
(1994) 118 CTR 26 : (1994) 205 ITR 270 : (1994) 74 TAXMAN 245

Calcutta High Court

Case No: Income-tax Reference No. 18 of 1978

Mihir Chatterjee

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: July 23, 1992

Acts Referred:

Income Tax Act, 1961 " Section 132(12), 132(4), 132(5), 143(3), 256(2)#Wealth Tax Act, 1957 " Section 15C

Citation: (1994) 118 CTR 26 : (1994) 205 ITR 270 : (1994) 74 TAXMAN 245

Hon'ble Judges: K.M. Yusuf, J; Ajit K. Sengupta, J

Bench: Division Bench

Advocate: R.N. Bajoria, for the Appellant;H.M. Dhar and Sunil Mukherjee, for the Respondent

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256(2) of the Income Tax Act, 1961, the following questions of law have been referred to this

court :

1. Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal to hold that the wealth-tax returns were

not filed on the various dates as shown on the respective returns ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the explanation offered by the assessee in respect

of Rs. 1,82,535 (rupees 5,126 cash, Rs. 56,606 foreign currency, Rs. 40,803 gold sovereigns and Rs. 80,000 expenses for investment in house

property or any part thereof) and in treating the same as undisclosed income of the assessee and as such liable to be assessed in the assessment

year 1968-69 ?

2. The assessment year involved in 1968-69 relevant to the accounting year ended March 31, 1968. In the raids conducted by the Revenue in the

house, locker of the assessee in a bank and the business premises some time in September, 1967, the Revenue found the following assets :--

Rs.

Cash 5,122

Foreign currency 56,606

Gold sovereigns 40,803

Investments in residence 80,000

3. The assessee by way of an explanation for the source of the assets submitted that his wife had received gifts of Rs. 40,000 and Rs. 1,50,000,

respectively, from her mother-in-law and her father. Out of these gifts, the aforesaid assets were acquired and investments made. It was further

stated that the said gifts were lying in cash with the assessee's wife and that she had shown the same in her wealth-tax returns right from the

assessment year 1963-64. But this explanation was not accepted by the Income Tax Officer in the proceedings u/s 132(5) as well as by the

Central Board of Direct Taxes in its order u/s 132(12) of the Act. The treatment of the aforesaid items as the assessee's income from other

sources in the order u/s 132(5) was affirmed by the Board in its order u/s 132(12). The Income Tax Officer, therefore, followed the said decision

in completing the assessment and treated the amount of investment disclosed in the search as the assessee's income from other sources.

4. The Appellate Assistant Commissioner affirmed the order. In the further appeal before the Tribunal, the Tribunal also upheld the action of the

lower authorities setting out the following reasons :

The other additions made in the assessment of the year which are objected to by the assessee, viz., cash Rs. 5,126, foreign currency Rs. 56,606,

gold sovereigns Rs. 40,803 and investment in house property Rs. 80,000, may well be considered together. The case of the assessee now, in

short, is that all these came out of the Rs. 1,90,000, which his wife is stated to have received from his mother and her father. For more than one

reason, we find it difficult to accept this case. Except for the ipse dixit of the assessee and his wife there is nothing else to show that there had been

by the latter, such receipts. There is no evidence that the mother of the assessee had the wherewithal to have made a gift of Rs. 40,000 to her

daughter-in-law or that the assessee's father-in-law had that much means to have made a present of Rs. 1,50,000 to his daughter. It is stated that

both the alleged donors had died in 1951 and 1954 and hence, if at all, the gifts would not have been only in these years or earlier. It is not

explained what the assessee or his wife was doing with the big amounts ever since the gifts till 1966 April, after which alone, according to the

assessee in his statement u/s 132(4), he began investing the same in foreign currencies. It is hard to believe that a man of the assessee's astuteness

and shrewdness would have kept the big sum idle for about 15 years. It is also interesting to note that on this the assessee seems to have no

consistent case at all. In the statement given by him u/s 132(4), he wanted to trace the entire investment of Rs. 1,44,182.50 in foreign currencies to

amounts which he then said he had received from his father and father-in-law. A reading of the petition dated August 25, 1970, which he submitted

to the Board would suggest that his case then was that he received Rs. 40,000 from his mother and his wife received Rs. 1V6 lakhs from her

father. It is even as against these discrepant versions that in the proceedings u/s 143(3) and now before us the case is pressed that both amounts

were gifts, made to his wife. However much the assessee's learned representative might assert before us that in these there is no discrepancy

whatever, we have no doubt in our minds that the versions are inconsistent with one another. Truth indeed cannot falter thus. It was argued that the

statement u/s 132(4) during the search was given at a time when the assessee was under much mental strain and that we should not set much store

by it. But then in his subsequent statements, the assessee himself had no case that in making the earlier statement he was under any pressure. Also

no such excuse can be carved out at any rate as regards the petition later submitted to the Board or the statement made at the time of the regular

assessment proceedings that followed.

The assessee's learned representative would then very much rely on the wealth-tax returns filed by the assessee for the assessment years 1963-64

to 1967-68 as proof positive that, even prior to the previous year relevant to this assessment year, the assessee had in his hands this amount of Rs.

1,90,000 as funds of his wife. Those returns were alleged to have been filed as under :--

1963-64 ... on 18-5-1966

1964-65 ... on 8-6-1966

1965-66 ... on 28-6-1966

1966-76 ... on 11-8-1966

1976-68 ... on 21-7-1967

Indeed, if these returns had in truth been filed on those alleged dates, the assessee's case that the amounts in question did not relate to this

assessment year would be unassailable. No doubt, the wealth-tax returns are stated to bear the seal of the Wealth-tax Officer's office showing

their filing on these dates. But, for obvious reasons, we are not prepared to take serious note of such date seals on the returns even if they exist. At

this stage, we may state that the learned Departmental representative was not able to produce before us those returns for us to see as he stated

that they were missing. But, in our view, there are clinching facts to show that, in truth, the assessee had not filed those returns at any time before

the search of his premises in September, 1967. It is admitted that, prior to 1966, the assessee had not filed any wealth-tax returns, though it cannot

be doubted that, even prior to the assessment year 1963-64, he had assessable wealth. Why is it that, in 1966, all of a sudden he became

conscious of his legal obligations and chose to file returns for the years 1963-64 to 1967-68 each one following the other in quick succession ? In

these returns, why was it that the assessee chose to show in Part IV thereof this amount of Rs. 1,90,000 as of his wife ? Before the search, there

was no need for him to have given any explanation for such an amount, much less to show the funds of his wife in his returns. As we have already

seen, the assessee's wife had, during the years 1951 to 1959, invested Rs. 44,000 in the India Marine Service (P.) Ltd., which we have

recognised in her favour. Even if she had her own funds, the investments fully explain the same, as it is not possible to imagine that the lady who

knew how to make investments still kept the amount of about Rs. 2 lakhs idle in her hands during all these years. If the lady had received as gifts in

all only Rs. 1,90,000 the question naturally arises how she could have had in 1963-64, the same amount, even after her investment in the India

Marine Service (P.) Ltd. If there is any truth in the present case, then it becomes unexplainable how in his statement u/s 132(4), the assessee

traced the investments in foreign currency as with funds received from his father-in-law and father. He had then no case that he made use of, for

the purpose, the funds of his wife. That appears to us another clinching circumstance clearly pointing out that the wealth-tax returns had not been

filed even by then. To add to this is the fact borne by the Board's order u/s 132(12) that before it, seeing no way to explain, the assessee

conceded to the inclusion of the value of the sovereigns found with him, and the amount of the investment made on the house as his undisclosed

income of the year. That again shows that he had then no case of his having had the money in the earlier years, as shown in the wealth-tax returns.

We have no doubt, in our mind, therefore, that these wealth-tax returns had not come into existence even at the time the Board passed its order on

August 25, 1970. It is conceded that none of the returns bore any inward number or the initials of either the Wealth-tax Officer or even the

receiving clerk. We are certainly not prepared to believe that such defects in all of them is purely accidental. Taking all these things into

consideration, we concur with the lower authorities that the wealth-tax returns relied on by the assessee are only manipulations on which no trust

can be placed. We, accordingly, uphold these additions.

5. The assessee's case is principally founded on the assertion that the possession of the amounts was disclosed by the assessee in his wealth-tax

returns filed for the assessment years 1963-64 to 1967-68 long before the date of search. All these returns were filed between May, 1966, and

July, 1967, while the search took place in September, 1967. The Tribunal, however, was not prepared to accept that these wealth-tax returns had

been really filed on the purported dates. The Tribunal concluded that the wealth-tax returns had not been really filed by the assessee even by the

time the Board passed its order u/s 132(12) on August 25, 1970. At the hearing before us, the learned advocate for the assessee contested the

finding of the Tribunal that the wealth-tax returns were not in existence even when the Board passed its order on August 25, 1970. It has been

pointed out that there is a clear reference to the wealth-tax returns in the order of the Board which directed that the amount relating to premium

price bonds should be excluded as the same had been disclosed in the wealth-tax returns for the year 1965-66. It has been further pointed out

that, in the petition filed before the Board against the order passed by the Income Tax Officer u/s 132(5) of the Act, the applicant had clearly

averred in paragraph 14 thereof that the amounts of Rs. 40,000 plus Rs. 1,50,000 had also been disclosed by the applicant in his wealth-tax

returns. Attention was further drawn to the fact that the order of the Board was passed on May 7, 1968, while on January 18, 1968, the notices

were issued by the Wealth-tax Officer for the assessment years 1963-64 to 1966-67 requiring the assessee to pay wealth-tax with reference to

the returns filed by the assessee in accordance with the requirement of Section 15C of the Wealth-tax Act, 1957. Thus, on the basis of the

cumulative effect of the petition before the Board, the order of the Board as well as the notices of demand issued by the Wealth-tax Officer u/s

15C of the said Act, the learned advocate for the assessee sought to show that, circumstantially, the factum of the submission of the wealth-tax

returns long before the Board passed its order u/s 132(12) on May 7, 1988, cannot be in doubt. Thus, the Tribunal's finding that the alleged

wealth-tax returns relied upon by the assessee to show that the items of assets were disclosed items were not in existence even at the time when

the Board passed its order is perverse. It is further stressed that the Wealth-tax Officer completed the assessment of net wealth for the said

assessment years 1963-64 to 1966-67 on the basis of the wealth-tax returns in question disclosing the wife's assets worth Rs. 1,90,000, The

assessee also preferred appeals against the said orders of assessment by the Wealth-tax Officer raising therein the contention that the said sum of

Rs. 1,90,000 could not be assessed in his hands. The Appellate Assistant Commissioner set aside the orders of assessment. In the fresh

assessment made by the Wealth-tax Officer, the said sum of Rs. 1,90,000 was again included as part of the net wealth of the assessee. Further

appeals were filed challenging such inclusion and the appeals were pending before the Appellate Assistant Commissioner till the date of hearing of

the instant appeal by the Tribunal. The learned advocate for the assessee submitted that the assessment of the sum of Rs. 1,90,000 as part of the

net wealth of the assessee is direct acceptance by the Revenue that the said sum was in existence as early as on the valuation date for the

assessment year 1963-64, viz., March 31, 1963. Therefore, there could be no addition on account of the assets found in the course of search in

the assessment year 1968-69. It was emphasised that the Tribunal's order that the wealth-tax returns were not actually filed on the dates as stated

by the assessee is perverse since such finding is contrary to all materials available on record.

6. We, however, fail to see that the inferences drawn by the Tribunal leading to the conclusion that the assets in question are undisclosed assets

suffer from any perversity. The case set up for and on behalf of the assessee is full of incongruities as quite reasonably justify the inference that the

case as sought to be advanced is not based on truth. The first element of improbability in the story is that the assessee's wife possessed a

substantial sum of about Rs. 2,00,000 completely idle for 15 years, even though, it is not that the investment of funds is unknown to her. As

observed by the Tribunal in 1963-64, she made an investment in the India Marine Service (P.) Ltd. Secondly, as found by the Tribunal, if the funds

received by the wife as gifts from her parents amounting to Rs. 1,90,000 were retained by her, she could not have further wherewithal to invest in

the aforesaid company.

7. The second inconsistency in the assessee's case is that this amount is supposed to have been kept idle all these years but the assessee lost no

time in getting the amount invested immediately after the search. This circumstantially shows that the assets in question no more required to be kept

hidden after the discovery in the search and, therefore, came out into the open. Thirdly, there are other discrepancies referred to by the Tribunal.

8. The learned advocate for the assessee has sought to capitalise on the facts that the Tribunal fell into an error in inferring that the so-called

wealth-tax returns were not in existence on the date the Board passed its order u/s 132(12) on August 25, 1970. That controversy is altogether

irrelevant. That does not ring the curtain down on the question whether the returns are manipulated. What we sum up from the facts as brought out

by the Tribunal is that the assessee's assertions are not of a piece with the common course of the assessee's pattern of conduct with regard to the

investment and dealings with his financial resources. The assessee's claim that the substantial sum of Rs. 1,90,000 remained idle since the fifties

until the date of search in September, 1967, is completely out of joint with the assessee's general course of conduct. As a matter of fact, even the

assessee's wife to whom the ownership of the assets is attributed is a person very much conversant with and interested in making investments. The

ordinary course of conduct of a person who shows sufficient investment-awareness generally in his financial affairs does not admit of the plea which

the assessee has sought to take in the case. Their antecedent conduct shows that neither the assessee nor his wife had any freak tendency of

hugging cash. They have the natural impulse of an "economic man", an average person who acts towards economic self-interest amidst normal

human propensities.

9. The assessee has founded his entire case on the basis of the wealth-tax returns as earlier dealt with by us. The facts of the case create such

preponderance of probability as clearly indicated by the falsity of the dates of filing of the returns. All the returns merely bear a stamp mark but do

not bear any inward number or the initials of the receiving clerk, or the Assessing Officer. This is not in the regular course in which the receipt of

returns in the Department is regulated. The returns received are date-stamped and then entered in the inward or the receipt register, the number of

entry therein being indicated on the face of the return with the initials of the clerk receiving the return as well as the officer who goes through the

daily dak.

10. For reasons stated, the Tribunal rightly questions the very factum of the submission of the returns on the dates as alleged. It is unfortunate that

the Revenue was not able to produce before the Tribunal the said returns for scrutiny of the Tribunal ; the same were reported missing. We quite

agree with the Tribunal that the returns leave tell-tale signs that these returns could not have been filed before the discovery of the assessee's funds

in the course of the search.

11. It further beats comprehension why the assessee should, in the said returns, indicate in Part IV thereof that the amounts do not belong to him

but to his wife. There was no occasion at this stage to give such a declaration in the said returns. If these returns had been really filed with an entry

in Part IV attributing the ownership of the money to his wife, the assessee could not have, in all probability, omitted to mention that fact in his

statement made u/s 132(4). The claim of the returns having been filed earlier disclosing the ownership of the wife in respect of these assets found in

the course of search was not at all mentioned before the authorised officer in his statutory statements u/s 132(4) of the Act. He was examined only

with regard to the self-same assets and, therefore, the alleged filing of the returns and prior disclosure therein are not matters to escape notice

unless the assessee suffers from complete amnesia. His silence at that stage and his subsequent assertion that he had filed his wealth-tax returns

earlier and disclosed in the said returns the assets, only shows that the Tribunal was very correct in not being carried away by such incoherent

claims and in concluding that the returns, filed are not reliable evidence. The date seals on the return unaccompanied by other evidence, viz., the

serial number of entry in the receipt register leads us nowhere. The Tribunal's disbelief of the dates is reasonable. In all the five returns, though

purportedly filed on different dates, there is the same omission. No allowance for the clerk's mistake explains the queer coincidence. The pattern

of the mistakes is unmistakable and absolutely justifies the Tribunal to disbelieve the dates of filing.

12. Thus, we find no perversity in the order of the Tribunal. There are sufficient materials and circumstances to hold that the wealth-tax returns

were not filed on the dates on which they are purported to have been filed but were filed later upon the discovery in the search. Similarly, the

explanation offered by the assessee in respect of the assets discovered in the course of the search have been, accordingly, held to represent

undisclosed income of the assessee and the conclusion is based on fair and correct appraisal of materials and facts present before the Tribunal.

13. Accordingly, we answer both the questions in the affirmative and against the assessee and in favour of the Revenue.

14. There will be no order as to costs.

K.M. yusuf, J.

15. I agree.