
(2005) 02 P&H CK 0149
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 315 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Krishan Lal Dua

RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, 75
Income Tax Act, 1961 — Section 131(1), 133(6), 142(2), 142A, 143(1)
Wealth Tax Act, 1957 — Section 16A, 37(1), 38, 38A

Citation : (2005) 277 ITR 477

Hon'ble Judges : Viney Mittal, J; G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi J.—Whether the Income Tax Appellate Tribunal (Delhi Bench "SMC-I" Delhi) (for short, "the Tribunal") was justified in deleting the additions made by the Assessing Officer on account of difference between the cost of construction shown by the assessee and the one assessed by the Departmental Valuation Officer is the question of which determination has been sought by the appellant in this appeal filed u/s 260A of the Income Tax Act, 1961 (for short, "the Act").

2. For the assessment year 1993-94, the respondent filed a return declaring an income of Rs. 27,660. By an order dated March 31, 1995, the Assessing Officer completed the assessment u/s 143(1)(a) of the Act. That order was not challenged by the Revenue by filing appeal, etc.

3. During the course of assessment proceedings for the assessment year 1994-95, the Assessing Officer noted that the assessee had constructed a building on Plot No. 20, Veer Savarkar Marg, Shakurpur, Delhi, in the financial years 1992-93 and 1993-94 relevant to the assessment years 1993-94 and 1994-95 at a cost of Rs. 9,65,250. He did not feel convinced with the value

projected by the respondent and referred the matter to the Valuation Officer, New Delhi, for determining the cost of construction. The latter valued the cost of the building at Rs. 12,53,900. After considering the objections filed by the respondent, the Assessing Officer determined the difference in the cost of construction at Rs. 2,39,243. He also observed that 69.38 per cent. construction was made in the financial year 1992-93 (assessment year 1993-94) and the balance was constructed in the financial year 1993-94 (assessment year 1994-95). Accordingly, he determined the amount of difference in the cost of construction for the assessment year 1993-94 at Rs. 1,65,984 and initiated proceedings u/s 147 of the Act. In response to the notice dated May 29, 1997, issued u/s 148 of the Act, the respondent filed reply dated July 3, 1997. After considering the same, the Assessing Officer vide his order dated December 6, 1999, reassessed the income of the respondent for the assessment year 1993-94 at Rs. 1,99,881 which included the alleged unexplained investment in the property amounting to Rs. 1,65,984. The Commissioner of Income Tax (Appeals), Rohtak (for short, "the CIT(A)"), allowed the appeal filed by the respondent and deleted the addition of Rs. 1,65,984 made by the Assessing Officer. However, he maintained some other additions made by the Assessing Officer.

4. Feeling dissatisfied with the order of the Commissioner of Income Tax (Appeals), the respondent filed further appeal before the Tribunal. He filed another appeal against the order passed in relation to the assessment year 1994-95. The Tribunal relied on the judgment of the Supreme Court in *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, and declared that the Assessing Officer did not have the jurisdiction to make addition on the basis of the Departmental Valuation Officer's report. Paragraph 3 of the Tribunal's order reads as under :

"After considering the rival submissions, I find that the ratio of the decision of the Supreme Court in the case of *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, is squarely applicable on the facts of the present case as in view of the decision of the apex court, the Departmental authorities have no power to refer the matter to the DVO for the purpose of valuing the cost of construction in the house property. Therefore, the addition on the basis of the DVO's report cannot be sustained. Accordingly, I delete all the additions made by the Assessing Officer on the basis of the DVO's report. This ground of the assessee is allowed."

5. Shri Rajesh Bindal, learned counsel for the appellant, fairly stated that the ratio of the Supreme Court's judgment in *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, is applicable to the respondent's case, but argued that in view of Section 142A which was added to the Act with effect from November 15, 1972, vide the Finance (No. 2) Act, 2004, the addition made by the Assessing Officer on the basis of the valuation report is liable to be sustained. We have considered the submission of Shri Bindal, but have not felt impressed. Section 142A of the Act, on which reliance has been placed by learned counsel, reads as

under :

"142A. Estimate by Valuation Officer in certain cases.

(1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in Section 69 or Section 69B or the value of any bullion, jewellery or other valuable article referred to in Section 69A or Section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under Sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has u/s 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment :

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of Section 153A."

6. A reading of the provision reproduced above shows that while the estimate of value of the property, etc., made by the Valuation Officer has been treated as relevant for the purpose of making assessment, by virtue of the proviso appearing below Sub-section (3), the same has been made inapplicable in respect of an assessment made on or before the 30th day of September, 2004, where such assessment had become final and conclusive except where reassessment is required to be made u/s 153A.

7. In the case before us, the assessment had become final on March 31, 1995. It is not the appellant's case that the said order is liable to be revised and reassessment is required to be made u/s 153A of the Act. Therefore, Section 142A cannot be pressed into service for sustaining the addition made by the Assessing Officer on the basis of the valuation report prepared by the Valuation Officer.

8. In *Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong*, , the Supreme Court considered the question whether the report of the Valuation Officer can be relied on for the purpose of making additions and answered the same in the negative. The relevant extracts of that judgment read as under (headnote) :

"In an assessment of the assessee to Income Tax, the Assessing Officer cannot refer to the Valuation Officer the question of the cost of construction of a house property built by the assessee : Section 55A of the Income Tax Act, 1961, can have no application to such a matter. The power of the Assessing Officer under

Sections 131(1) and 133(6) is distinct from and does not include the power to refer a matter to the Valuation Officer u/s 55A. A report of the Valuation Officer u/s 55A may be considered by the Assessing Officer as a piece of evidence if it is relevant. However, the power of inquiry granted to an Assessing Officer under Sections 133(6) and 142(2) does not include the power to refer the matter to the Valuation Officer for an enquiry by the latter.

If the power to refer any dispute to a Valuation Officer were already available in Sections 131(1), 133(6) and 142(2), there was no need to specifically empower the Assessing Officer to do so in certain circumstances u/s 55A. Section 55A having expressly set out the circumstances under and the purposes for which a reference can be made to a Valuation Officer, there is no question of the Assessing Officer invoking the general powers of enquiry to make a reference in different circumstances and for other purposes. Such a reference cannot be supported by reference to Section 131(1) of the Income Tax Act read with Order XXVI, Rule 9, of the Code of Civil Procedure, 1908, since the consequences of a reference to a Valuation Officer u/s 55A of the Income Tax Act and of a commission issued u/s 75, read with Order XXVI, Rule 9, of the Code are different . . .

A Valuation Officer appointed under the Wealth-tax Act, 1957, can discharge functions within the statutory limits under which he is appointed : it is not open to a Valuation Officer to act in his capacity as Valuation Officer otherwise than in discharge of his statutory functions. He cannot be called upon, nor would he have the jurisdiction, to give a report to the Assessing Officer under the Income Tax Act except when a reference is made under and in terms of Section 55A or to a competent authority u/s 269L.

In a reference u/s 16A of the Wealth-tax Act, 1957, the entire process of enquiry is solely conducted by the Valuation Officer alone whose responsibility is to arrive at a correct valuation of the asset. The inquiry of the Valuation Officer is distinct from the power of the Assessing Officer who is otherwise invested with the power of enquiry into the actual wealth of the assessee under that Act. The Assessing Officer's power to enquire under Sections 37(1) and 38 is distinct from his power to refer to the Valuation Officer u/s 16A : there is no overlapping."

9. In view of the above discussion, we hold that no question of law, much less a substantial question of law, arises for determination in this appeal. Consequently, the appeal is dismissed.