BOMBAY HIGH COURT

Commissioner of Wealth-Tax

Vs

Ballarpur Industries Ltd

(R Kantawala, C.J. S Desai, J.)

17.06.1978

JUDGMENT

R. Kantawala, C.J.

1. At the instance of the revenue, the following question has been referred to us for determination :

> "Whether, on the facts and in the circumstances of the case, the Appellate Assistant Commissioner had jurisdiction to direct the Wealth-tax Officer to consider the merits of the claim of the assessee for the exclusion of the sum of Rs. 5 lakhs in the computation of its net wealth in the reassessment for the assessment year 1959-60, when that sum had been included in the original assessment ?"

2. Ballarpur Industries Ltd., the assessee, at the time of its original assessment, filed a return on or about September 12, 1959, declaring a net wealth of Rs. 56,38,190, calculated on the basis of the balance-sheet as at June 30, 1958. That date was the relevant valuation date for the assessment year 1959-60. The balance-sheet included two items shown on the assets side, one of the items being the value of Rs. 5 lakhs of certain shares of Shree Gopal Paper Mills Ltd. and the other item being a sum of Rs. 4,47,369, being rights, concessions, facilities and privileges acquired from the Government of Madhya Pradesh, pursuant to an agreement with them dated July 31, 1947. In the net wealth declared in the return, the sum of Rs. 4,47,369 was not included but the sum of Rs. 5 lakhs was included. On January 28, 1969, the WTO made the original assessment on the basis of the balance-sheet by following the global method of valuation. He determined the net wealth at Rs. 84,74,148, including the sum of Rs. 5 lakhs but not including the sum of Rs. 4,47,369.

3. On or about February 7, 1962, the WTO initiated action under s. 17 of the W. T. Act (hereinafter referred to as "the Act") for reopening the assessment recording the following reasons :

(1) Investment in shares of joint stock companies taken in assessment at Rs. 5 lakhs whereas for balance-sheet the amount is Rs. 15 lakhs. The figure to be taxed is Rs. 10 lakhs.

(2) The balance-sheet shows miscellaneous expenses and losses which are expenditure in respect of rights, concessions, facilities and privileges obtained from the State Government. The amount is Rs. 4 lakhs. This sum has not been included in the value of assets while following the global method of valuation in the assessment made.

4. In the areassessment proceedings, he intended to take that item for subjecting to tax. A notice for reopening the asessment was served upon the assessee on or abouot February 9, 1962. The assessee filed a return declaring therein once again net wealth of Rs. 56,38,190, which was the amount declared in the original return.

5. Before reassessment was made, the assessee wrote a letter on July 27, 1962, to the WTO urging that both the sums of Rs. 4,47,369 and Rs. 5 lakhs should be excluded from the net wealth. He stated that the return filed earlier may be treated as revised to the extent that the net wealth declared might be taken at Rs. 51,07,332. The contention of the assessee was that the value of the shares of Rs. 5 lakhs was exempt looking to the provisions of s. 5(1)(xix) read with s. 5(3).

6. On November 30, 1963, the WTO made a reassessment by his order under s. 16(3) read with s. 17 thereof. He added to the net wealth determined in the first instance the sum of Rs. 5 lakhs on the ground that it was not open to the assessee and also to the WTO to consider the relief claimed by the assessee at the time of reassessment.

7. In an appeal preferred by the assessee before the AAC, among other contentions, an objection was raised to the reopening of assessment under s. 17 and another objection was raised to the reopening of assessment under s 17 and another objection was raised that the WTO erred in not excluding from the net wealth the sum of Rs. 5 lakhs.

8. So far as the second objection was concerned, it was sought to be contended that the WTO went wrong in holding that the sum of Rs. 5 lakhs cannot be deducted in computing the net wealth made in reassessment under s. 17 and also on the ground that the on merits the WTO erred in not exempting the value of the said shares under s. 5(3)(a). The AAC upheld the action of the WTO in reopening the assessment under s. 19. On the other points, he did not give a finding and directed as under :

"The disputed amounts are large and the issues involved are based on submissions which have yet to be verified. As the registered office of the company is at Calcutta and the

authorised representative is also far from the city, it may take considerable time to secure all the relevant information. In fact, the hearing of this appeal has been inordinately delayed due to these factors. The Wealth-tax Officer should also have an opportunity to consider and verify the submissions of the appellant. In view of these circumstances, I set aside the assessment for the limited purpose of enabling the Wealth-tax Officer to consider the assessability of Rs. 4,47,369 and Rs. 5 lakhs. For this purpose, he may bring on record such evidence as he may consider necessary but before finalising the assessment, he should give the appellant a reasonable opportunity of being heard on the issues involved."

9. In the appeal before the Tribunal, it was sought to be urged on behalf of the revenue that the AAC had no jurisdiction to give direction that the WTO should consider the matter of includibility in the assessment of the sum of Rs. 5 lakhs in the sense that this item having been included in the original assessment and indeed having been included by the assessee is computing the net wealth declared in the return at the stage of the original assessment, it was not open to the assessee to agitate at the state of reassessment that the relevant amount should be excluded from net wealth. On behalf of the revenue, reliance was sought to be placed upon certain decisions which pertain to s. 34 of the Indian I. T. Act, 1922, dealing with the issue. The Tribunal held that there was material difference between the language of s. 34 of the Indian I. T. Act and the language of s. 17 of the W. T. Act. It felt that under s. 34 of the Indian I. T. Act, the income chargeable to tax was referred to, while under s. 17 of the W. T. Act the net wealth was referred to. It also emphasised the definition of the expression "net wealth" given in the W. T. Act, which requires consideration of all items which would go into the computation of the net wealth, whether by way of inclusion or deduction, which would mean that the correctness or otherwise of a deduction not given in the original assessment would a matter for consideration at the stage of reassessment. Accordingly, the Tribunal rejected the contention on behalf of the revenue and dismissed its appeal.

10. Mr. Joshi, on behalf of the revenue, submitted that so far as s. 34 of the Indian I. T. Act is concerned, it has been consistently held that in reassessment proceedings the income-tax authority will have no jurisdiction to reverse a finding in respect of any item which was already considered at the state of original assessment in respect of which the question of reassessment was not raised on the ground that the income has escaped assessment. In support of this contention, he drew our attention to a decision of this court in *Kevaldas Ranchhoddas v. CIT*[1] He submitted that the view that has been taken by this court in the above case has been followed and approved by the Kerala High Court in the case of *CWT v. C. Ravindran*[2] which was a case dealing with reopening of the assessment under s. 17 of the W. T. Act. He submitted that there is a well-recognised convention ordinarily followed by all the High Courts that in respect of an all-

India taxing statute, with a view to avoid uncertainty of law, it is customary and usual to follow a decision of another High Court, though otherwise it may be regarded as a persuasive authority. He, therefore, submitted that the same course should be adopted in the present case since the question that arises for consideration has been concluded by the above decision of the Kerala High Court.

11. Dr. Pal, on the other hand, on behalf of the assessee, urged that there is a difference in the scheme and provisions of the I.T. Act and those of the W.T. Act and if regard be had to the relevant provisions of the W.T. Act, especially the provisions in the charging section, the definition of the ward "net wealth" and the provisions of s. 17 of that Act, then the view that has been taken by the Kerala High Court in the above case cannot be regarded as the correct view. He wanted to persuade us to consider the question de novo and see whether, on a proper consideration of the relevant provisions of the W. T. Act, the view that has been taken by the Kerala High Court can be reaffirmed by this court independently.

12. In *Kevaldas Ranchhoddas v. CIT*[3] a Division Bench of this court took the view that recomputation under s. 34(1)(a) of the Indian I. T. Act, 1922, can taken place only with a view to garnering in the income escaping assessment under the first clause and that it was clear from the provisions of s. 34 itself that it was not intended for the benefit of the assessee but only for the benefit of the revenue. This view, taken by the Bombay High Court, has been approved of and applied by the Kerala High Court in the case of CWT v. C. Ravindran [1977] 107 ITR, 547(SUPRA), which was a case of reassessment under s. 17 of the W. T. Act, 1957. The Division bench of the Kerala High Court in that case has taken the view that whereas the assessment under s. 17 of the W. T. Act, 1957, is of the "net wealth" of the assessee, the jurisdiction of the WTO to reassess the escaped net wealth springs up when either of the contingencies mentioned in clause (a) or (b) of s. 17(1) of the W. T. Act, 1957, is satisfied and the said jurisdiction enables him to reassess only such net wealth as satisfied the requirements of clause (a) or (b) of s. 17(1). The nature of the jurisdiction to reassess being very limited, there is nothing in the provisions of s. 17(1) or in the scheme of the Act to enlarge the limited scope of the power and jurisdiction of the WTO in reassessing to tax the escaped net wealth by allowing the assessee to seek a recomputation of net wealth and a redoing of the assessment and allow a claim which the assessee failed to make at the time of the regular assessment, especially when the assessment of the assessee had become final. According to the Kerala High Court, there was no material difference in this respect between the provisions of the I. T. Act and the W. T. Act. In view of this principle, the Division Bench of the Kerala High Court held that the Appellate Tribunal was not justified in law in holding that at the time of reassessment under s. 17(1)(a) of the W. T. Act, the assessee's claim for exemption in respect of agricultural land, which claim he should have made at the time of the original assessment but omitted to make, is admissible.

13. In our opinion, this decision of the Division bench of the Kerala High Court fully covers the point which we have to consider in the present case. It is a well settled convention that in respect of an all-India taxing statute, with a view to avoid uncertainty in law, it is customary for the High Courts to follow a decision of another High Court on the same point in relation to the question under consideration, even though having regard to the rule of precedents it may merely be regarded as a persuasive authority. On the facts of the present case, we do not find any cogent reason to depart from this well recognised convention. it is not even the contention of Dr. Pal. that the above decision of the Kerala High Court is either distinguishable on facts or is inapplicable to the facts of the case. We, accordingly, in view of the normal convention, follow the said decision with a view to avoid uncertainty in the law and decide the question referred to us in the light of what was held by the Kerala High Court.

14. The item of Rs. 5 lakhs was already included in the computation of net wealth when the original assessment was made by the WTO for the assessment year 1959-60. Accordingly, when reassessment proceedings are initiated at the instance of the revenue in respect of any item the taxing authority and the Tribunal will have no jurisdiction to consider the question of inclusion or exclusion of Rs. 5 lakhs in the computation of the net wealth at the stage of reassessment. The question referred to us is, therefore, answered in the negative and in favour of the revenue.

15. The assessee shall pay the costs of the revenue.

Cases Referred.

1[1968] 68 ITR 842 (Bom)
2[1977] 107 ITR 547
3[1968] 68 ITR 842 (Bom)