A M/S. LOK NATH AND COMPANY, THE MALL, SHIMLA

*v.*

COMMISSIONER OF WEALTH TAX, PATIALA

OCTOBER 31, 1995

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[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

*Wealth Tax Act, 1957 :*

*Ss.14,16 18(1)(a), 25(2)—Wealth Tax—Return—Assessee filing returns*
C *beyond prescribed time—Wealth Tax Officer after notice, making assessment purported to be under S.16(3)—Commissioner of Wealth Tax vacating assessment for non-issuance of notice under S.16(2)—Held, quoting of sub-section (3) of s.16 in assessment orders was a case of quoting wrong provision of law and does not affect its legality—Assessment was in substance and effect under*
D *S.16(1)—Non-issuance of notice under S.16(2) did not affect the assessment.*

**The appellant-assessee filed returns in August 1969 in respect of his house property for the assessment years 1959-60 to 1967-68. The Wealth Tax Officer, finding the returns as filed beyond the prescribed period, issued notices under section 18(1)(a) of the Wealth Tax Act 1957. On**
E **receipt of the revised returns, he made the assessment purporting to be under section 16(3). The Commissioner of Wealth Tax opined that the assessment was invalid for non-issuance of notice under S.16(2) and there was under-assessment. He expressed his apprehension that such an assessment could be challenged by the assessee even after the period for**
F **re-opening the assessment under S.17 was over and in that event the Department would not be able to collect the tax due. He proposed to revised the assessment under S.25(2) and accordingly issued notice to the assessee. The assessee appealed to the Income Tax Appellate Tribunal which held that the Commissioner wrongly assumed jurisdiction under S.25(2). At the instance of the Revenue, a reference was made to the High**
G **Court whether the Tribunal was right in holding that the Commissioner wrongly assumed jurisdiction. The High Court answered the reference in favour of Revenue holding that though the orders passed by the Wealth Tax Officer purported to be under sub-section (3) of section 16 of the Act, the same were in substance and effect under sub-section (1) of section 16**
H **and as such were not violative of section 16(2); that the Commissioner was**

empowered to exercise the jurisdiction under S.25(2) on his being satisfied that there was an under-assessment; and that even assuming that the Wealth Tax Officer made assessment under section 16(3), non-issuance of notice under section 16(2) did not affect the assessment. Aggrieved, the assessee filed the appeal by special leave.

Allowing the appeal and answering the reference in favour of the assessee, this Court

HELD : 1.1. There was no sufficient ground for the Commissioner of Wealth Tax to exercise his jurisdiction under section 25(2) of the Wealth Tax Act, 1957. He acted on certain assumptions and the apprehension expressed by him, which constitutes the basis of his order, is to remote, besides being difficult to appreciate. [594-D-C]

1.2. Once the High Court opined, and rightly, that quoting of sub-section (3) of S.16 of the Wealth Tax Act, 1957 in the assessment orders was really a case of quoting the wrong provisions of law and does not affect its legality, question of setting aside the assessment orders did not arise. The revised returns filed by the assessee-appellant were accepted by the Wealth Tax Officer and the assessment made. [593-D]

1.3. From a perusal of the assessment order it is obvious that the same is made under sub-section (1) of S.16 though wrongly mentioning section 16(3). Indeed, the High Court has held further that even if the said assessments are deemed to be under sub-section (3), yet they cannot be held to be without jurisdiction merely because notice under sub-section (2) of S.16 was not issued. [594-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9697 of 1995.

From the Judgment and Order dated 24.10.90 of the Himachal Pradesh High Court in Wealth Tax Reference No. 1 of 1977.

G.L. Sanghi and R.K. Mehta, for the Appellant.

B.S. Ahuja for S.N. Terdol, for the Respondent.

The Judgment of the Court was delivered by

A **B.P. JEEVAN REDDY, J.** Leave granted. Heard counsel for both the parties.

This appeal arises from the judgment of the Himachal Pradesh High Court answering the question referred to it, at the instance of the Revenue, in favour of the Revenue. The question stated under section 27(1) of the B Wealth Tax Act, 1957 reads .

> "Whether the Income Tax Appellate Tribunal has been right in law in vacating the orders passed by the Commissioner of Wealth Tax under Sec. 25(2) of the Wealth-Tax Act, 1957, for the assessment C years 1959-60 to 1967-68 on the ground that on his own recorded findings, the Commissioner wrongly assumed jurisdiction."

For the Assessment years 1959-60 to 1967-68, the appellant- assessee filed returns on August 30, 1969 declaring the value of his house property D at Rs. 5,02,762. Since the returns were filed beyond the prescribed period, the Wealth Tax Officer issued notices under section 18(1)(a) of the Act. The assessee filed revised returns disclosing higher valuation which were accepted by the Wealth Tax Officer. He made an assessment order accordingly, stating *inter alia*, that the assessment was made under section 16(3). When these orders came to the notice of the Commissioner of Wealth Tax, E he proposed to revise them under section 25(2) of the Act. He issued notices calling upon the assessee to show cause why the said orders of assessment be not revised for two reasons, viz., (1) the Wealth Tax Officer did not apply his mind to the valuation, etc. as he did not give a notice under section 16(2) of the Act and yet completed the assessment under F section 16(3) which is as such invalid and (ii) the Wealth Tax Officer erred in accepting the value of the house property for all the said assessment years at a lower figure, even though value of the very same house property was declared by the assessee in the return relating to assessment year 1968-69 at a much higher figure. The assessee submitted explanation to the said show cause notice stating that non-issuance of notice under section G 16(2) of the Act a mere irregularity and not an illegality and that inasmuch as his revised returns have been accepted by the Wealth Tax Officer, the non-issuance of the notice under section 16(2) is neither erroneous nor prejudicial to the interests of the Revenue. After hearing the assessee, the Commissioner revised the aforesaid assessment orders. The main reason H assigned by him is to be found in para 3 of his order, which reads :

"I have carefully considered the various points made by the assessee in its note dated 27.9.1974 as well as those made during the course of hearings. According to me there is no force in the submissions of the assessee. No. assessment can validly be made u/s 16(3) without issuing a notice u/s 16(2). Such an assessment can always be challenged by the assessee legally even after the period for re-opening the assessment under section 17 of the wealth-tax Act, is over. And if this happens, the Department would have no remedy for collecting the wealth-tax dues from the assessee for this year as it will be outside its purview. Therefore, the assessment order made by the Wealth tax officer is not only erroneous but also prejudicial to the interests of the revenue."

The assessee appealed to the Tribunal against the orders of the Commission. The Tribunal allowed the appeal on reasoning, which being rather involved, be better set out in their own words. The Tribunal held :

On the preliminary objection, we only have to adjudicate whether when the Commissioner invoked the provisions of section 25(2), he had any justification for doing so and here we have the recorded findings of the Commissioner himself in the impugned order that he was taking recourse to vacating the assessments because without issue of notices under section 16(2), section 16(3) assessments could not be validly and legally framed and such assessments can be got vacated by the assessee at any time. The facts of this case leave us in no doubt that while resorting to the provisions of section 25(2), the learned Commissioner of Wealth-tax assumed jurisdiction of the ground that the assessments framed by the Wealth-tax Officer under section 16(3) for all the nine years were invalid. We do not feel any necessity of giving a finding whether section 16(3) assessments in this case were in fact invalid, as argued by Shri B.R. Gupta. What we are keeping in mind is that he Commissioner of Wealth-tax while taking recount (recourse?) to section 25(2) provisions thought those assessments to be invalid and once such was the case, his application of mind for vacating the assessments which he himself thought to be invalid and void ab-initio could not clothe him with power or authority of ordering fresh assessments."

The Tribunal also characterised the reason given by the Commis-

A sioner for revising as imaginary and unreal.

The High Court answered the question aforesaid in favour of Revenue on three grounds, viz., (1) the orders of the Wealth Tax Officer though purporting to be under sub-section (3) are in substance and effect under sub-section (1) of section 16 of the Act, since he had accepted the B revised returns submitted by the assessee. It cannot, therefore, be said that the orders of assessment are defective for violation of section 16(2) of the Act, (2) the Commissioner was well within his jurisdiction when he was satisfied that all material facts necessary for the assessment had not been disclosed and that there had been an under-assessment. In such cases, the C Commissioner is empowered to exercise his jurisdiction under section 25(2) and (3) even if it is held that the assessment orders were made under sub-section (3) of section 16, yet the failure to issue a notice under sub-section (2) of section 16, does not affect the jurisdiction of the Wealth Tax Officer and it cannot be said that the orders of assessment are without D jurisdiction.

As would be evident from the order of the Commissioner, the main ground upon which he exercised his power under section 25(2) is that the assessment orders made by the Wealth Tax Officer purporting to Act under sub-section (3) of section 16 were bad since no order of assessment E could have been made under sub-section (3) unless a notice under sub-section (2) was given. In this case, admittedly no notice under section 16(2) was issued. Sub-sections (1), (2) and (3) of section 16, as they stood at the relevant time read as follows :

F "16. (1) If the Wealth-tax Officer is satisfied without requiring the presence of the assessee or production by him of any evidence that a return made under section 14 or 15 is correct and complete, he shall assess the net wealth of the assessee and determine the amount of wealth-tax payable by him or the amount refundable to him on the basis of such return.

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(2) If the Wealth-tax Officer is not so satisfied, he shall serve a notice on the assessee either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may H rely in support of his return.

(3) The Wealth-tax Officer, after hearing such evidence as the person may produce and such other evidence as he may require on any specified points, and after taking into account all relevant material which the Wealth-tax Officer has gathered, shall, by order in writing, assess the net wealth of the assessee and determine the amount of Wealth-tax payable by him or the amount refundable to him on the basis of such assessment."

The Commissioner then expressed the following apprehension, which forms the basis of his order : "Such an assessment can always be challenged by the assessee legally even after the period for re- opening the assessment under section 17 of the Wealth-tax Act, is over. And if this happens, the Department would have no remedy for collecting the wealth-tax dues from the assessee for this year as it will be outside its purview. Therefore, the assessment order made by the Wealth-tax Officer is not only erroneous but also prejudicial to the interests of the revenue."

We are of the opinion that once the High Court opined, and in our opinion rightly, that quoting of sub-section (3) in the assessment orders was really a case of quoting the wrong provision of law and does not affect its legality, question of setting aside the assessment orders did not arise. The revised returns filed by the assessee-appellant were accepted by the Wealth Tax Officer and the assessment made. The assessment order for the Assessment year 1959-60, which is in identical words as all the assessment orders, is a brief one. It reads :

"Assessment order.

Return declaring total Wealth of Rs. NIL was filed on 30.8.1968 which is late. Consequently notice under section 18(1)(a) has been issued separately. A revised return declaring total wealth of Rs. 706077 has been filed by the assessee which is accepted as declared.

Assessed. Issue demand notice and challan."

(Under the Column "section and sub-section under which the assessment is made", in the Preamble to the order, the Wealth Tax Officer mentioned "16(3)".)

A The assessment order is obviously the one made under sub-section (1) though wrongly mentioning section 16(3). Indeed, the High Court has held further that even if the said assessments are deemed to be under sub-section (3), yet they cannot be held to be without jurisdiction merely because notice under sub-section (2) was not issued.

B Now, coming to the apprehension expressed by the Commissioner, which constitutes the basis of his order, it is, in our opinion, a remote one at best. The counsel for the Revenue could not also explain the observation of the Commissioner that if an assessment is made under sub-section (3) without issuing a notice under sub- section (2) of section 16, such an C assessment can always be challenged by the assessee legally even after the period of re-opening the assessment under section 17 is over and in which case, the Revenue will be totally helpless. In our opinion, the Commissioner has acted on certain assumptions which are, at best, too remote, beside being difficult to appreciate.

D For the above reasons, we are of the opinion that there was no sufficient ground for the Commissioner to exercise his jurisdiction under section 25(2). This appeal is accordingly allowed and the judgment of the High Court is set aside. The question referred to the High Court is answered in the affirmative, i.e., in favour of the assessee and against the E Revenue. No costs.

R.P. Appeal allowed.