
(2009) 07 P&H CK 0080
In the Punjab And Haryana At Chandigarh

Commissioner of Wealth Tax

APPELLANT

Vs

Vardhman Polytex Ltd.

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Wealth Tax Act, 1957 — Section 27A

Citation : (2010) 230 CTR 389 : (2011) 332 ITR 81 : (2010) 186 TAXMAN 454

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This appeal filed by the revenue u/s 27A of the Wealth Tax Act, 1957 (for brevity the Act) is directed against order dated 17-1-2006 in respect of assessment year 1998-99 passed by the Income Tax Appellate Tribunal, Chandigarh Bench A, Chandigarh (for brevity the Tribunal) in WTA No. 30/Chd/2005 for the assessment year 1998-99. The revenue has claimed that following substantive question of law would arise for determination of this Court:

Whether on the facts and circumstances of the case, the Tribunal was justified in law in directing the assessing officer to confront report of Valuation Officer to the assessee company and to consider its order of lower valuation in the case of Sanjay Jain by ignoring the provisions of Sub-section (6) to Section 16A of Wealth Tax Act, 1957, as per which report of Valuation Officer is binding on the assessing officer.

2. Brief facts of the case are that the assessee-respondent filed its return of wealth for the assessment year 1998-99 on 30-11-1998 which was processed u/s 16(1)(a) of the Act vide order dated 15-9-1999 without making any adjustment to the WT return. Thereafter the case was selected for scrutiny. During the assessment proceedings, the assessing officer noticed the value of the plot at Pakhowal Road, Ludhiana measuring 2,005.12 sq. yds. which was claimed to be @ Rs. 3,000 per sq. yd. The total value of the plot reflected in the assessment

order was Rs. 75,37,500. The assessing officer asked the assessee-respondent to explain the lower rate as compared to the value determined by the DVO in the case of Sh. Sanjay Jain @ Rs. 5,000 per sq. yard. The assessee filed its reply to the notice. The explanation was not accepted by the assessing officer and the matter was referred to the DVO, IT Department who determined the value of the plot at Rs. 1,76,33,330. Accordingly the value of the plot was taken at Rs. 1,76,33,330 against the declared value of Rs. 75,37,500. The assessee preferred an appeal by arguing that the DVO did not give any basis for making assessment at such an exorbitant rate whereas the prevailing rates were much less. However, the Commissioner (Appeals), Ludhiana vide order dated 1-6-2005 (A.2) confirmed the addition made by the assessing officer. The assessee further filed an appeal before the Tribunal. The Tribunal set aside the order dated 1-6-2005 (A.2) of Commissioner (Appeals), Ludhiana by holding as under:

3. Now, the assessee is in appeal. We have heard both the parties and carefully gone through the material on record. In the instant case, it seems that the assessing officer while adopting the value estimated by the DVO had not given any opportunity to the assessee for rebuttal. Nothing is mentioned in the assessment order of the assessing officer, how the value was determined by the DVO. He simply replaced the value declared by the assessee by the value determined by the DVO. The learned Commissioner (Appeals) has also not given any cogent reason while confirming the addition made by the assessing officer. He simply stated that DVO of the department is an expert and his report cannot be brushed aside. It is well established that the estimate is an opinion of a person, it cannot replace the real. In the instant case also, the value worked out by the DVO was merely an estimate which reflected his opinion. It is not clear on what basis he worked out value of the impugned property. The principle of natural law demands that no one should be condemned unheard as embodied in the maxim audi alteram partem. We, therefore, considering the totality of the facts of the present case, deem it proper to set aside this issue back to the file of the assessing officer and also direct him to confront the report of DVO to the assessee.

3.1 During the course of hearing, it was also one of the contention of the learned Counsel for the assessee that the case of Shri Sanjay Jain which had been considered by the assessing officer was a subject-matter of appeal before the Tribunal, Chandigarh Bench wherein vide order dated 24-5-2005, the value had been adopted at Rs. 2,900 per sq. yard for the adjoining plot. We, therefore, direct the assessing officer to consider the aforesaid referred to order of the Tribunal also while adjudicating the case of the assessee.

3. Mr. Rajesh Sethi, learned Counsel for the revenue has submitted that there is no obligation cast on the assessing authority to confront the assessee with the report of the DVO. He has placed reliance on Sub-section (6) of Section 16A of the Act and argued that there is no option given to the assessing officer who is required to complete the assessment in conformity with the estimation of the

Valuation Officer. Learned Counsel for the revenue has emphasized that use of word shall in that section makes it mandatory on the part of the assessing officer to proceed in accordance with the report of the Valuation Officer. In order to buttress his stand, learned Counsel has placed reliance on a Division Bench judgment of the Allahabad High Court in the case of M.C. Khunnah Vs. Union of India (UOI) and Others, and submitted that the Wealth Tax Officer is bound to accept the valuation given by the Valuation Officer. He has placed reliance on another Division Bench judgment of the Allahabad High Court rendered in the case of Commissioner of Wealth-tax Vs. Dr. H. Rahman, wherein the view taken in M.C. Khunnahs case (supra) was reiterated.

4. Mr. Akshay Bhan, learned Counsel for the assessee-respondent has submitted that there cannot be any dispute with the aforesaid proposition. He has argued that the question of law may be answered in favour of the revenue and the matter be remitted back to the Tribunal for deciding the issue on merits.

5. Having heard learned Counsel for the parties and perusing the paper book with their able assistance we are of the view that the question of law deserved to be answered in favour of the revenue. It would be profitable to examine Section 16A of the Act which reads as under:

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, whereunder the provisions of Section 7 read with the rules made under this Act or, as the case may be, the rules made in Sch. III, the market value of any asset is to be taken into account in such assessment, the assessing officer 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 assessing officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the assessing officer is of opinion--

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

(2) For the purpose of estimating the value of any asset in pursuance of a reference under Sub-section (1), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been

correctly declared in the return made by the assessee u/s 14 or Section 15, he shall pass an order in writing to that effect and send a copy of his order to the assessing officer and to the assessee.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee u/s 14 or Section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections.

(5) On the date specified in the notice under Sub-section (4), or as soon thereafter as may be, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the assessing officer and to the assessee.

(6) On receipt of the order under Sub-section (3) or Sub-section (5) from the Valuation Officer, the assessing officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer.

6. A perusal of the aforesaid provision makes it evident that in case where the market value of the assets is to be taken into account in an assessment, the assessing officer may refer to valuation of any asset to a Valuation Officer. On reference having been made, the Valuation Officer is required to serve the assessee notice requiring him to produce on a specified date such accounts, records or other documents as he may require. In case the Valuation Officer is of the opinion that the value of the asset is higher than the value declared in the return filed by the assessee or where the asset is not disclosed the Valuation Officer must serve a notice on the assessee intimating the value which he proposes to estimate. It also obliges the assessee an opportunity to state on a date specified in the notice his objections either in person or in writing before the Valuation Officer and to produce on that date such evidence as the assessee may like to rely in support of his objection. After hearing evidence produced by the assessee and by taking into account all relevant material, the Valuation Officer is obliged under the law to estimate the value of the asset and send a copy of order to the assessee as well as to the assessing officer. Thereafter the assessing officer is to act in accordance with the valuation made by the Valuation Officer.

7. It is in the context of the aforesaid provision that the question of law has to be answered in favour of the revenue because one comprehensive provision has

been made by Sub-sections (3) to (5) and the principle of audi alteram partem has been set out to be followed by the Valuation Officer then no further opportunity before the assessing officer needs to be given as it would result into duplication. Accordingly with utmost respect we accept the views taken by the two Division Benches of the Allahabad High Court in the cases of M.C. Khunnah (supra) and Dr. H. Rahman (supra). In para 6 of M.C. Khunnahs case (supra), the following views have been expressed:

The only other contention raised in support of this petition was that the Wealth Tax Officer had acted illegally and in disregard of the principles of natural justice in not affording the petitioner an opportunity of cross-examining the Valuation Officer. As already stated under Sub-section (6) of Section 16A, the Wealth Tax Officer has no option but to pass an order in conformity with the valuation report submitted by the Valuation Officer. Assuming that in cross-examination the petitioner could have succeeded in establishing the valuation report to be incorrect, it still would not have been open to the Wealth Tax Officer to disregard the estimate of the valuation given by respondent No. 2 in his report. No useful purpose consequently would have been served by the Wealth Tax Officer permitting cross-examination of respondent No. 2 in the proceedings before him.

8. The aforesaid view has further been followed and applied in Dr. H. Rahmans case (supra).

9. As a sequel to the aforesaid discussion, the question of law is answered in favour of the revenue and against the assessee. The order dt. 17-11-2006 passed by the Tribunal is set aside with a direction to the Tribunal to decide the appeal on merits keeping in view the aforesaid answer given to the question of law. The parties through their counsel are directed to appear before the Tribunal on 12-8-2009.