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(2004) 134 TAXMAN 46

Calcutta High Court

Case No: Matter No. 2028 of 1992 24 April 2002

CWT	APPELLANT
Vs	
Sandeep Jajodia	RESPONDENT

Date of Decision: April 24, 2002

Acts Referred:

- Wealth Tax Act, 1957 - Section 25(2)

Citation: (2004) 134 TAXMAN 46

Hon'ble Judges: Altamas Kabir, J; Alok Kumar Basu, J

Bench: Full Bench

Advocate: Sunil Kumar Mitra, for the Revenue, for the Appellant;

Judgement

Altamas Kabir, J.

The assessments for the assessment years 1984-85 and 1985-86 in respect of the respondent/ assessee were computed u/s 16(3) of the Wealth Tax Act, 1957, on 29-4-1986 and 22-8-1986, at a net wealth of Rs. 12,57,100 and Rs. 12,35,900 respectively. The wealth assessed included the value of a flat situated at 1, Arcade, Nariman Point, Bombay, accepted by the Wealth Tax Officer at Rs. 2,50,000. Subsequently, the assessee filed returns of wealth for the aforesaid years under the amnesty scheme on 29-4-1986, disclosing certain additional wealth in the shape of jewellery, silver utensils, ornaments and a half share of a house property at 1/ 17, Shantiniketan, New Delhi. Pursuant thereto, notices were issued u/s 17 of the Wealth Tax Act and fresh assessments were completed on net wealth of Rs. 18,60,800 and Rs. 18,94.200 respectively on 19-11-1986.

2. Subsequently, the Commissioner of Wealth-tax, West Bengal IX, Calcutta, initiated action u/s 25(2) of the above Act to revise the assessments made on 29-4-1986 and 22-8-1986 since in his view. the said assessments were erroneous and against the interest of the revenue. The said Commissioner set aside the assessments and directed

the assessing officer to take into account the gross and net annual rent of the property at Bombay and to determine the value of the property on yield basis.

3. Being aggrieved by the order of the Commissioner u/s 25(2) of the above Act, the assessee moved the Appellate Tribunal contending that the proceedings u/s 25(2) were without jurisdiction as the original assessment made on 29-4-1986 and 22-8-1986 were no longer in existence having been replaced by the fresh assessments made on 19-11-1986.

4. The Appellate Tribunal accepted the above contention made on behalf of the assessee and vacated the order of the Commissioner upon observing that the assessee might have made disclosure of wealth under the Amnesty Scheme, but the assessing officer took action u/s 17 of the Wealth Tax Act and made reassessments and that the view that reassessment proceedings superseded and set aside the original assessments can be taken at well-established in view of certain decisions of the Hon"ble Supreme Court and the Kerala High Court referred to in its order.

5. Thereafter, pursuant to the directions given by this court on 7-1-1992, in Matter Nos. 2997 and 2992 of 1991, the following questions were referred by the Income Tax Appellate Tribunal to this court for its opinion, namely :

(i) Whether, on the facts and in the circumstances of the case when in the reassessment proceedings the assessment of the flat at Bombay was not interfered with the Tribunal was justified in law in holding that the reassessment proceedings superseded and set aside the original assessment in its entirety?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not sustaining the order passed by the Commissioner u/s 25(2) of the Wealth Tax Act, 1957

6. Despite service of notice of the reference, no one appeared on behalf of the assessee.

7. Appearing for the revenue, Mr. Sunil Kumar Mitra, learned Senior Counsel, submitted that pursuant to the Amnesty Scheme the assessee submitted a return of higher wealth on 29-9-1986, on the basis whereof proceedings were taken u/s 17 of the Wealth Tax Act only in respect of the additional wealth disclosed and without disturbing the assessment originally made in respect of the flat at Bombay. It was urged that the same did not have the effect of re-opening of the entire assessment made u/s 16 and would have to be confined to the assessments made on the additional wealth declared by the assessee under the amnesty scheme and the original assessment did not stand replaced by the subsequent assessment made u/s 17 and the Appellate Tribunal erred in law in holding otherwise and coming to a finding that the order of the Commissioner u/s 25(2) of the above Act could not be sustained in respect of assessments which were no longer in existence.

8. In support of his submission Mr. Mitra relied on the decision of the Hon"ble Supreme Court in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , which involved reassessment of an original assessment under the Income Tax Act, 1961. Mr. Mitra pointed out that the Hon"ble Supreme Court had observed that in proceeding u/s 147 of the Income Tax Act, the Income Tax Officers may bring to charge items of income which had escaped assessment or in addition to items which led to the issuance of notice u/s 148, and where reassessment is made u/s 147 in respect of income which had escaped tax. The Income Tax Officer"s jurisdiction is confined only to such income which had escaped tax or had been under assessed and does not extend to revising, re-opening or reconsidering the whole assessment or permitting the assessee to re-agitate the question which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment in the reassessment proceedings.

9. Mr. Mitra urged that applying the same principle in the instant case, the reassessment proceedings u/s 17 must be held to have been the additional wealth declared by the assessee under the confined to amnesty scheme and did not amount to reopening of the entire assessment made u/s 17 and the questions referred to this court were required to be answered in the negative.

10. While allowing the appeals preferred by the assessee, the learned Appellate Tribunal observed that the question as to whether on initiation of reassessment proceedings the original orders of assessment are vacated and do not survive in any manner is no longer res integra having been decided by the Hon"ble Supreme Court in The Deputy Commissioner of Commercial Taxes Vs. H.R. Sri Ramulu, . Reference was also made to the decision of the Kerala High Court in Commissioner of Income Tax Vs. K. Kesava Reddiar, rendered in the light of the aforesaid decision of the Hon"ble Supreme Court.

11. As against the aforesaid decision, Mr. Mitra relied on the decision of the Hon"ble Supreme Court in the Sun Engg. Works (P) Ltd."s case (supra) relating to re-assessment of an original assessment made under the Income Tax Act, 1961. The said decision was rendered by a two Judges" Bench, but it appears that another two Judges" Bench took a different view in Income Tax Officer, Azamgarh and Another Vs. Mewalal Dwarka Prasad, . Having regard to the divergent views taken in the two matters, certain Special Leave Petitions were directed to be placed before a three Judges Bench - Income Tax Officer and Another Vs. K.L. Srihari and Others, to resolve the difference. On considering the two views the Hon"ble Supreme Court held that the reassessment order amounted to a fresh assessment of the entire income. In other words, the original assessment made u/s 16 was replaced by the order of reassessment made u/s 17 of the Wealth Tax Act, 1957.

12. While it is no doubt true that in the instant case the notice u/s 17 of the above Act was issued on the basis of the additional wealth disclosed by the assessee under the amnesty scheme and at the time of reassessment the original assessment with regard to the flat at Bombay was not disturbed, the effect of the reassessment was that the entire

assessment made u/s 16 stood reopened and the order of assessment made u/s 16 stood replaced by the subsequent order passed on reassessment on the basis of the additional disclosure of wealth by the assessee.

13. In that view of the matter both the questions in this reference are answered in the affirmative against the revenue.

14. There will be no order as to costs.

Alok Kumar Basu, J. - I agree.

Reference answered in the affirmative.