
(2008) 04 SHI CK 0001
In the High Court Of Himachal Pradesh

Commissioner of Wealth Tax	Vs	APPELLANT
Raghunath Singh Thakur		RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Wealth Tax Act, 1957 — Section 16A(1)(a), 16A(1)(b), 7

Citation : (2008) 216 CTR 248 : (2008) 304 ITR 268 : (2008) 2 ShimLC 129

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This judgment shall dispose of four appeals since all the appeals are admitted on the following two common substantial questions of law:

1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that where the assessee's figures are supported by valuation report of registered valuer and WTO has not made a reference to the valuation cell, then the assessee's figures are required to be accepted?
2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the sale consideration of plot "A" would not be relevant for purpose of determining the valuation of the adjoining plot i.e., "B" vis-a-vis the asst. yrs. 1987-88 and 1988-89 and subsequent asst. yrs. 1989-90 and 1990-91?
2. In our opinion, the second question is consequential to the first question and if we decide the first question in favour of the assessee and against the Revenue, the second question would not arise at all, it being more in the nature of a question of fact.
3. The assessee was in possession of an estate known as "Combermere". Out of this estate, he sold one plot measuring 90 sq. yds. in November 1988, for a consideration of Rs. 30.50 lacs. The agreement to sell had been entered into on

28th Aug., 1987. According to the assessee, this was his best plot and the remaining two plots were not of the same valuation and he disclosed much lower valuation for the other two plots "B" and "C" measuring 1,375 and 850 sq. yds., respectively.

4. The assessee, in respect of his returns for the asst. yrs. 1987-88, 1988-89, 1989-90 and 1990-91 had submitted the valuation of registered valuer in respect of plot "B" which was valued at Rs. 5,47,800. The AO did not agree with this valuation and valued plot "B" at Rs. 29,50,115 and plot "C" at Rs. 20,45,800.

5. In this case, we are only concerned with one question. Whether the AO could reject the report of the registered valuer relied upon by the assessee without referring the matter to the valuation cell of the Revenue and was bound to accept the figures produced by the assessee?

6. The question which arises for consideration is whether it is mandatory for the WTO to obtain report of the Valuation Officer or he can make the valuation of the property on his own estimation.

7. Section 16A(1) of the WT Act, 1957 reads as follows:

16A. Reference to Valuation Officer--(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, where under the provisions of Section 7 read with the rules made under this Act, or, as the case may be, the rules in Schedule III, the market value of any asset is to be taken into account in such assessment, the AO may refer the valuation of any asset to a Valuation Officer-

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the AO is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the AO is of opinion.

8. The Department issued a circular on 29th Nov., 1972 [Circular No. 96 dt. 25th Nov., 1972--Ed] which obviously is binding on the Revenue. Para 35 of the circular, deals the Section 16A of the WT Act. The circular specifically mentions thus:

35...In cases covered by Section 16A(1), it will be incumbent on the WTO to refer the valuation of the asset in question to the Valuation Officer and it will not be open to him to decide the question of valuation on his own.

9. There is no manner of doubt that this circular is binding upon the Department. It was clearly held by the apex Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, that the WTO is bound by such circular.

10. The Delhi High Court considered the provision of Section 16A in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, and held as

follows:

...In the context in which the word "may" is used in Section 16A, we have no doubt that where there is a question of conflict of opinion with regard to the value of a particular asset, then the word "may" has to mean "shall" and, on being called to do so, the WTO has to refer the question of valuation of the asset to the Valuation Officer.

11. The Delhi High Court also referred to the circular in the aforesaid judgment and held that the Revenue could not contend that the provisions of Section 16A are not mandatory. Similar view has been taken by the Punjab & Haryana High Court in *Raj Paul Oswal v. CWT* (1988) 67 CTR 60 : (1988) 171 ITR 489 , wherein it held as follows:

In our view, there is no merit in the stand taken on behalf of the Revenue. In our view, the provisions of Section 16A(1), Clause (b), when r/w Rule 3B, *ibid*, mandatorily require the WTO to make a reference.

Similar view has been taken by the Delhi High Court in *CWT v. L.N. Ahuja* (2000) 163 CTR 502 : (2000) 159 Tax 446 .

12. It obvious that the legislative intent was not to give unbridled discretion to the WTO whether to make a reference to the Valuation Officer or not. No doubt, the word "may" has been used. However, keeping in view the context in which it has been used and the nature of Clauses (a) and (b) of Sub-section (1) of Section 16A, there can be no manner of doubt that the intention of the legislature was that the WTO was bound to make a reference to the Valuation Officer if he did not agree with the reporte of the registered valuer relied upon by the assessee.

13. We are of the considered view that while interpreting the section we must take into consideration the power vested with the authority as in the present case is WTO. It cannot be left to the sole discretion of the WTO to make a reference to the Valuation Officer in some cases and in other cases to evaluate the property by following his own formula. We are in respectful agreement with the judgments of the Delhi High Court and Punjab & Haryana High Court referred to above and answer the first question against the Revenue and in favour of the assessee. The second question need not be answered since it is only an ancillary question.

14. In view of the above discussion, we find no merit in the aforesaid appeals which are accordingly dismissed.