
(2004) 12 AHC CK 0088
In the Allahabad High Court
Case No : WT Ref. No. 26 of 1989

Commissioner of Wealth Tax

APPELLANT

Vs

Kuldeep Kapoor

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Citation : (2005) 198 CTR 69 : (2005) 145 TAXMAN 204

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

R.K. Agrawal, J.—The Tribunal, Delhi, has referred the following question of law u/s 27(1) of the WT Act, 1957 (hereinafter referred to as "the Act") for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in quashing the order of the CWT u/s 25(2) ?"

The reference relates to the asst. yrs. 1983-84 and 1984-85. Briefly stated, the facts giving rise to the present reference are as follows :

2. The respondent is an individual. For the assessment years in question the assessment was completed u/s 16(3) of the Act vide order dt. 24th July, 1984 and 22nd March, 1985, respectively determining taxable net wealth at Rs. 11,57,300 and Rs. 11,24,000. The returned wealth of the respondent was accepted but for addition of Rs. 50,000 made in each of the two years in respect of the value of immovable property known as Shah Theatre, shown at Rs. 13,00,000. The WTO noted that the same property was valued at Rs. 13,50,000 subsequent to the completion of the assessment for the two years in question. The CWT examined the record and after coming to the conclusion that the assessment was erroneous and prejudicial to the Revenue, initiated proceedings u/s 25(2) of the Act on the following grounds :

"(a) The value of Shah Theatre had been taken at Rs. 13 lakhs for the asst. yr. 1972-73 on profit basis. But the same value had been taken for the subsequent assessment years upto 1984-85. The above method was not correct because the profit from the said theatre was increasing year after year. For the asst. yr. 1980-81, "total income" from the theatre was Rs. 3,12,500. It gradually increased and for the asst. yr. 1984-85, the "total income" came to Rs. 4,77,642.

(b) The valuation of Shah Theatre should also have been increased on the basis of above increase in profit and also in view of the general appreciation in the value of the immovable property. The ITO failed to do this."

The respondent resisted the CIT's notice on the ground that he was receiving fixed rent for the last several years without any change and that the figures of the total income of Shah Theatre (P) Ltd. to whom the cinema hall has been let out on rent, has no relevance as far as the assessment at his hand was concerned. The CWT, however, did not find any substance in the submission made by the respondent as in his view the gross higher receipts of the Shah Theatre as well as net profit showing increasing trend, was material for valuing the cinema building. He also noted that for the asst. yr. 1980-81 the net profit returned by Shah Theatre was Rs. 38,514 whereas it has increased to Rs. 64,156 for the asst. yr. 1984-85. According to him, the profits earned provided a guide in the valuation of properties like cinema, hotels, cold storage, etc. In this view of the matter, the CWT concluded that the assessment made by the WTO were erroneous and prejudicial to the interest of the Revenue and after setting aside the assessment order, directed the WTO to compute the value on the basis of profits earned by the Theatre. Feeling aggrieved by the said order, the respondent preferred separate appeals before the Tribunal. The Tribunal had upheld the plea of the respondent and had quashed the order passed by the CWT u/s 25(2) of the Act.

3. We have heard Sri A.N. Mahajan, learned standing counsel for the petitioner. Nobody has appeared for the respondent-assessee.

4. The learned standing counsel for the Revenue submitted that as the valuation of the cinema building was being done on the basis of the profit earned by the cinema theatre and there was increase in the profit earning, the valuation ought to have been increased and should not have remained static at Rs. 13,50,000 as has been done by the WTO in respect of the assessment years in question. According to him, right from the asst. yr. 1972-73, the valuation of the cinema theatre was being made at Rs. 13,00,000 and, therefore, looking to the appreciation in the value of the immovable property as also the profit earning by the Theatre, the value ought to have been increased.

5. After giving our careful consideration to the submissions made by the learned standing counsel, we are of the considered opinion, that the action taken by the CWT u/s 25(2) of the Act. was wholly misconceived and unwarranted. From the order of the Tribunal, we find that in respect of the asst. yr. 1975-76, the

respondent had declared the value of the cinema building at Rs. 13,00,000. The WTO has referred the question of valuation of the said property to the Departmental Valuer who estimated the value at Rs. 15,31,000 which was adopted by the assessing authority. However, in appeal before the AAC, the DVO had appeared and admitted that on the fact and circumstances of the case, deduction for sinking funds at the rate of 5 per cent for 20 years on value of machinery, plant and furniture, that means, on an amount of Rs. 2,32,000 can be allowed and a relief of Rs. 2,25,000 was allowed to the respondent. The order of the AAC for the asst. yr. 1975-76 has been upheld by the Tribunal vide order dt. 29th April, 1983. Thus, it is clear that the valuation of the cinema building, as declared by the respondent, was not on the profit earning basis but on the basis of actual valuation of the land, building and machinery in respect of the asst. yr. 1981-82. The WTO attempted to raise the valuation of the cinema building to Rs. 13,50,000 as against the disclosed value of Rs. 13,00,000. Addition of Rs. 50,000 has been deleted by the AAC vide order dt. 19th Nov., 1982 on the ground that the cinema building has been let out at Rs. 7,000 per month and the rent was the same as in the earlier years, which order has been accepted by the Department. Thus, the basic premises on which the CWT has initiated the proceeding u/s 25(2) of the Act that the valuation has been done on the basis of profit earning is wholly misconceived. The WTO has adopted one of the several methods prescribed and followed for valuation of the cinema building and merely because on the basis of some other method to be adopted a higher valuation of the cinema building could have been arrived at, could not be a ground to say that the assessment order is prejudicial or erroneous to the interest of the Revenue. Moreover, we find that the valuation of the cinema building at Rs. 13,00,000 has been accepted by the Revenue in respect of the asst. yr. 1981-82 and there is no reason nor any sufficient material to depart from the said valuation.

6. In the result, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.