

(2003) 03 KL CK 0123

High Court Of Kerala

Case No: WTA No"s. 1, 3 to 13 of 2003 17 March 2003

P.V. Jacob

APPELLANT

Vs

CWT

RESPONDENT

Date of Decision: March 17, 2003

Citation: (2003) 130 TAXMAN 767

Hon'ble Judges: J.M. James, J; G. Sivarajan, J

Bench: Full Bench

Advocate: N. Srinivasan and M.P. Abraham, for the Assessee P.K.R. Menon and George K. George, for the Revenue, for the Appellant;

Judgement

Sivarajan, J.

The matter arises under the Wealth Tax Act, 1957, (hereinafter referred to as "the Act". W.T.A. Nos. 1, 3, 8, 9, 11 and 12 of 2003 are filed by the assessee, namely, Late Mrs. Lucy Kochu Vareed, represented by her son Sri P.V. Jacob W.T.A. Nos. 4, 5, 6, 7, 10 and 13 are filed by the assessee, namely, Sri P.V. Jacob. The assessment years concerned in the first batch of cases are 1979-80 to 1984-85, and the assessment years concerned in the second batch of cases are 1980-81 to 1985-86. Though the assessees in both these batch of cases are different, (in the sense that the assessee in the first batch of case is the mother of the appellant in the second batch of cases, who also represents the estate of the deceased mother), the question arising for consideration in all these cases is one and the same, that is, as to whether the Income Tax Appellate Tribunal while deciding the appeals filed by them was justified in issuing directions which, according to the assessee, are beyond the scope of the appeals.

2. The brief facts necessary for the disposal of these appeals are as follows. The appellant in W.T.A. No. 1 of 2003 was the owner of a rubber estate known as Velanikkara Thattil Estate. She has leased out one-third of the said Estate to M/s. Varkey Jacob & Co., on which the appellant in the second batch of cases was a

partner. The Thattil Estate was acquired by the government in the year 1970. Possession of the said estate was also taken by the government in the year 1973. By the acquisition of the said estate, the business of the partnership firm, M/s. Varkey Jacob & Co., came to an end. Compensation was awarded both to the owner of the estate and to the lessee. Not being satisfied by the said award passed by the Collector, the appellants have filed application for reference, and the matter was referred to the sub court. The sub court also passed an award granting enhanced compensation and also interest at the rate of 4 per cent. Aggrieved by the award passed by the sub court, the State filed appeals before this court. The appellants also filed cross appeals against the said award before this court. Both set of appeals were disposed of by this court as per judgment dated 28-1-1987.

3. In all these cases, the appellants filed returns under the Act, and the assessments were also completed accordingly. Subsequently, the appellants filed revised return offering higher amounts for compensation. Since the assessments for the years for which the revised returns were filed were already completed, the assessing officer issued notice u/s 17 of the Act to regularise the revised returns filed by the appellants. The assessing officer thereafter completed revised assessments on the basis of the award passed by this court. According to the appellants, the said assessment orders were barred by limitation, that therefore they filed appeals against the assessment order before the Commissioner (Appeals). The said authority upheld the validity of the revised assessment orders. However, the Tribunal in further appeal by the appellants held that the assessments are barred by limitation. The department has not filed any appeal against the order of the Tribunal holding that the assessments are barred by limitation. The appellants are also not aggrieved by the order of the Tribunal in that regard.

4. The only grievance of the appellants which is the subject matter of the appeals is the further direction issued by the Tribunal with regard to the consequences of the order passed by the Tribunal, namely, that the assessments are barred by limitation. The Tribunal after holding that the assessments are barred by limitation further observed that in view of the decision of the Allahabad High Court in the case of Saraya Sugar Mills Ltd. Vs. Income Tax Officer and Others, which followed the Full Bench decision of the Gujarat High Court in Saurashtra Cement and Chemical Industries Ltd. Vs. Income Tax Officer, the appellants are not entitled to get refund of the taxes pursuant to the voluntary revised returns filed for the assessment years in question.

5. Sri N. Srinivasan, the learned senior counsel appearing for the appellant submits that the question of refund of taxes paid as per the voluntary returns was not at all a subject matter of the appeal filed before the Tribunal and that the only ground on which the appeal were filed is that the assessments are barred by limitation. The senior counsel further submits that the Tribunal has no jurisdiction in such circumstances to go beyond the scope of the appeal and to issue further directions

in regard to the consequences of the orders passed by them. The senior counsel also wanted to make submissions on the merits of the direction issued by the Tribunal. He took us to the provisions of section 24(5) of the Act which gives jurisdiction to the Tribunal to decide the appeals and submits that the direction in the nature specified in paragraph 4 of the appellate order regarding the refund of the tax paid is not contemplated within the said jurisdiction.

6. Sri. P.K.R. Menon, Senior Central Government standing counsel for taxes, appearing for the respondent submits that the powers conferred on the Tribunal u/s 24(5) of the Act are much more wider than the powers conferred on the Tribunal under the provisions of the Income Tax Act, and that the powers of the Tribunal under the Act are much more wider and are co-extensive with that of the assessing officer also. Section 24(5) of the Act confers power on the Tribunal to enhance the tax in appropriate cases. Thus, senior standing counsel further submits that the power to issue directions of the nature given in the appellate order will also comprehend within the sweep of the powers conferred on the Tribunal u/s 25(5) of the Act.

7. As already noted, the subject matter of the appeals before the two appellate authorities is regarding the validity of the reassessment orders passed by the assessing officer so far as the assessment year 1986-87 is concerned. There is also no dispute that the Tribunal has held that the reassessment orders are barred by limitation. The said order has also become final. The only question for consideration, as already noted, is as to whether the Tribunal was justified in issuing further directions as to the consequences of order passed by the Tribunal holding that the reassessment orders are barred by limitation. Normally, passing of consequential order pursuant to the order of the Tribunal is a matter for the assessing officer concerned. It is for the assessing officer to consider the question as to whether, as a consequence of the order passed by the Tribunal to the effect that the reassessment orders are barred by limitation, if the assessee had paid any amount by way of tax, either on the basis of the revised return or on the basis of the reassessment orders, whether it should be refunded to the assessee and if the assessing officer does not give effect to the appellate order of the Tribunal by passing the consequential orders, it is for the assessee to make appropriate request in that regard.

8. In the instant case, the Departmental Representative contended before the Tribunal while considering the question of validity of reassessment orders that even assuming that the assessments are held to be bad, still the assessee is not entitled to get refund of the amount paid pursuant to the voluntary return, based on certain decisions of other High Courts. No doubt, that was not a relevant aspect so far as the issue regarding the validity of the reassessment orders. In such circumstances, ordinarily, the Tribunal should not have entertained such arguments and when the Tribunal holds that the assessments are barred by limitation, it should have relegated all other questions to the assessing officer concerned. Now, the only point

to be considered is as to whether section 24(5) of the Act confers any such power on the Tribunal. Section 24(5) of the Act reads as follows :

"24(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty."

9. True, the said provision confers power on the Tribunal to pass such orders thereon as it thinks fit, and any such order may include an order enhancing the assessment or penalty. The provisions in the Wealth Tax Act, with regard to the scope of the expressions, "pass such orders thereon as it thinks fit" was considered by the Supreme Court in [Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others](#) , where the Supreme Court construing the provisions of section 33(4) of the Income Tax Act, held that, the expression "there on" restricts the jurisdiction of the Tribunal to the subject matter of the appeal, and the words "pass such order as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement), which are conferred on the Appellate Assistant Commissioner, by section 31.

10. As already noted, the provisions of section 24(5) will take in the power of enhancement also. However, the direction issued in this case does not have the effect of enhancement of the assessment. As already noted, the direction issued is only in regard to the consequence of the appellate order. It cannot be treated as one for enhancement. Even other wise, in a case, where the Tribunal wants to enhance the assessment, necessarily, it has to comply with the provisions of the proviso to the said sub-section which clearly provides that no order enhancing an assessment or penalty shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement. In the instant case, admittedly, it was only a contention taken by the Departmental Representative based on certain decisions of other High Courts, which was straightaway accepted by the Tribunal. In other words, the assessee did not get an opportunity to have their say before the Tribunal in the matter. In these circumstances, it is unnecessary for us to go into the question as to whether the Tribunal is entitled to issue a direction of the nature given in the appellate order to the effect that the appellants are not entitled to refund of the tax paid pursuant to the voluntary return filed by them. Even assuming that the Tribunal has got such a power u/s 24(5), it has not been exercised in the manner provided in the said sub section. We make it clear that we have not considered the question as to whether the Tribunal has got the power to issue such a direction u/s 24(5) in the instant case, for according to us, it is unnecessary to consider the said question on the facts of this case.

11. In these circumstances, we delete the following directions issued in the appellate order :

"However, in the light of the decision of the Allahabad High Court cited above, we hold that the additional tax paid by the assessee voluntarily is not liable to be refunded."

12. We make it clear that it is for the assessing officer to give effect to the appellate order of the Tribunal holding that the reassessment orders in all these cases are barred by limitation. Of course, when the question of refund arises, or if the assessee seeks for refund of tax paid, certainly, it is a matter for consideration by the assessing officer in accordance with law, and if for any reason, the assessing officer feels that the appellants cannot be granted refund of the tax paid pursuant to the voluntary returns filed by them or pursuant to the reassessment orders, if any, the assessing officer has to issue a notice to the appellant pointing out the circumstances under which refund cannot be ordered, in which case, the appellants are entitled to show cause against the same. The assessing officer will also pass a reasoned order in accordance with law, in this matter.

The Wealth Tax Appeals are disposed of as above.