(2004) 08 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No. 14 of 1990

Commissioner of Wealth Tax APPELLANT

Vs

Darshan Singh RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:
Wealth Tax Act, 1957 — Section 16(3), 17, 25, 25(2), 25(3)

Citation : (2006) 200 CTR 614 : (2005) 277 ITR 53 : (2006) 150 TAXMAN 417

Hon'ble Judges : N.K. Sud, J;Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant;

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—At the instance of the Revenue, the following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, "the Tribunal"), u/s 27(3) of the WT Act, 1957 (for short, "the Act"), in respect of the asst. yr. 1977-78 :

Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in vacating the order of the CWT u/s 25(2) by holding the same as erroneous ?

2. The assessee is an individual and filed his WT return for the asst. yr. 1977-78 on 2nd Feb., 1978, declaring net wealth of Rs. 4,11,100. The assessment was completed u/s 16(3) of the Act on 8th March, 1978. The assessee, thereafter, filed a revised return on 31st May, 1979, declaring net wealth of Rs. 4,49,130. The stand of the assessee was that while preparing the original return, the share of immovable properties inherited from his father was left out inadvertently. Reassessment was completed on 12th Feb., 1980, on the net wealth of Rs. 4,48,365. The WTO included a sum of Rs. 2,500 being the amount of CDS.

3. Vide his order dt. 4th Dec., 1981, the CWT, exercising jurisdiction u/s 25 of the Act, set aside the assessment order dt. 12th Feb., 1980, on the ground that

the question of valuation of interest of the assessee in Preet Palace Theatre had not been gone into.

4. The assessee preferred an appeal before the Tribunal and submitted that the order revising the assessment was not justified, as the question of valuation of the assessee''s interest in Preet Palace Theatre stood settled in the original order of assessment dt. 8th March, 1978, wherein the WTO had accepted the valuation of interest of the assessee in the said property and the said order had become final. It was further explained that in the assessment order dt. 12th Feb., 1980, the WTO had merely assessed the additional wealth offered by the assessee in the revised return. The said order did not deal with the issue about the valuation of the Preet Palace Theatre. This submission was accepted and the order of the CWT passed u/s 25(2) of the Act was set aside.

The Tribunal held that since the order sought to be revised did not deal with the question of valuation of interest of the assessee which question was involved at the time of the original assessment finalised vide order dt. 8th March, 1978, the order of the CWT could not be sustained. The Tribunal followed its earlier order in WT Appeal No. 5 of 1982.

5. We have heard learned Counsel for the Revenue and perused the record.

6. Section 25(2) of the Act reads as under :

25(2) Without prejudice to the provisions contained in Sub-section (1), the CWT may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by an AO is erroneous insofar as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

7. The question is whether the CWT could revise the order dt. 8th March, 1978, wherein the question of valuation of interest of the assessee in Preet Palace Theatre was gone into. Admittedly, the CWT has revised the order dt. 12th Feb., 1980, which had been passed to regularise the revised return by issuing a notice u/s 17 of the Act to tax only the share of immovable properties inherited by the assessee from his father which had earlier been left out inadvertently. The order of the WTO, thus, did not deal with this aspect of the matter. While exercising power of revision qua order dt. 12th Feb., 1980, the CWT has failed to notice that the said order did not deal with the question of valuation of interest of the assessee in Preet Palace Theatre which had become final as per order dt. 8th March, 1978. The CWT could not have exercised powers u/s 263(sic) against the said order as the limitation u/s 25(3) of the Act which is two years, had also expired with regard to the said order. The Tribunal, thus, rightly held in para 2 of its order that while passing the order dt. 12th Feb., 1980, there was no occasion for the WTO to make any enquiry regarding valuation of the interest of the

assessee in Preet Palace Theatre.

8. For the above reasons, we are of the opinion that the order of the Tribunal is in accordance with law. We, therefore, answer the question in the affirmative, i.e., in favour of the Revenue and against the assessee (sic).