KERALA HIGH COURT

Commissioner of Wealth-Tax

Vs

C. Ravindran

(V Gopalan Nambiyar, C.J. T Kochuthommen, J.)

04.02.1977

JUDGMENT

Gopalan Nambiyar, Actg. C.J.

1. The Income-tax Appellate Tribunal, Cochin Bench, has drawn up a statement of the case and sent up the following question for opinion of the High Court, under Section 27 of the Wealth-tax Act, 1957.

> "Whether the Appellate Tribunal is justified in law in holding that at the time of reassessment under Section 17(1)(a) of the Wealth-tax Act the assessee's claim for exemption in respect of agricultural land, which claim he should have made at the time of original assessment but omitted to make, is admissible ?"

2. The assessee is one late Shri C. Koru. After his death, proceedings had been taken against his legal representatives by the Wealth-tax Officer. The deceased was a partner in a firm by name, C. C. Transport Co., which owned an agricultural property by name Mangundimala Estate. In the books of the firm there were the capital account of the assessee as well as the current account. The balance in the capital account and the current account were shown as the value of interest from the partnership in the return filed by the assessee for the assessment year 1968-69, which is the relevant assessment year for the purpose of this case. The figures were accepted and the original assessment was completed by including the value of the interest in the agricultural property also in the net wealth of the assessee. The Wealth-tax Officer subsequently reopened the assessment under Section 17 of the Wealth-tax Act. The ground for reassessment was that the land acquisition compensation awarded by the sub-court in respect of the "West Hill property" on November 30, 1967, had not been included in the return. The amount was Rs. 2,01,987. The assessee's stand was that the amount was actually received from court only on January 4, 1969, viz., beyond the valuation date. It was held by all the three authorities that the right to the amount accrued on November 30, 1967, although it was actually paid only on January 4, 1969, and that the wealth was assessable during the year 1968-69. In the reassessment proceedings on behalf of

the legal representatives it was contended that the value of the interest of the deceased in the partnership firm as computed in the original assessment was wrong, inasmuch as the value of the agricultural property owned by the firm became automatically included when the assessee had shown the entire credit balance in the capital account and the current account. As the assets of the firm consisted of agricultural and non-agricultural items, it was claimed that the Wealth-tax Officer should recompute the interest in the firm by applying Rule 2 of the Wealth-tax Rules and excluding the agricultural assets of the firm. The assessee, accordingly, claimed a deduction of Rs. 51,596 representing the assessee's share in the value of the agricultural estate owned by the firm. The Wealth-tax Officer rejected the claim (vide annexure "A"). On appeal to the Appellate Assistant Commissioner, that officer held that the assessee himself had not claimed any such deduction in the original assessment, that the said assessment had become final, and it was, therefore, not open to the assessee to take up this new claim when the Wealth-tax Officer reopened the assessment to net in some other items of wealth which had escaped assessment (vide annexure "B").

3. The assessee took the matter in further appeal before the Income-tax Appellate Tribunal. The Tribunal pointed out the nature and concept of net wealth as an integral feature of the Act. The Tribunal then pointed out what it considered to be the difference between Section 147 of the Income-tax Act, 1961, and Section 17 of the Wealth-tax Act. It was of the view that under Section 17 of the Wealth-tax Act, the Wealth-tax Officer had to assess or to reassess the "net wealth" under the provisions of the Act. The officer was, therefore, bound to recompute the taxable wealth of the assessee according to the provisions of the Act in the reassessment proceedings also, and it was not enough if he merely adds to the original figure of assessment, the items, which, according to him, had escaped assessment. According to the Tribunal it was open to the assessee in reassessment proceedings to point out to the officer to reassess the "net wealth" according to the Act. In this view the Tribunal held that the assessee was justified in asking for exclusion of the value of the agricultural estate. The Tribunal has, on the above facts, formulated the question of law and sent up the same for the opinion of this court.

4. We have heard counsel for the revenue. But we did not have the advantage of hearing counsel for the respondent who was unrepresented before us.

5. Section 17 of the Wealth-tax Act reads:

"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 under-assessment or assessment at too low a rate or otherwise ; or

(b) has, in consequence of any information in his possession, reason 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 under-assessment 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 subsection (2) of Section 14, and may proceed 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.

(2) Nothing contained in this section limiting the time within which any proceeding for assessment or reassessment may be commenced, shall apply to an assessment or reassessment to be made on such person in consequence of or to give effect to any finding or direction contained in an order under Section 23, 24, 25, 27 or 29 : 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."

6. The jurisdiction of the officer to assess the escaped net wealth springs up when either of the contingencies mentioned in Clause (a) or (b) of the section is satisfied ; and we think that the said jurisdiction enables him to reassess only such net wealth as satisfied the requirements under Clause (a) or (b) of Section 17(1) of the Act. This seems to us to follow from the language of the section itself. That being the limited nature of the jurisdiction conferred on the officer, we see nothing in the provisions of the section or in the scheme of the Act to enlarge the limited scope of the power and jurisdiction of the officer in assessing to tax the escaped net wealth, by allowing the assessee to ask for a recomputation of net wealth and a re-doing of the assessment, especially when the assessment of net wealth of the assessee had become final. We are unable to accept the view of the Tribunal that there is any material difference in this respect between the provisions of the Income-tax Act and those of the Wealth-tax Act. The Tribunal stated:

"para. 14.....It is not enough if he merely adds to the original figure of assessment the items which, according to him, had escaped assessment. It may in many cases be sufficient but in a case like the assessee's before us, it will not be sufficient because by adopting the originally assessed figure he is not assessing the net wealth according to the provisions of the Act. The provisions of the Act do not give him jurisdiction to include agricultural assets. In the reassessment proceedings the assessee can very well point this out to the Wealth-tax Officer since the Wealth-tax Officer is bound to reassess the net wealth only and that too according to the Act. We, therefore, hold that the assessee is justified in requiring the Wealth-tax Officer to exclude that portion of the agricultural estate which was included in the original assessment."

7. The fallacy here seems to lie in the fact that the Tribunal did not notice that the power of

reassessment is conditioned by the fulfilment of the contingencies specified in Clauses (a) and (b) of Section 17(1) of the Act. Whereas the assessment is of "net wealth", the reassessment is of such net wealth as escaped under Clause (a) or (b) of Section 17. In that sense, the position in this respect is not very different from the Income-tax Act. In *Kevaldas Ranchhoddas v. Commissioner of Income-tax*[1] a Division Bench of the Bombay High Court observed that a recomputation under Section 34(1)(a) of the Indian Income-tax Act, 1922 (which was the predecessor section to Section 147 of the Income-tax Act, 1961), can take place only with a view to gathering in the income escaping assessment and that it was clear from the section itself that it was not intended for the benefit of the assessee but only for the benefit of the revenue. In Sir *Shadi Lal and Sons v. Commissioner of Income-tax*[2] a Division Bench of the Allahabad High Court observed as follows with respect to Section 147(a) of the Income-tax Act, 1961 :
"In computing the income from house property, the Income-tax Officer had to determine the annual letting value of the house, and also to fix the deductions in respect of repairs which could be allowed under the Act. For a correct determination of both these questions the lease deed was a material document. This being so, it was incumbent on the assessee to have filed the lease deed before the Income-tax Officer at the time of the original assessment. The Tribunal has repelled the assessee's contention that the lease deed had been produced by it at the time of the original assessment. This being so, there was an omission on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that year. The case as such clearly fell under Section 147(a) of the Act. The answer to the third question is obvious. It is settled law that on reassessment the entire assessment is not opened. Thus, claims which had been disallowed during the original assessment cannot be reagitated on the assessment being reopened for bringing to tax certain income which has escaped assessment. The controversy on reassessment is confined to matters which are relevant in respect of the income which had not been brought to tax during the course of the original assessment. It has not been contended that the disallowance of expenditure made during the course of the original assessment, which the assessee wanted to be reconsidered during reassessment, were relevant for the enquiry on which the Income-tax Officer had re-embarked on reassessment. The disallowance of these expenses in the original assessment had become final, and this being so, it was not open for the assessee to make a claim for these items of expenditure."

8. We have not had the advantage of hearing counsel for the assessee. But, in the light of the rulings noticed above, and the provisions of the section which we have extracted earlier, we are not persuaded that a different principle from what is applicable under the provisions of the Income-tax Act would apply under Section 17 of the Act. We are unable to discern any distinction between the limited jurisdiction for the purposes of assessing escaped income under the provisions of the Income-tax Act and the Wealth-tax Act. We may close by noticing how the assessee's objection was dealt with by the Appellate Assistant Commissioner. That officer observed:

> "In the grounds of appeal it has also been stated that the Wealth-tax Officer ought to have

> taken the correct value of shares calculated on the basis of rules made thereunder. At the time of hearing the authorised representative did not press this ground when it was pointed out to him that it was not open to the Wealth-tax Officer to reduce the wealth in the reopened assessment when the appellant had failed to pursue his remedies against the original assessment according to law. So this ground also fails."

We answer the question referred in the negative, that is in favour of the department and against the assessee. There will be no order as to costs.

9. A copy of this judgment, under the signature of the Registrar and the seal of the High Court will be communicated to the Income-tax Appellate Tribunal, Cochin Bench, as required by law.

Cases Referred.

1[1968] 68 ITR 842 (Bom)
2[1973] 92 ITR 453, 456 (All)