income tax Officer to initiate re-assessment proceeding u/s 147(b) of the income tax Act.

10. In the case of Sheela Devi Goel (supra) this Court has upheld the action of the Wealth-tax Officer u/s 35 of the Act for rectification of the

assessment order consequent upon retrospective amendment of section 5(1)(viii) of the Act, by the Finance (No. II) Act, 1971. This Court had

not considered the question as to whether the provision of section 17 of the Act is also attracted or not.

As already mentioned hereinbefore, as a result of retrospective amendment in section 5(1)(viii) of the Act, the exemption on jewellery was not

admissible and, therefore, the net wealth chargeable to tax has escaped assessment for that year. Thus, the Wealth-tax Officer was perfectly

justified in initiating proceeding u/s 17 of the Act.

11. So far as the question as to whether in the course of re-assessment proceedings, the assets other than jewellery could be re-valued by the

Assessing Officer concerned, it may be mentioned here that once the assessment is reopened, the original order of assessment ceases to be

operative and the fact of reopening of assessment is to vacate or set aside the original order of assessment and to substitute in its place the order

made on re-assessment, as held in the case of Dy. CCT v. H.R. Sri Ramulu 1977 Tax LR 1855 (SC); Saran Engineering Co. Ltd. Vs.

Commissioner of Income Tax, ; Sharda Trading Company Vs. Commissioner of Income Tax, ; Commissioner of Income Tax Vs. Shri Rangnath

Bangur and Shri Purshottam Dass Bangur, and Kundan Lal Srikrishan v. CST [1987] 65 STC 71 (SC).

12. In the case of V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh, , the Apex Court

has held as follows:

... once proceedings u/s 34 are taken to be validly initiated with regard to two-thirds share of the income, the jurisdiction of the income tax Officer

cannot be confined only to that portion of the income. Section 34 in terms states that once the income tax Officer decides to reopen the assessment

he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may

be included in a notice u/s 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once

assessment is reopened by issuing a notice under sub-section (2) of section 22 the previous under-assessment is set aside and the whole

assessment proceedings start afresh. When once valid proceedings are started u/s 34(1)(b) the income tax Officer had not only the jurisdiction but

it was his duty to levy tax on the entire income that had escaped assessment during that year.

13. A Full Bench of the Bombay High Court in the case of Commissioner of Income Tax Vs. Indian Rare Earth Ltd., has held that once a valid

proceeding u/s 147 of the income tax Act is started, the Assessing Officer has not only the jurisdiction but it is his duty to complete the whole

assessment de novo. While reassessing an assessee, the Assessing Officer does not assess him on the escaped income but the assessment is made

on his taxable income, as held in the case of The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main

Road, Indore, . Thus, it is well-settled that if an assessment has been reopened, the entire assessment is to be made afresh and, therefore, the

assets can be revalued also. In view of the foregoing discussion, we answer both the questions of law in the affirmative, i.e., in favour of the

Revenue and against the assessee. However, there shall be no order as to costs.