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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.687 of 2012
and
M.P.No.1 of 2012

Income Tax Officer, Ward V (I)
Aayakar Bhavan
Nungambakkam High Road
Chennai - 600 034

..Appellant

Versus

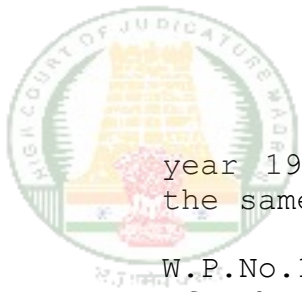
1. Sarojini Ramaswamy (died)
rep. by power of attorney holder
V.Ramaswamy
2. V. Ramaswami
3. Geetha Toke
4. Bhamini Narayanaswamy
5. Uma Ramaswamy
6. Ashok Ramaswamy
7. Sanjay Ramaswamy
(RR2 to 6 were brought on record as
legal heirs of the deceased sole respondent
as per order dated 19.03.2019 passed in
CMP No.12336 of 2018 in Writ Appeal
No.687 of 2012)

..Respondents

Appeal filed under Clause 15 of The Letters Patent against the Order dated 08.12.2011 passed by the learned single judge of this court in WP Nos. 13948 to 13954 of 2002.

W.P.No.13948 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR 51-2565 for the Assessment year 1990-1991 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13949 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue for the Assessment



year 1991-1992 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13950 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR 51-2565 for the Assessment year 1992-1993 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13951 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR 51-2565 for the Assessment year 1993-1994 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13952 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR51-2565 for the Assessment year 1994-1995 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13953 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR51-2565 for the Assessment year 1996-1997 dated 26.03.2002 of the respondent and to quash the same.

W.P.No.13954 of 2002: Writ Petition is filed under Article 226 of the constitution of India for the issue of a writ of certiorari to call for the record in No.GIR51-2565 for the Assessment year 1995-1996 dated 26.03.2002 of the respondent and to quash the same.

For Appellant : Mr. A.P. Srinivas,
Senior Standing Counsel
for Mr. A.N.R. Jayapratap,
Jr. Standing Counsel

For Respondents : Mr.M.P.Senthil Kumar
for Mr.N.Muthukumar

JUDGMENT

R. MAHADEVAN, J.

Assailing the validity and correctness of the order dated 08.12.2011 passed by the learned single Judge in WP Nos.13948 to 13954 of 2002, the Revenue has come forward with this intra-court appeal. By the order impugned herein, the writ petitions filed by the assessee were allowed by setting aside the re-opening of the wealth tax assessment for the assessment years



1990-91 to 1996-97.

2. Pending this appeal, the sole respondent, who was the petitioner before the learned single Judge, died and therefore, her legal heirs were brought on record as the respondents 2 to 7 to this appeal.

3. For the sake of convenience, the parties are referred to, as per their original status i.e., appellant as Revenue and the respondent / writ petitioner as assessee.

4. The case of the assessee as projected in the writ petitions would run thus:

The assessee had filed her returns of wealth for the assessment years 1990-91 to 1995-1996, on 30.08.1990, 13.08.1991, 10.03.1993, 14.07.1995, 14.07.1995 and 14.07.1995 respectively. After processing the assessment under section 16 (1) of the Wealth Tax Act, 1957, notices under section 17 were issued on 17.11.2000 stating that there was escaped assessment and calling upon the assessee to file revised returns, on the ground that the property at Mugappair owned by the assessee was sold in the year 1995 for a higher price of Rs.1,33,00,000/-. In response to the same, the assessee filed her return for the assessment year 1996-97, disclosing the taxable income at Nil. Whereas, in respect of the other assessment years, she filed her replies requesting to treat the returns originally filed as having filed in response to the said notices. After conduct of enquiry and upon perusal of the documents placed, the assessing officer proposed to revise the assessment with a view to adopt the value of the said property by changing its nature from agricultural land to commercial land, for the assessment years 1990-91 to 1995-96. Having regard to the fact that the assessee sold the said property before the valuation date and the sale consideration received by her was invested in the Park Town Benefit Fund in the name of her husband, the assessing officer estimated the total deposit held by her on the valuation date viz., 31st March, 1996 at Rs.1,00,00,000/- and determined the same assessable to tax, for the year 1996-97. The assessee filed her objections to the proposed revision of assessment. Without considering the same, the assessing officer confirmed the proposed revision by assessment orders dated 26.03.2002. Aggrieved over the said reassessment orders passed by the assessing officer, the assessee filed WP.Nos.13948 to 13954 of 2002.

5. After hearing both sides, the learned single Judge allowed the writ petitions. While doing so, referring to a decision of this court in Commissioner of Wealth Tax v. Smt. Suguna Mahendran and others (1994) 209 ITR 684, it was held that 'where the sale itself takes place long after the assessment



year under consideration, the question of reopening the assessment for the purpose of redetermination of the value of the property based on the subsequent year's sale, as such, does not arise'. Placing reliance on the decision of the Apex court in Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd (2010) 320 ITR 561, it was further held that a reassessment cannot be made based on the sale of the asset, which had taken place long after the assessment and hence, there was no material to establish that the assessee had not disclosed true and full particulars on the valuation of the property. Considering the long pendency of the writ petitions i.e., right from 2002, the learned single Judge also rejected the plea of the Revenue relating to availability of an alternative remedy by way of appeal. Challenging the same, the Revenue is before this court with the present writ appeal.

6. The learned senior standing counsel appearing for the appellant would contend that during the assessment proceedings for the year 1996-97, the assessee had admittedly sold the immovable property at Mugappair for Rs.1,33,00,000/- on 03.06.1995 and the said property was earlier developed to be a commercial property as on 01.04.1981. Thus, the assessee had not made a full and true disclosure of wealth, which warranted issuance of notice dated 17.11.2000 and consequential reassessment orders under section 17 of the Wealth Tax Act, for the assessment years in question. The learned senior standing counsel would further contend that the returns filed by the assessee were only processed under Section 16 (1) and no assessment orders under Section 16 (3) were passed and therefore, as per explanation (b) to section 17, the net wealth chargeable to tax had escaped assessment and accordingly, the reassessment proceedings were validly initiated. It is also submitted that the assessee has an alternative remedy of appeal as against the reassessment orders, but she straight away approached this court by filing the writ petitions. Thus, according to the learned senior standing counsel, without considering the said aspects in a proper perspective, the learned single Judge allowed the writ petitions by the order impugned herein, which is liable to be set aside, as it is illegal and contrary to law.

7. Per contra, the learned counsel for the respondent / assessee would contend that the sale of the property on 03.06.1995 for a higher price cannot be the basis for initiating the reassessment proceedings, especially when the value of the property was truly and correctly disclosed in the returns filed by the assessee. Further, there was no additional material made available requiring the assessing officer to resort to the provision under section 17 of the Wealth Tax Act. Having found so, the learned single Judge has set aside the reassessment



orders passed by the assessing officer, which does not call for any interference at the hands of this court. In support of his contentions, the learned counsel relied on the following decisions of the supreme court as well as this court:

(i) Commissioner of Income Tax and another v. Foramer France, (2003) 264 ITR 566 (SC);

(ii) Commissioner of Wealth Tax v. V.Vatsala, (1989) 177 ITR 120 (Mad); and

(iii) Commissioner of Wealth Tax v. Smt. Suguna Mahendran and others, (1994) 209 ITR 685 (Mad).

8.This Court considered the rival submissions and perused the materials available on record.

9.A short point that arises for consideration herein is, as to whether the reassessment proceedings initiated by the assessing officer under section 17 of the Wealth Tax Act, 1957, based on the sale consideration of the property at Mugappair owned by the assessee that took place after the assessment years under consideration, is correct.

10.According to the assessee, she purchased the property at Mugappair, measuring about 56 cents, from and out of the agricultural family income and all the family members were the co-owners of the same. In the returns filed for the assessment years 1990-91, 1991-92 and 1992-93, the assessee declared the value of the said agricultural property at Rs.2,47,230/- and claimed exemption, since the agricultural land was not included in the definition of 'assets' for the purpose of wealth tax. Subsequently, section 2 of the Wealth Tax Act was amended with effect from 01.04.1993 by the Finance Act, 1992 pursuant to which, the exclusion of agricultural land from the definition of 'assets' was withdrawn. Consequently, in respect of the assessment years 1993-94 to 1995-96, the assessee included the value of the property as part of the asset and offered for assessment. Accordingly, the value of the property was declared as Rs.21,60,000/- for the assessment year 1993-94, Rs.22,80,000/- for the assessment year 1994-95 and Rs.24,00,000/- for the assessment year 1995-96. Since the property was sold before the valuation date and was not liable to be included in the net wealth, the assessee did not file her returns for the assessment year 1996-97. However, in response to the notice under section 17, she filed her return for the said year 1996-97. It was the specific claim of the assessee that since the property belonged to all the five members of the family, the sale consideration of the same was distributed to each individual and accordingly, she was received one-fifth share thereof, which was deposited in the name of her husband. Thus, there has not been any omission or failure on the part of the assessee to disclose fully and truly all materials facts,



warranting the assessing officer to reopen the assessment under section 17 of the Act.

11. On the other hand, the Revenue pleaded that the subject property was not used for agricultural activities; it was developed to be a commercial property as on 01.04.1981; and the same was sold for a higher price of Rs.1,33,00,000/- during the year 1995. Therefore, the assessee failed to disclose the true and correct value of the property assessable to tax. Accordingly, the assessing officer reopened the assessment and passed the reassessment orders on 26.03.2002, for the assessment years in question, in accordance with law.

12. At this juncture, it would be relevant to refer to section 17 of the Act, which reads as follows:-

"17. Wealth escaping assessment

(1) If the Assessing Officer has reason to believe that the net wealth chargeable to tax in respect of which any person is assessable under this Act has escaped assessment, for any assessment year (whether by reason of under-assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 17A, serve on such person a notice requiring him to furnish within such period as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth the net wealth in respect of which such person is assessable as on the valuation date mentioned in the notice, along with such other particulars as may be required by the notice, and may proceed to assess or reassess such net wealth and also any other net wealth chargeable to tax in respect of which such person is assessable, which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year) and the provisions of this Act shall, so far as may be, apply as if the return were a return required to be furnished under section 14;

Provided that where an assessment under sub-section (3) of section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any net wealth chargeable to tax has escaped assessment for such assessment year, by reason of the failure on the part of the assessee to make a return under section 14 or section 15 or in



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response to a notice issued under sub-section (4) of section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year;

Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reason for doing so;

Provided also that the Assessing Officer may assess or reassess such net wealth, other than the net wealth which is the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Provided that, after the expiry of four years from the end of the relevant assessment year, no notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

Provided that the provisions of this sub-section shall not apply in any case where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any provision limiting the time within which any action for assessment or reassessment may be taken."

The aforesaid provisions postulate that for invoking Section 17 of the Act, it must be shown that (i) there are reasons to believe that certain income earned by the assessee has not been subjected to assessment or (ii) the assessee should have defaulted in filing of the return. In other words, the proceedings for reassessment should be based on the failure of the assessee to have made full and true disclosure of income, wilfully. Thus, based on certain omissions or misrepresentation or suppression of certain material particulars at the time of filing the return of wealth, by the assessee, the Assessment Officer can initiate proceedings under Section 17 of The Act. Such a power conferred on the Assessing Officer is akin to the power conferred upon the Assessing Officer under Section 147 of The Income Tax Act, 1961. In this case, the assessing officer had invoked the provisions of Section 17 of the Act and passed the reassessment orders dated 26.03.2002 against the assessee, based on the sale consideration of the subject property subsequent to the assessment years under consideration and hence, it must be examined as to whether the Assessing Officer is justified in reopening the returns filed by the assessee under section 17 of the Act.



13. It is an admitted fact that the assessee had owned the property at Mugappair measuring 56 cents, which was sold on 03.06.1995 for a sale consideration of Rs.1,33,00,000/-; and she filed her returns disclosing wealth for the assessment years from 1990-91 to 1995-96. There is no allegation that there has been any omission or failure to disclose fully and truly all the materials facts by the assessee for the assessment in respect of the years under consideration. While so, the assessing officer issued the notices dated 17.11.2000 wherein, it was merely stated that there was reason to believe that the net wealth chargeable to tax for the assessment years in question has escaped assessment within the meaning of section 17 of the Wealth Tax Act. Pursuant to the same, the assessee filed her return for the assessment year 1996-97 as well. Thereafter, the assessing officer completed the reassessment proceedings and passed orders dated 26.03.2002, after determining the value of the property as on valuation date, on the premise that the assessee estimated its value at Rs.3,50,000/- per ground as on 01.04.1981, whereas the property was sold for a consideration of Rs.1,33,00,000/- during the year 1995; and thus, the assessee did not adopt the fair market value of the property for determining the IT purposes.

14. When the said reassessment orders were put to challenge in the writ proceedings, the learned single judge, placing reliance on the decision of this court in the Commissioner of Wealth Tax v. Smt. Suguna Mahadevan and others (supra), held that the question of reopening the assessment for the purpose of redetermination of the value of the property based on the subsequent year's sale, as such, does not arise. In that case, in similar situation, this court pointed out that it is not permissible to the assessing officer to rely upon an event of sale, which took place subsequent to the assessment year in question, to determine the value of the property as on the valuation date, relating to the assessment year in question; and such method is not known in the field of income capitalisation method. The relevant passage of the said decision is usefully extracted below:

"3. We are of the view that it is not at all permissible to the Assessing Officer or for that matter the Tribunal to rely upon an event of sale which takes place subsequent to the assessment year in question to determine the value of the property as in the relevant assessment year. Such a method is not known in the field of income capitalisation method. On the contrary, the value is worked out from the event of sale that takes place till the assessment year if that assessment year happens to be subsequent to the year of sale. In addition to this the Tribunal cannot be held to have committed an error in law in



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relying upon Circular No. 326 (see (1982) 134 ITR (St.) 167) dated 6th Feb., 1982 as that circular is issued for the purpose of determining the value of the lands by following the income capitalisation method. The circular lays down the guidelines for the purpose of determining the valuation so that different methods are not followed by the Department for the purpose of determining the value of the property. In order to ensure uniformity in the manner and mode of determining the value of the property, the wealth-tax circular in question has been issued under s.10 of the WT Act. In this regard, we may usefully refer to the decision of the Supreme Court in K.P. Varghese vs. ITO (1981) 24 CTR (SC) 358; (1981) 131 ITR 597 (SC), in which it has been held as follows (at page 612)

"2. But the construction which is commending itself to us does not vest merely on the principle of contemporanea expositio. The two circulars of the CBDT to which we have just referred are legally binding on the revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-s. (2) and they depart or deviate from such construction. It is now well-settled as a result of two decisions of this Court, one in Navnit Lal C. Javeri vs. K.K. Sen, AAC (1965) 56 ITR 198 and the other in Ellerman Lines Ltd. vs. CIT 1972 ctr (SC) 11; (1971) 82 ITR 913 (SC) that circulars issued by the CBDT under s.119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act.

4. However, it is contended that as the circular prescribed only the guidelines, the actual value of the property as in the asst. yr. 1982-83 ought to have been determined. With reference to this contention it is sufficient for us to observe that the question is not framed in that fashion. Therefore, it need not be considered. For the reasons stated we are of the view that no referable question of law as raised by the petitioner arises in these cases. Accordingly, the tax case petitions are rejected."

15. In this context, a decision of this Court in Commissioner of Wealth Tax v. V.Vatsala reported in (1989) 177 ITR 120 cited on the side of the assessee is also worth mentioning. In that case, the assessee submitted her return of wealth for the assessment year 1973-74 on 22.06.1973 declaring



the value of her property at Rs.38,000/-, which according to the assessee was the value as exist in the year 1968. The assessee also disclosed that she purchased the property on 10.06.1971. Subsequent to the filing of the return, the assessee entered into an agreement for sale on 06.10.1973 for Rs.75,000/-. The assessee filed a revised return in which she had disclosed some of the jewelleries, which she omitted to include. However, insofar as the property purchased by her on 10.06.1971, she did not disclose the sale agreement entered into in October, 1973. The Wealth Tax Officer was of the view that the value of the property shown in the return as Rs.38,000/- cannot be accepted as the assessee had sold it for Rs.70,000/- during January 1974. Therefore, the Wealth Tax Officer initiated penalty proceedings for the balance amount allegedly not declared by the assessee to the tune of Rs.30,000/-. In such circumstances, the Division Bench of this Court held as follows:-

"We have carefully considered the rival submissions. We are of the view that it is unnecessary, on the facts and circumstances of this case, to consider and decide the question whether inaccuracy in the value declared would amount to concealment of particulars or furnishing of inaccurate particulars of an asset. It is seen that the property in question was a single storeyed house in an area of 4,574 sq.ft. and had been purchased by the assessee from the Bharathi Nagar Co-operative House Construction Society for a sum of Rs.22,365/- under a document dated 10th June 1971. The property was valued in 1968 at Rs.38,000 and that really formed the basis of the value as returned by the assessee for the assessment year in question as well as for the prior years and that value had been accepted. It is this value which was adopted by the assessee when she filed a return of wealth for the assessment year in question on 22nd June, 1973. At that time, there was absolutely no negotiation for the sale of her property or any offer for the same and as matters stood on the date on which she filed the return, it cannot be said that the assessee had furnished inaccurate particulars regarding the value of the property. The adoption of the value of Rs.40,000/- with reference to this item of property as in the previous years cannot but be bona fide when the return of wealth was filed. It was later in October, 1973, that she entered into an agreement for the sale of the property for Rs.75,000/-, though the actual sale price was only Rs.70,000/-, after deducting stamp and other related expenses. It is true that the assessee filed a revised return on 24th Dec. 1973 adding the value of some jewellery not



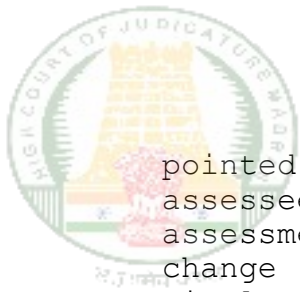
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included in the earlier return and retaining the value of immovable properties as before. Though this was done after the entering into the agreement for the sale of the property by the assessee in October, 1973, we cannot project backwards the value reflected in the agreement entered into in October 1973 to the valuation date 31st March, 1973. In other words, the value reflected in the agreement entered into in October, 1973, cannot be considered to be the value as on 31st March, 1973. So looked at, the assessee cannot be stated to have concealed any particulars even with reference to the value of the property. There is, therefore, no question of the assessee having concealed particulars of any asset or furnished inaccurate particulars of any asset attracting the levy of penalty under S.18 (1) (c) of the Act. We hold that the Tribunal was right in the view it took that no case is made out for the levy of penalty. We, therefore, answer the questions referred in the affirmative and against the revenue. The assessee will be entitled to the costs of this reference. Counsel's fee Rs.500."

16. In the light of the aforesaid legal proposition, this court is of the view that the reopening the assessment by the assessing officer, based on the event of sale, which had taken place subsequently, to redetermine the value of the property for the assessment years in question, is not legally sustainable. Accordingly, the learned single judge rightly held so in the writ petitions filed by the assessee challenging the reassessment proceedings.

17. That apart, in the present case, admittedly, the assessee had filed her returns of wealth along with supportive documents; and there was no allegation that she had withheld the material facts or that the facts placed before the Officer are not truly and fully disclosed for assessment. Further, in the notice issued under Section 17, there was no mention about the additional material or document unearthed by the Assessing Officer, which the assessee failed to disclose; and the sub section, under which assessment was reopened. Thus, one of the basic requirements to initiate the reassessment proceedings under Section 17 of the Act, has not been satisfied by the Assessing Officer. In such circumstances, we do not find any justification on the part of the assessing officer to reopen the assessment and pass the reassessment orders dated 26.03.2002.

18. In [Commissioner of Income-Tax and another v. Foramer France](#), [264 ITR 566] arising under [Income Tax Act](#) relating to [Sections 147](#) and [148](#) of the Income Tax Act, the supreme court



pointed out that 'when there was no failure on the part of the assessee to disclose fully and truly all material facts for assessment, the assessment could not be reopened on the basis of change of opinion'. Placing reliance on the same, the learned single Judge has concluded that on a mere change of opinion on the part of assessing officer, there cannot be reopening of the assessment. We are in full agreement with such a conclusion reached by the learned single Judge.

19.As regards the plea of alternative remedy, this court is of the opinion that when the condition precedent for the invocation of reassessment proceedings does not exist, the assessee is entitled to approach this court under Article 226 of the Constitution of India and hence, the question of invoking the alternative remedy available to the assessee, does not arise. The learned single Judge has also rightly rejected the said plea of the Revenue, besides considering the fact of long pendency of the writ petitions.

20.Thus, we do not find any reason much less valid reason to interfere with the order of the learned single Judge. Accordingly, we dismiss the writ appeal filed by the revenue. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rsh

To

Income Tax Officer, Ward V (I)
Aayakar Bhavan
Nungambakkam High Road
Chennai - 600 034

+1cc to Mr.G.Baskar, Advocate, S.R.No.3519

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.4419

WA No. 687 of 2012

MT(CO)
RGA(09/02/2022)