

(2002) 02 BOM CK 0109

Bombay High Court

Case No: Writ Petition No. 957 of 1987

Byramji Jeejeebhoy
and Co. Ltd., Bombay

APPELLANT

Vs

Gift Tax Officer,
Bombay and Another

RESPONDENT

Date of Decision: Feb. 6, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Gift Tax Act, 1958 - Section 16(1)

Citation: (2002) 2 ALLMR 849 : (2002) 4 BomCR 228 : (2003) 259 ITR 647 : (2002) 2 MhLj 880

Hon'ble Judges: V.C. Daga, J; J.P. Devadhar, J

Bench: Division Bench

Advocate: S.E. Dastur and M.J. Joshi, instructed by H. Thakkar and Co, for the Appellant;
R.V. Desai and P.S. Jetly, instructed by H.D. Rathod, for the Respondent

Final Decision: Allowed

Judgement

V.C. Daga, J.

The present petition is directed against the notice dated 23rd November 1982 (Exh. "H") received by the petitioner on 27th November 1982 purported to be issued u/s 16(1) of the Gift Tax Act, 1958 ("Act" for short) alleging therein that the first respondent had reason to believe that the gifts made by the petitioner company in the assessment year 1976-77 had escaped assessment within the meaning of Section 16 of the Act. By the said notice the first respondent called upon the petitioner company to file its return under the said Act. The petitioner company replied the aforesaid notice through its Chartered Accountant by letter dated 24th December 1982 setting out relevant facts and challenging the same on various factors and legal grounds. The petitioner company did not receive any reply from the first respondent. The petitioner therefore assumed that the first respondent had accepted the contention of the petitioner and agreed either to withdraw the

impugned notice dated 23rd November 1982 or not to take any further steps in the proceedings pursuant thereto.

2. On 20th February 1987, the petitioner company was served with the notice dated 20th February 1987 by the first respondent calling upon the petitioner company to appear in the proceedings initiated on the impugned notice dated 23rd November 1982. The petitioner objected to the said proceedings and continuance thereof. The petitioner aggrieved by the aforesaid notice invoked extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India and contended that notice dated 20th February 1987 and the proceedings initiated by the Gift Tax Officer were bad and illegal and there was no justification in continuance of the said proceedings by the first respondent.

3. At the stage of admission, rule was issued in the aforesaid petition and petitioners were protected by interim relief in terms of prayer Clause (d) vide order dated 19th March 1987.

4. Right from the year 1987 till the date of hearing of this petition i.e. for more than 14 years, no steps were taken by the respondents to file their return and/or affidavit in reply so as to place the reasons for issuing the impugned notice. The learned counsel for the petitioner reiterated the submissions and grounds of challenge incorporated in the petition and contended that the Gift Tax Officer had no material before him for reasons to believe that the gift made by the petitioner company in the assessment year 1976-77 had escaped the assessment within meaning of Section 16 of the Act.

5. The petitioner contended that the notice was issued for making enquiry. However, in spite of lapse of 14 years no material is placed on record. The learned counsel appearing for the petitioner, therefore, relying upon the judgment of the Supreme Court in the case of [Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle "B", Nagpur](#), submitted that as there is no counter affidavit filed, this Court has to accept the allegations made in the petition and to quash the notice which is challenged in this petition. The learned counsel also relied upon the judgments of the Division Bench of this Court in the case of [Devji Ravji Patel Vs. Balasubramaniam and others](#), and in the case of *Sable Waghire Trust v. S.R. Achyuta Rao*, (1999) 241 ITR 688.

6. The present petition was* admitted on 19th March 1987. It came up for hearing before this Court on 20th December 2001. Thereafter again the matter was placed before this Court on 16th January 2002. When the matter was called out for hearing, the respondents sought time to file reply. Accordingly one week time was granted with direction to the respondents to file return/affidavit in reply along with all the documents on which they are relying and were further directed to deliver advance copy thereof to the petitioner. The matter was adjourned for one week. Again the same was placed on board of this Court on 26th January 2002. Thus, it would be

clear that, though the matter came up on board after more than 14 years, still adequate opportunity was given to the respondents to disclose reasons in support of their notice under challenge. No affidavit has been filed in support of the notice issued u/s 16 of the Act. The petitioner in this petition has challenged the existence of reasons for issuing the impugned notice. The law is well settled that if the existence of facts is challenged by the assessee before the Court on oath, it is for the authority, who has issued the said notice, to satisfy the Court about the existence of conditions precedent by filing an affidavit and producing relevant documents. If, on consideration of such material, the Court is satisfied that the conditions precedent did exist at the time the notice was issued, the challenge may be turned down by the Court. In absence of any material placed by the authority to disprove the challenge of the assessee to the existence of the conditions precedent, the writ petition cannot be dismissed. In the present case, in spite of grant of repeated adjournments, no attempt was made by the respondents to file return or affidavit in reply. No steps were taken to produce the reasons warranting issuance of the notice u/s 16 of the Act.

7. The learned counsel appearing for the petitioner submitted that in view of absence of any material placed by the revenue, this petition should be allowed and the impugned notice should be quashed and set aside. Our attention is also drawn to the judgment of this Court *Devji Ravji Patel v. Balasubramaniam* (supra) followed in the case of *Sable Waghire Trust v. S.R. Achyuta Rao* (supra), wherein the notice issued u/s 148 of the Income Tax Act was quashed in the identical facts and circumstances of the case involving identical challenge. In the instant case, no material is placed before us to justify the impugned action. Faced with the aforesaid situation we are left with no option but to quash and set aside the impugned notice.

Accordingly, petition is allowed. The impugned notice dated 23rd November 1982 issued u/s 16 of the Act is quashed and set aside. Rule is made absolute in terms of prayer Clause (a) with no order as to costs.