IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WEALTH TAX APPEAL NO. 1743 OF 2014

The Commissioner of Wealth Tax-II ... Appellant
Vs.
Harakchand Uttamchand Khinvasara (HUF) ... Respondent

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Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant.
Miss. Aasifa K. Khan for the Respondent.

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CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 21, 2017.

P.C. :

1. We have heard Mr. Suresh Kumar appearing in support of this Appeal.

2. The Revenue is in Appeal against the order passed on 31st October, 2013 by the Income Tax Appellate Tribunal, Bench at Pune. The assessment year in question is 1998-1999. Two Wealth Tax Appeals (WTA No. 11/PN/2007 and WTA No. 12/PN/2007) came to be disposed of by the Tribunal by this common order.

3. One of the Appeals was by the respondent-assessee. The second one was by the Assistant Commissioner of Income Tax.

4. On 3rd June, 2007, the Commissioner of Income Tax, Pune, dealt with an appeal against the assessment order dated 31st March, 2006 passed by the Assessing Officer under Section 17 read with Section 16(3) of the Wealth Tax Act, 1957 (for short, 'WT Act').

5. The grounds proposed by the assessee relate to the understanding of the Assessing Officer, based on which he brought certain transaction within the purview of the WT Act.

6. An immovable property was belonging to the assessee (HUF) as a co-owner. A notice under Section 17 of the WT Act dated 30th March, 2005 was issued on the ground that net wealth chargeable to tax has escaped assessment. The land owned was an asset and situated at Vadgaon Sheri, more particularly described in the notice which is dated 30th March, 2005.

7. The Assessing Officer proceeded on the footing that this asset was not disclosed for the purpose of wealth tax and that is how it has escaped the assessment under the WT Act.

8. The response of the assessee was a return of wealth which was filed on 28th April, 2005 declaring 'nil wealth'. The value of the land was taken in the assessment at Rs.15 crores and the total wealth assessable was computed at Rs.15 crores. This was done on a protective basis for the reason that in the income tax

proceedings for the assessment year 1998-1999, the Assessing Officer was of the view that such properties stood transfered as on 31st March, 2002 and the resultant capital gain was brought to tax. Based on the assessee's pleading in the income tax proceedings that the taxable event of transfer of land had taken place in the previous year relevant to the assessment year 2002 and 2003, the Assessing Officer under WT Act was of the view that this property constituted an asset chargeable to tax under the WT Act. It was not transfered as claimed in 1998-1999, but the transfer having taken place in the previous year relevant to the assessment year 2002-2003.

9. It is that issue which was brought before the Tribunal alongwith a cross appeal of the Revenue, whereunder, the ground raised was deletion of a protective addition made by the Assessing Officer.

10. It is common ground that the Tribunal dealt with the core issue relating to the properties/assets chargeable to tax as claimed under the WT Act and otherwise by the assessee.

11. The Tribunal noted these contentions. It perused the contents of the notice which read as under :

> "*In this case, a notice u/s 17 of the Wealth Tax Act, 1957 was issued to the assessee on 30.03.2005 duly served on the assessee, re-opening the wealth tax assessment for the A. Y. 1998-99 for the following reasons:*

> *"The assessee is a co-owner of property situated at Vadgaon Sheri, S. No. 15 admeasuring 45 acres and 25 Guntas. This land,non-agricultural land, later on fell in the Pune Municipal area and therefore, became an assets chargeable to wealth tax. The market value of the assets as on 03.10.1997, as evident from agreement to sale entered into with M/s Merigold Premises Pvt Ltd is Rs.11,55,00,000/-. The assessee claims that the land under reference has been sold in themonth of March 2002, though the department does not agree to it. Without prejudice to proceedings in the Income Tax Act for AY 1998-99 and keeping in view the assessee's stand regarding the sale of the land that the sale of property situated at Vadgaon Sheri, S.No. 15 has taken place in A.Y. 2002-2003, it is clear that assessee has not disclosed the wealth of this land in addition to wealth chargeable to tax in respect of plot at Lohagaon (1/6th Share in 2.00 acres plot and house property situated at Nana Peth excluding one house property situated at Ahmednagar, claimed to be occupied by assessee and therefore, I am satisfied and have reason to believe that wealth at Rs.15,00,00,000/- chargeable to tax has excaped assessment in AY 1998-99."*

12. On a perusal of this notice by us, we enquired from Mr. Suresh Kumar as to how he justifies the issuance of such notice and which does not spell out, and in precise terms, the wealth which has escaped the wealth tax. It relies upon certain stand of the assessee in the income tax proceedings and the view of the Assessing Officer in such assessment proceedings. It says, without prejudice to that assessment, the wealth tax authorities propose to reopen the assessment and for computation of chargeability of wealth tax. Such a notice was rightly termed as vitiated and the reopening was held to be impermissible in law. In paragraph 17 of

the order under challenge, the Tribunal may have referred to a judgment of this Court in the case of DHFL Venture Capital Fund vs ITO in Writ Petition (L) No. 2996 of 2012 dated 14th June, 2013, but what we find is the recourse to Section 17 of the WT Act was not justified in this situation. The Tribunal felt that it could be justified in a situation where the Assessing Officer has reason to believe that the asset ought to be brought to wealth tax and should be chargeable as such, but in *praesentia.* The reason must be present and live and based on which he could have issued the notice. It could not be based on certain stand of the assessee before the Assessing Officer assessing him to income tax. Merely because capital gains tax was levied, assessed and sought to be charged on certain understanding or stand of the assessee, that does not mean that the Assessing Officer under the WT Act can issue a notice under Section 17 of the said Act. The ingredients, based on which the satisfaction can be recorded under Section 17, were clearly lacking. Once they were found to be lacking, then, we do not think that the Tribunal was required to refer to any wider principle of law or decide a larger issue or controversy. On facts, the Tribunal's view can be sustained, as it is eminently possible. Consequently, the present Appeal does not raise any substantial question of law and it is dismissed, but without any order as to costs.

(SMT. VIBHA KANKANWADI, J.) **(S. C. DHARMADHIKARI, J.)**