
(2005) 02 DEL CK 0208

In the Delhi High Court

Case No : WTA NO. 8 of 2002 3 February 2005

CWT

APPELLANT

Vs

RAKR. International (P.) Ltd.

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 195 CTR 528 : (2005) 145 TAXMAN 322

Hon'ble Judges : Swatanter Kumar, J;Madan B. Lokur, J;Delhi Swatanter Kumar, J

Bench : Full Bench

Advocate : Sanjiv Khanna, R.D. Jolly, Ms. Prem Lata Bansal and Ms. Rashmi Choprafor the Revenue. C. S. Aggarwal, Prakash Kumar and Aman Jainfor the assessed, for the Appellant;

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.

It is often said, though mistakenly, that consistency is the virtue of fools. The complete lack of it by the revenue (as the facts of this batch of cases demonstrates) really puts the theory to an acid test.

2. Three companies, M/s. Allied Finance Pvt. Ltd., M/s. R.K.K.R. Industries Pvt. Ltd. and M/s. R.K.K.R. International Pvt. Ltd. purchased property bearing No. 12, Aurangzeb Lane, New Delhi by a sale deed dated 22-7-1972 for a sum of Rs. 8,00,000. It was then let out to two directors of these companies at Rs. 22,500 per month.

3. When the question of valuing the property came up before the Wealth tax Officer, for the relevant assessment year 1985-86, he was of the view that it should be valued at Rs. 7,50,00,000. Since the assessed was 1/3rd owner of the property, its net wealth was valued at Rs. 2,50,00,000.

4. Feeling aggrieved, all three companies filed appeals before the Commissioner

of Wealth-tax (Appeals) [for short CWT(A)] who was of the view that the value of the property should be calculated on the basis of its annual letting value worked out in the Income Tax assessment.

5. The revenue challenged the order of the CWT(A) before the Income Tax Appellate Tribunal (ITAT). By the impugned order dated 1-1-1999 the ITAT disposed of the appeal on the basis of its earlier order dated 4-5-1998 and directed the assessing officer to adopt the value of the property on the basis of its municipal valuation.

6. The revenue has preferred the present appeal u/s 27A of the Wealth Tax Act directed against the order of the ITAT dated 1-1-1999, which follows the order dated 4-5-1998.

7. Learned counsel for the Respondent placed before us a chart (which we have since completed on the basis of all pending cases) indicating how the revenue has dealt with similar orders of the ITAT in respect of each of the three companies for various assessment years. This chart makes for some rather interesting reading.

Assessment Year

Allied Finance Pvt. Ltd.

R.K.K.R. Industries Pvt. Ltd.

R.K.K.R. International Pvt. Ltd.

1984-85

No appeal against May, 1998 ITAT order of 18th

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1985-86

WTA No. 4/99 filed against order of ITAT dated 1-1-1999 (following order dated 4-5-1998)

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1986-87

No appeal against ITAT order of 18-5-1998

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1987-88

No appeal against ITAT order of 18-5-1998

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1988-89

No appeal against ITAT order of 18-5-1998

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1989-90

No appeal against ITAT order of 18-5-1998

No appeal against ITAT order of 4-5-1998

No appeal against ITAT order of 4-5-1998

1990-91

WTA No. 7102 filed against order of ITAT dated 3-4-2001 (following order dated 4-5-1998)

WTA No. 6/02 against order of ITAT dated 12-5-2000 (following order dated 4-5-1998)

WTA No. 8/02 filed against order of ITAT dated 12-5-2000 (following order dated 4-5-1998)

1991-92

No information

No information

WTA No. 9/02 against order of ITAT dated 13-6-2001 (following orders dated 4 and 18-5-1998)

1992-93

WTA No. 12/03 filed against order of ITAT dated 19-12-2002 (following orders dated 4 and 18-5-1998)

WTA No. 1/03 filed against order of ITAT dated 21-9-2001 (following order dated 4-5-1998)

WTA No. 21/02 filed against order of ITAT dated 21-9-2001 (following order dated 4-5-1998)

1993-94

WTA No. 13/03 filed against order of ITAT dated 19-12-2002 (following orders

dated 4 and 18-5-1998)

WTA No. 2/03 filed against order of ITAT dated 21-9-2001 (following order dated 4-5-1998)

WTA No. 22/02 filed against order of ITAT dated 21-9-2001 (following order dated 4-5-1998)

1994-95

WTA No. 11/03 against order of ITAT dated 19-12-2002 (following orders dated 4 and 18-5-1998)

No information

No information

1995-96

WTA No. 10/03 filed against order of ITAT dated 19-12-2002 (following orders dated 4 and 18-5-1998)

WTA No. 6/04 filed against order of ITAT dated 10-12-2002 (following orders dated 4-5-1998)

No information

1996-97

WTA No. 5/04 filed against order of ITAT dated 17-9-2003 (following orders dated 4-5-1998)

No information

No information

1998-99

WTA No. 16/04 filed against order of ITAT dated 22-4-2004 (following order dated 18-5-1998)

No information

No information

1999-2000

No information

WTA No. 27/04 filed against order of ITAT dated 5-5-2004 (following order dated 4-5-1998)

No information

2000-2001

WTA No. 7/05 filed against order of ITAT dated 5-5-2004 (following order dated 4-5-1998)

No information

No information

8. A perusal of the above chart clearly shows that the basic orders in all these appeals are the orders of the ITAT dated 4-5-1998 and 18-5-1998. These two basic orders have merely been followed by the ITAT while deciding all subsequent appeals. The revenue has accepted the correctness of these two basic orders and has not filed any appeal against them; it has only challenged subsequent orders, which follow these two orders. To say the least, this is a rather anomalous situation, and we are called upon to act upon it. Fortunately, we have the benefit of some decisions of the Supreme Court that makes our task quite simple.

9. In *Union of India and Others Vs. Kaumudini Narayan Dalal and Another*, what was challenged by the revenue was an order which merely followed an earlier decision of the High Court in the case of *Pradip Ramanlal Sheth Vs. Union of India and Others*, . The Supreme Court noted that no appeal had been filed against the decision in *Pradip Ramanlal Sheth's* case (*supra*). Consequently, it was held that:-

"...It is not open to the revenue to accept that judgment in the case of the assessed in that case and challenge its correctness in the case of other assessed without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal." (p. 220)

10. The same Bench reiterated its view in respect of identical matter in *Union of India Vs. Satish Panalal Shah*,

11. In *Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta*, , the Supreme Court noted the decision in *Kaumudini Narayan Dalal's* case (*supra*) and also referred to *Commissioner of Income Tax Vs. Narendra Doshi*, and *Commissioner of Income Tax Vs. Shivsagar Estate*, and held that:-

"...the principle established is that if the revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessed then it is not open to the revenue to challenge its correctness in the case of other assessed, without just cause." (p. 104)

12. Earlier, in *M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax*, the Supreme Court noted that the principle of *res judicata* does not apply. to Income Tax proceedings, since each assessment year is a unit by itself. But, at the same time, where there is a fundamental aspect permitting through different assessment years and the authorities have allowed that position to be sustained, it would not be appropriate to allow the position to be changed in a subsequent year. In arriving at this conclusion, the Supreme Court referred to a Full Bench decision of the Madras High Court in *TMM Sankaralinga Nadar and*

Bros. v. CIT(1929) 4 ITC 226, Hoystead v. Commissioner of Taxation (1926) AC 155 (PC) and Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot, . The Supreme Court, however, also made it absolutely clear that the facts of Radhasoami Satsang" case (supra) being very special, the decision would be confined to the facts of that case and may not be treated as an authority on aspects which have been decided for general application.

13. A Division Bench of this court in Commissioner of Income Tax Vs. Neo Poly Pack (P.) Ltd., held that even though the doctrine of res judicata would not apply to Income Tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years in a particular manner, then for the sake of consistency, the same view should continue to prevail in subsequent years unless there is some material change in the facts.

14. In view of the law laid down by the Supreme Court and also by a Division Bench of this Court, we have no reason to discard the principle of consistency which requires that when the revenue has accepted a particular view by not filing an appeal, that view should be adhered to unless there is just cause for departure.

15. Insofar as the present batch of cases is concerned, the view taken by the ITAT in its orders dated 4-5-1998 and 18-5-1998 has remained unchallenged in respect of several assessment years. These orders were not only in respect of the present assessed but in respect of the other two owners of the concerned property. For some reason, an appeal was filed in respect of the present assessed for the assessment year 1985-86 but no such appeal was filed in respect of the other two assessed for that. year. For the earlier assessment year, that is, 1984-85 and for subsequent years, that is, 1986-87 to 1989-90, no appeal was filed by the revenue in respect of any of the assessed. Similarly, there appears to be no information with regard to any appeal having been filed by the revenue for a couple of other assessment years in respect of all the three assessed. In cases where an appeal has been filed by the revenue, it is on an absolutely ad hoc basis and without any intelligible pattern whatsoever. The fact, however, remains that the two basic orders passed by the ITAT on 4-5-1998 and 18-5-1998 have been accepted by the revenue. Subsequent orders which merely follow these two orders have been challenged, without any just cause having been shown for the departure by the revenue. Since the revenue has accepted the two basic orders, we are not inclined to permit it to randomly challenge a subsequent order in respect of an assessed or in respect of a random assessment year. There cannot be pick and choose in this regard, without sufficient reason.

16. Under the circumstances, we decline to entertain this appeal as well as all the other connected appeals. Dismissed.