
(2010) 05 P&H CK 0332
In the Punjab And Haryana At Chandigarh
Case No : WT Appeal No's. 31 to 36 of 2009

Commissioner of Wealth Tax, Patiala

APPELLANT

Vs

Parminder Singh

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Income Tax Act, 1961 — Section 155, 155(16), 45(5), 45(5)(b), 45(5)(c)
Land Acquisition Act, 1894 — Section 23, 23(1A), 23(2), 4, 4(1)
Wealth Tax Act, 1957 — Section 17, 2(ea)

Citation : (2010) 192 TAXMAN 69

Hon'ble Judges : Mehinder Singh Sullar, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Urvashi Dhugga, for the Appellant; Radhika Suri, for the Respondent

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved in the aforesaid appeals, pertaining to the assessment years 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04, under the provisions of the Wealth-tax Act, 1957 (for short "the Wealth-tax Act"), having arisen out of the same impugned order, therefore, we propose to dispose of the same, vide this common judgment, in order to avoid the repetition. However, for facilitation, the bare minimum facts that need a necessary mention have been extracted from Wealth Tax Appeal No. 31 of 2009. The matrix of the facts, culminating in the commencement of, relevant for disposal of present appeals filed by the revenue against the ultimate legal heir of Smt. Soma Devi (since deceased) respondent-assessee Parminder Singh (for brevity "the assessee") and emanating from the record, is that, originally, Soma Devi (deceased), mother of Jarnail Singh, was the owner and in possession of the land in question, situated in village Sultanwind (Urban) and (Suburban), District Amritsar. She died on 12-5-2000. During her life time, Soma Devi had sold a piece of land measuring 2 kanals 3 marlas to M/s. Guru Ram Dass Charitable Trust, for a consideration of Rs. 5,37,500 on 24-4-1998. However, subsequently, the remaining entire land was acquired by the Government under the provisions of Land Acquisition Act, 1894

(hereinafter to be referred as "the LA Act") for Improvement Trust, vide notification dated 17-11-2000. Having completed all the codal formalities, the Land Acquisition Collector (hereinafter to be referred as "the Collector") determined the market value of the acquired land at Rs. 53,20,908, vide award dated 28-11-2003. However, the Government had further allowed increase at the rate of 12 percent per annum as appreciation in the valuation of acquired land.

2. The revenue claimed that the value of the land in question exceeded the maximum amount, not chargeable to wealth tax, for the relevant period of assessment years and the assessee was required to file the returns. As Soma Devi (since deceased) did not file the returns, so, proceedings u/s 17 of the Wealth-tax Act were initiated and accordingly, a show- cause notice was issued to her ultimate legal heir, the present assessee, in this relevant connection.

3. In the wake of show-cause notice, the assessee filed the reply/return of wealth and explained that the reasons to believe that the limit of net wealth chargeable to tax had exceeded and escaped assessment, is based on and emerged out of non-existent facts, as Smt. Soma Devi did not own any urban land on the valuation date 31-3-1998 at any place in India. Thus, the initiation of proceedings was invalid. In all, according to the assessee that as the land in question did not come under the purview of assets, therefore, he is not liable to pay wealth tax. It will not be out of place to mention here that the assessee stoutly denied all other allegations contained in the show-cause notice and prayed for its reversal.

4. The explanation put forth by the assessee did not find favour and the Assessing Officer included the value of the land at the rate of Rs. 20 lakhs and 18 lakhs per acre on the basis of sale instance dated 24-4-1998, regarding small parcel of land measuring 2 kanals 3 marlas, in his assets/wealth, charged interest and gave notice for imposing penalty separately, vide order dated 28-3-2006 (Annexure A1).

5. Aggrieved by the order (Annexure A1), the assessee filed the appeal before the Commissioner of Wealth-tax (Appeals). The first Appellate Authority held that the value taken by the Assessing Officer is on the higher side, without any basis, cannot be sustained and, therefore, directed the Assessing Officer to adopt the value as determined by the Collector. The Commissioner (Appeals) partly allowed the appeal of the assessee, vide order dated 24-3-2008 (Annexure A2).

6. Neither the revenue nor the assessee felt satisfied with the order (Annexure A2) of the first Appellate Authority and filed cross appeals before the income tax Appellate Tribunal. The Tribunal, on the basis of its earlier decision in case of CWT v. Kulbir Singh [WT Appeal Nos. 7 to 22 of 2008, dated 9-7-2008], reiterated and directed the Assessing Officer to adopt the value of the land on the basis of market price determined by the Collector on 17-11-2000, vide award dated 28-11-2003, with respect to the land situated in village Sultanwind (Urban) and (Suburban), in the relevant assessment years before acquisition.

7. Sequelly, the Tribunal, relying upon its another judgment in case of CWT v. Amrit Lal Jindal & Sons [WT Appeal No. 39 of 1999, dated 5-11-2004], has held that the value of 25 kanals 6 marlas of land situated in village Sultanwind (Urban) and (Suburban), which has already been acquired by the Improvement Trust, has wrongly been included in the net wealth of the assessee, pertaining to the subsequent assessment years, as the right to receive compensation is not an asset liable to tax u/s 2(ea) of the Wealth-tax Act.

8. At the same time, the Tribunal has also held that as the solatium payable in terms of section 23(2) of the L.A. Act does not constitute market value of the land, therefore, the same is not chargeable to tax. Hence, the Tribunal, accordingly, disposed of all the appeals, vide impugned order dated 22-8-2008 (Annexure A3).

9. The revenue still did not feel satisfied with the impugned order (Annexure A3) and filed the present appeals, which were admitted to consider the following substantial questions of law by this Court:-

1. Whether on the facts and in the circumstances of the case, the decision of the ITAT is fair even when it has ignored the fair market value as evidenced by the sale instance that took place in the year immediately following the valuation date?

2. Whether on the facts and in the circumstances of the case, the ITAT was justified in not taking solatium as part and parcel of the value of land?

3. Whether on the facts and in the circumstances of the case, the ITAT was justified in allowing, relief to the assessee by holding that the right to receive compensation is not an asset u/s 2(ea) of the Wealth-tax Act, 1957 whereas as on the date of valuation, the assessee was in physical and legal possession of land which only was assessed as an asset by the WTO?

10. Assailing the impugned order, at the very outset, the learned counsel for the revenue has contended with some amount of vehemence that the Tribunal has wrongly held that the market price determined by the Collector is the relevant price for including in the wealth of the assessee and has also erred in holding that mere right to receive compensation is not an asset and subsequently not includible in his wealth. The argument further proceeds that although now it is well-settled that the solatium is part of the compensation and is includible in the wealth of the assessee but the Tribunal has fell in error in excluding the same from his assets. In support of his contention, he has placed reliance on the judgment of Hon''ble Supreme Court in case of Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF), .

11. Hailing the impugned order, on the contrary, the learned counsel for the assessee has urged that the Tribunal was legally correct to take the market value of the land in question, during the relevant period of assessment, as determined by the Collector, based on its earlier decision in Kulbir Singh's case (supra). The argument is that as the mere right to receive compensation does not fall within

the definition of section 2(ea) of the Wealth-tax Act, therefore, no interference is warranted in this respect. Learned counsel has relied on the judgments of this Court in cases of CWT v. S. Baldev Inder Singh [1993] 203 ITR 8371 and CWT v. Nand Lal, Mohan Lal [W.T. Appeal No. 55 of 2009, dated 19-5-2010]

12. We have heard the learned counsel for the parties and have gone through the record with their valuable help.

13. The bare perusal of the material on record would reveal that the original owner Soma Devi died on 12-5-2000. During her life time, she had sold a small parcel of land measuring 2 kanals 3 marlas to M/s. Guru Ram Dass Charitable Trust, vide registered sale deed dated 24-4-1998, but subsequently, the entire big chunk of the land in question of the assessee was acquired by the Improvement Trust and the Collector determined its market value as on 17-11-2000, the date of notification issued u/s 4 of the L.A. Act.

14. Keeping in view that the facts of the case are neither intricate nor much disputed, the first core question, that arises for determination in these appeals, is that, what should be the fair market value of the land in question, which should be included in the assets of the assessee at the relevant time.

15. The main celebrated argument of the learned counsel for the revenue that the sale instance dated 24-4-1998 of the land measuring 2 kanals 3 marlas in the vicinity, ought to have been taken the value of the land and was liable to be included in the wealth of the assessee, is not only devoid of merit, but misplaced as well. On the other hand, the contention on behalf of the assessee that the market price as determined by the Collector was the relevant price in this direction, has considerable force. The Commissioner as well as the Appellate Tribunal, after placing reliance on the earlier decision in Kulbir Singh's case (supra), has rightly directed the Assessing Officer to take the market price of the land in question, as determined by the Collector, for the purpose of wealth tax.

16. The solitary sale instance dated 24-4-1998 of small parcel of land measuring 2 kanals 3 marlas, is not at all relevant to determine the market value of a big chunk of land. A large track of land could not fetch that much average price/rate, as a small piece of plot could get, because purchasers of large piece of land are rarely available. Moreover, land measuring 2 kanals 3 marlas was situated in an advantageous position, being close to the main road and also at a higher level, as compared to the remaining big chunk of uneven land. Besides it, M/s. Guru Ram Dass Charitable Trust required that piece of land for a specific purpose to construct a building of hospital on a compact land on the main road. So, taking into consideration the urgent need of the vendee, the location of small piece of land measuring 2 kanals 3 marlas on the main road and other attending circumstances, as mentioned hereinabove, we are of the considered view that the price of land, described in the indicated sale deed, do not represent the true value and is not relevant at all to determine the market value of the large chunk of land of the assessee.

17. The matter did not rest there. The Collector determined the adequate market price of the acquired land u/s 23 of the L.A. Act, which postulates that in determining the amount of compensation to be awarded for land acquired under this Act, the Collector, inter alia, shall take into consideration the market value of the land at the date of publication of notification u/s 4(1). The market price assessed by the Collector has more persuasive value and is correct as compared to adoption of any other method in this regard. Therefore, the adequate market price assessed by the Collector under the statutory provisions would represent the actual value/market price of the land in question of the assessee at the relevant time, for the purpose of wealth tax. Reliance in this behalf can also be placed upon the judgment of this Court in S. Baldev Inder Singh's case (supra).

18. Therefore, it is held that the market price as determined by the Collector u/s 23 of the L.A. Act would represent the actual value/market price of the land in question of the assessee at the relevant time, for the purpose of wealth tax, as also concluded by the Appellate Tribunal. No infirmity has been pointed out in the impugned order by the learned counsel for the revenue in this relevant direction.

19. Now advertent to the next question as to whether the solatium is part and parcel of the compensation to be included in the wealth of the assessee or not? This question is not res integra. The Hon'ble Apex Court in Ghanshyam (HUF)'s case (supra) examined the relevant provisions of the L.A. Act and observed that the additional amount u/s 23(1A) and solatium u/s 23(2) form part of the enhanced compensation. The law laid down in the aforesaid judgment is the complete answer to the problem in hand. In this view of the matter, it is held that the solatium is part and parcel of the compensation/value of the land. To that extent, the impugned order (Annexure A3) deserves to be and is hereby modified accordingly.

20. Again, it is not a matter of dispute that the land in question was acquired on 17-11-2000 and State became its owner for all intents and purposes. Meaning thereby, the assessee does not remain owner and had no control over the land in question after its acquisition. Thereafter, his mere variable and speculative right to receive enhanced compensation only remains in existence.

21. Above being the position on record, now the next significant question, that arises for determination, is, whether mere inchoate right of the assessee to receive enhanced compensation of the acquired land, if any, is an asset and falls within the purview of section 2(ea) of the Wealth-tax Act and includible in the assets of relevant subsequent period of assessment or not?

22. The submission of learned counsel for the revenue that mere right to receive enhanced compensation is also liable to be included in the wealth of the assessee, is neither tenable nor the observations of Hon'ble Supreme Court in Ghanshyam (HUF)'s case (supra) are at all applicable to the present controversy. Having interpreted the amended provisions of income tax Act including the insertion of mandatory scheme of sections 45 and 155 of that Act, it was ruled

by the Hon"ble Apex Court as under:-

The scheme of section 45(5) and section 155(16) of the income tax Act, 1961, is this. Section 45(5) was inserted with effect from April 1, 1988, as an overriding provision. Since compensation under the Land Acquisition Act, 1894, arises and is payable in multiple stages, the Legislature stepped in and said that as and when the assessee-claimant is in receipt of enhanced compensation it shall be treated as "deemed income" and taxed on receipt basis. Hence, the year in which enhanced compensation is received is the year of taxability. Consequently, even in cases where pending appeal, the Court/Tribunal : authority before which the appeal is pending, permits the claimant to withdraw against security or otherwise the enhanced compensation (which is in dispute), the same is liable to be taxed u/s 45(5) of the Act in the year of receipt. Even before the insertion of section 45(5)(c) and section 155(16) with effect from April 1, 2004, the receipt of enhanced compensation u/s 45(5)(b) was taxable in the year of receipt and this is reinforced by insertion of clause (c).

23. Be that as it may, as the learned counsel for the revenue has fairly acknowledged that there is no such parallel amendment in the Wealth-tax Act as compared to section 45(5) of the income tax Act, therefore, the law laid down by the Hon"ble Supreme Court in Ghanshyam (HUF)"s case (supra) would not come to the rescue of the revenue in this relevant connection, in view of the amended definition of assets, as per section 2(ea) of the Wealth-tax Act, which is in the following manner:-

2(ea) "assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means-

(i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board, but does not include-

(1) to (4) *****

(5) any property in the nature of commercial establishments or complexes.

"Explanation 1.-For the purposes of this clause,-

(a) ****

(b) "urban land" means land situate-

(i) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been

published before the valuation date; or

(ii) in any area within such distance, not being more than eight kilometres from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette,

but does not include land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated or the land occupied by any building which has been constructed with the approval of the appropriate authority or any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him or any land held by the assessee as stock-in-trade for a period of ten years from the date of its acquisition by him.

24. Thus, it would be seen that a co-joint reading of these provisions would reveal that after the drastic and remarkable change and amendment in section 2(ea) of the Wealth-tax Act with effect from 1-4-1993, only those assets of the assessee are exigible to wealth tax, which squarely fall within the ambit of section 2(ea) and not otherwise. However, this position was entirely different before the amendment of this section.

25. Not only that, in the instant case, the Appellate Tribunal has noticed that it has been stated at Bar by the learned counsel for the assessee that the value determined by the Land Acquisition Collector has been accepted by the assessee and there is no challenge to the same. This lends potency to the stand of the assessee that such value reflects the market value of the land more appropriately. That being so, even question of receipt of enhanced compensation did not arise at all.

26. As is evident from the record that the assessee did not remain the owner of the land in question after its acquisition, vide notification dated 17-11-2000, which stood vested in the State for all intents and purposes. He was only entitled to receive the enhanced compensation, if any. As the mere right to receive the enhanced compensation does not fall within the purview of assets, as envisaged u/s 2(ea) the Wealth-tax Act, therefore, we are of the view that the same cannot be included in the wealth of the assessee and he was not liable to pay wealth tax, in view of the decision dated 15-9-2009 of this Court in case of *Amrit Lal Jindal & Sons (HUF) v. WTO* [2009] 184 Taxman 143, in which, it was held that "once the land could not be covered by definition of expression "assets", then it would not be exigible under the Act." The same view was reiterated by this Court in case of *CWT v. Amrit Lal Jindal & Sons* [WT Appeal No. 11 of 2005, dated 3-3-2010] and *Nand Lal, Mohan Lal's case* (supra). The contrary arguments on behalf of the revenue in this connection deserve to be and are hereby repelled, under the present set of circumstances.

27. Therefore, we are of the considered opinion that as soon as the land of the

assessee was acquired and stood vested in the State, he did not remain its owner and the mere inchoate right to receive the enhanced compensation cannot possibly be treated as assets and included in his wealth subsequently.

28. In the light of the aforesaid reasons, it is held that the market price determined under the L.A. Act would represent the true value of the land in question, which was relevant to be included in the assets/wealth of the assessee. After the acquisition and vesting of all rights of the land in the State, the mere speculative right to receive compensation/enhanced compensation is not and cannot possibly be treated as an asset, as contemplated u/s 2(ea) of the Wealth-tax Act. Sequelly, it is also held that the solatium is part and parcel of the value of the acquired land. Thus, question No. 2 is answered in favour of the revenue and against the assessee, while question Nos. 1 and 3 are answered against the revenue and in favour of the assessee, in the obtaining circumstances of the case. For the reasons recorded above, the instant appeals are partly dismissed and partly allowed and the impugned order (Annexure A3) is accordingly modified, in the manner indicated hereinabove.