In the High Court of Judicature at Madras

Dated: 21.07.2015

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Ms.JUSTICE K.B.K.VASUKI**

Tax Case (Appeal) Nos.1138 to 1145 and 1067 to 1070 of 2007

Commissioner of Wealth Tax
Chennai.

.... Appellant in the above T.CAs

Vs.

M/s.Tamil Nadu Real Estates Ltd.,
15, N.H.Road,
Chennai - 600 034.

.... Respondent in the above T.CAs

APPEALs under Section 260A of the Income Tax Act against the orders dated 26.08.2005 in W.T.A.Nos.129 to 132 and 135 to 138 and 05.12.2006 in W.T.A.Nos.60 to 63/Mds/2003 on the file of the Income Tax Appellate Tribunal Madras 'B' and 'C', Chennai for the assessment years 1986-87, 1986-87, 1987-88, 1988-89 and 1991-92.

For Appellant : Mr.M.Swaminathan
Standing Counsel for Income Tax
For Respondent: Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) filed by the Revenue as against the common order of the Income Tax Appellate Tribunal in respect of the wealth tax assessment for the assessment years 1986-87, 1986-87, 1987-88, 1988-89 and 1991-92.

2. The brief facts of the case are as follows:

The assessee, which is a company, have admitted its wealth in respect of two immovable properties viz., No.44, Armenian Street, Chennai, which was let out for rent and 15, Nungambakkam High Road, Chennai, which was partly rent out and partly used by the assessee. The assessee filed wealth tax returns admitting his wealth adopting rent capitalization method. Originally, the Assessing Officer completed the assessment under Section 16(3) of the Wealth Tax Act accepting rent capitalisation method for both the properties as returned by the assessee. Subsequent to the said assessment, the Assessing Officer referred the property for valuation to the Valuation

Cell. Based on the report submitted by the District Valuation Officer, the Assessing Officer reopened the assessment and valued the property by rent capitalisation method plus market value of the land, thereby, rejected the method of valuation adopted by the assessee.

3. Aggrieved by the said re-assessment, the assessee filed appeals before the Commissioner of Wealth Tax (Appeals), who confirmed the order of reassessment. Whereas, on merits, the Commissioner of Wealth Tax (Appeals) held that the property at No.15 Nungambakkam High Road, had to be re-assessed, viz., the portion occupied by the tenant, by adopting land and building method. With respect to the property at No.44, Armenian Street, the Commissioner of Wealth Tax (Appeals) directed the Assessing Officer to rework the annual rent by taking 15% of advance rent received in excess of three months advance rent.

4. Aggrieved by the orders of the Commissioner of Wealth Tax (Appeals), the Revenue as well as the assessee filed appeals before the Tribunal challenging the valuation and the reopening respectively. In the meanwhile, the Assessing Officer passed an order giving effect to the order of the Commissioner of Wealth Tax (Appeals). Aggrieved

by the said giving effect to order, the assessee filed appeals before the Commissioner of Wealth Tax (Appeals).

5. The Tribunal, on 26.8.2005, passed a common order in the appeals W.T.A.Nos.129 to 132 of 2003 filed by the assessee as well as the Revenue in W.T.A.Nos.135 to 138 of 2003 holding that as there was no assessment pending, the reference made to the Valuation Officer was unauthorized and hence, the reopening of assessment was not valid.

6. Thereafter, the Commissioner of Wealth Tax (Appeals), following the above-said order of the Tribunal holding that the reopening was bad, allowed the appeals filed by the assessee challenging the giving effect to order passed by the Assessing Officer.

7. Aggrieved by the said order of the Commissioner of Wealth Tax (Appeals), the Revenue filed appeals before the Tribunal in W.T.A.No.60 to 63 of 2006. The Tribunal, following the earlier order passed dated 26.08.2005 in W.T.A.Nos.129 to 132 of 2003 filed by the assessee; W.T.A.Nos.135 to 138 of 2003, filed by the Revenue dismissed the appeals filed by the Revenue in W.T.A.No.60 to 63 of

2006.

8. As against the orders passed by the Tribunal allowing the appeals filed by the assessee holding that the reopening was not valid, the Revenue filed appeals before this Court in T.C.(A)Nos.1142 to 145 of 2007. The Revenue also filed appeals before this Court as against the order passed by the Tribunal on merits in T.C.(A)Nos.1138 to 1141 of 2007 and as against the order dismissing the appeals filed by the Revenue with regard to the giving effect to order in T.C.(A)Nos.1067 to 1070 of 2007.

9. Heard learned Standing Counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials placed before this Court.

10. It is seen that the issue involved in the above appeals, whether the reopening of assessment based on the report of the Valuation Officer is held valid, stands resolved by this Court in the decision reported in ***[2012] 344 ITR 43 (Mad) (Commissioner of Income Tax V. Simpson and Co.)***, wherein, this Court while dealing with the reassessment based on the report of the Valuation officer,

observed as follows:

> *"10. The provision of law relating to assessment on the wealth escaping assessment, as it then stood, during the material assessment year 1985-86, reads as follows:*
>
> *"17. Wealth escaping assessment.—(1) If the Wealth-tax Officer.—*
>
> *(a) has reason to believe that by reason of the omission or failure on the part of any person to make a return under section 14 of his net wealth or the net wealth of any other person in respect of which he is assessable under this Act for any assessment year or to disclose fully and truly all material facts necessary for assessment of his net wealth or the net wealth of such other person for that year, the net wealth chargeable to tax has escaped assessment for that year, whether by reason of underassessment or assessment at too low a rate or otherwise ; or*
>
> *(b) has, in consequence of any information in his possession, rea son to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (a), that the net wealth chargeable to tax has escaped assessment for any year, whether by reason of underassessment or assessment at too low a rate or otherwise ; he may, in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that*

assessment year, serve on such person a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 14, and may pro ceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section."

11. The reading of the order of assessment says nothing about the sub-section under which the assessment was reopened. If the case of the Revenue has to fall under clause (a), then it must satisfy the following conditions, namely, the Assessing Officer must have reason to believe that there was omission or failure on the part of an assessee to make a return of his net wealth under section 14 for any assessment year or there was an omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that year ; that by reason of the same, the net wealth chargeable to tax has escaped assessment for that year either by reason of underassessment or assessment at too low a rate or otherwise. If the case has to fall under section 17(1)(b), the officer must have in his possession, information upon which the officer has reason to believe that even though there was no omission or failure on the part of the assessee to disclose fully and truly all material facts as given under sub-section (a), yet, the net wealth chargeable to tax has escaped *assessment either by reason of underassessment or assessment at too low a rate or otherwise. The section further provides the time limit that in cases falling under clause (a), the officer has to serve a notice containing the requirements which may be included in a notice under sub-section (2) of section 14 within a period of eight years of the end of that assessment year ; in cases falling under section 17(1)(b), the notice has to be served on the assessee within a period of four years of the end of that assessment year. Thus, going by clause (a) of sub-section (1) to section 17 of the Wealth-tax Act, the failure to disclose the material particulars fully and truly had led the officer to believe that there was an escapement of tax either by reason of underassessment or assessment at too low a rate. As far as clause (b) is concerned, notwithstanding that there was no omission or failure on the part of the assessee, the officer must have information in his possession to result in a reopening of the assessment.*

12. It is an admitted fact that the assessee had returned its income and the materials were also placed before the Wealth-tax Officer at the time of the original assessment ; thereby there is nothing to suggest that the assessee had withheld the material facts or that the facts placed before the officer are not truly and fully disclosed, necessary for assessment. Hence, we do not find any ground for this court to *accept the case of the Revenue that the officer had exercised his jurisdiction under section 17(1)(a) of the Wealth-tax Act to reopen the assessment. The second proviso to section 17(1), which was introduced with effect from April 1, 1989, is not available during the relevant assessment year."*

11. This Court, in the above-said decision, relying on the decision of the Supreme Court in the case of *CIT v. Foramer France [2003] 264 ITR 566 (SC)* and that of the Delhi High Court in the case of *Dr.Karni Singh Ji of Bijaner v. Deputy CIT [1999] 237 ITR 505 (Delhi)* held as follows:

"16. The reassessment proceedings were initiated in respect of the assessment year 1985-86 by issuing a notice on March 16, 1993. When the case is to fall under section 17(1)(b), then the proceedings should have been taken to serve the notice within four years of the end of that assessment year. Going by the above dates, the proceedings taken under section 17 of the Act, would not fall under 17(1)(b) of the Act. Hence, necessarily, the same has to be considered with reference to the provisions under section 17(1)(b) of the Wealth-tax Act. Even here, to sustain the proceedings, the twin conditions, namely, that the

officer had reason to believe that by reason of omission or failure to disclose fully and truly all material facts necessary for assessment had resulted in an escapement of tax and that there was underassessment in the assessee's case, must be present to justify a reopening under section 17(1)(a) of the Wealth-tax Act. Thus, there must be a nexus between the material at the hands of the officer and formation of belief that there was escapement of wealth from assessment on account of the failure of the assessee to disclose fully and truly, all material facts. In the absence of any nexus or any one of the requirements, the reassessment proceedings could not be upheld as one falling under section 17 of the Wealth-tax Act. The mere fact that the officer rejects the valuation of the assessee based on the Valuer's Report, obtained under section 16A in respect of a reference made during the pendency of the assessment, by itself, would not justify the requirements under section 17(1)(a) to reopen the assessment under section 17(1)(a) of the Act.

17. Thus, when the requirements under section 17(1)(a) are not satisfied, we have no hesitation in rejecting the case of the Revenue, thereby, affirming the view of the Tribunal. Even assuming that the case of the Revenue is to be accepted, going by the decision of this court in the same assessee's case in

CWT v. Shardlow India Ltd. reported in [2006] 285 ITR 426 (Mad) as regards the valuation of the property to be adopted based on the compensation payable under the Tamil Nadu Urban Land (Regulation and Ceiling) Act, the revenue difference would be so minimal, that the case does not call for any interference on the Tribunal's order. Hence, we have no hesitation in accepting the case of the assessee. Accordingly, the tax case appeal stands dismissed. No costs."

12. In the present case, the assessment was reopened beyond the period of four years based on the report of the Valuation Officer. When there was no assessment pending at the time of submission of the report by the Valuation Officer, the Assessing Officer should not reopen the assessment.

13. We, therefore, following the above-said decision of this Court, hold that the reopening of assessment in this case is bad. Accordingly, the order of the Tribunal dated 26.08.2005 stands confirmed and T.C.(A)Nos.1138 to 1145 of 2007 are dismissed. No costs.

14. Since the reopening of assessment is held bad, the consequential giving effect to order passed by the Assessing Officer is also not valid. Accordingly, the order of the Tribunal dated 05.12.2006 stands confirmed and T.C.(A)Nos.1067 to 1070 of 2007 are also dismissed. No costs.

Index :Yes/No (R.S.,J) (K.B.K.V.,J)
Internet :Yes/No 21.07.2015
sl

To

1. The Income Tax Appellate Tribunal Madras 'B' Bench, Chennai.
2. The Income Tax Appellate Tribunal Madras 'C' Bench, Chennai.

R.SUDHAKAR,J.

AND

K.B.K.VASUKI,J.

sl

Tax Case (Appeal) Nos.1138 to 1145
and 1067 to 1070 of 2007

21.07.2015