(2009) 01 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Raja Malwinder Singh APPELLANT

Vs

CWT Tax and Another RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Citation : (2011) 334 ITR 115 : (2013) 212 TAXMAN 17

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition shall dispose of Wealth Tax Appeal Nos. 7, 8 to 19 of 2003, as common questions of law and fact have been raised. All the appeals have been preferred by the assessee u/s 27A of the Wealth Tax Act, 1957 (for brevity the Act) against the order dated 4-2-2003 passed by the Income Tax Appellate Tribunal, Chandigarh Bench B (for brevity the Tribunal) in WTA Nos. 277 to 285/Chd/1991 for the assessment years 1972-73 to 1980-81, WTA No. 95/Chd/1990 for the assessment year 1981-82, WTA Nos. 286 to 288/Chd/1997 for the assessment years 1982-83 to 1984-85.

2. The assessee has claimed that following questions of law would emerge from the impugned order of the Tribunal:

(i) Whether in the facts and circumstances of the case, order of the Tribunal dated 4-2-2003 is based on misappreciation of the prior findings of the same bonds and of facts and law involved in the case and liable to be set aside ?

(ii) Whether in the facts and circumstances of the case, order of Tribunal dated 4-2-2003 is legally sustainable ?

(iii) Whether in the facts and circumstances of the case, the classification of the residential property and lands appurtenant to the residential property for the purpose of valuation under Wealth Tax Act, and not valuing the residential property and lands appurtenant to the residential property as per the provisions of Section 7(4) of the Wealth Tax Act is legally sustainable ?

3. Brief facts of the case are that the appellant is an individual and belongs to the royal family of Maharaja Ranjit Singh of Patiala. The Tribunal had initially decided these appeals on 21-10-1998. One of the common issues involved in these appeals has been about the valuation of the then residential property located at Leela Bhawan, Patiala, which has been used by the appellant as such. For the purpose of valuation, the department had bifurcated the residential land bounded by four walls of the property into different segments and adopted different rates of land. The house has been in existence over the past 70 years and in the earlier years ending on 31-3-1970 and 31-3-1973, the Tribunal in WTA Nos. 275 & 276/Chd/1991 had adopted the uniform rate of land for the entire land within the boundary wall of the residential property.

4. In the earlier impugned order dated 21-10-1998, the Tribunal had considered the facts of the case and the arguments of both the parties. It then proceeded to hold in para 2.7 that the value of the residential house and the land appurtenant to the residential house may be valued as per the provisions of Section 7(4) of the Act. It would be necessary to peruse para 2.7 of the order which reads as under:

We have carefully considered the rival submissions and have perused orders of the departmental authorities. It is observed that first prayer of learned Counsel is that value of residential house may be determined as on 31-3-1971 and its value may be frozen in terms of Section 7(4) of Wealth Tax Act. He has referred to order of the Tribunal for assessment years 1970-71 and 1971-72, whereby it held that the multiplier should have been the age of the building divided by the life of the building in terms of number of years and directed assessing officer to allow depreciation on the said basis and work out value of the property as on 31-3- 1970 in respect of different portions mentioned in the report. It is observed that Commissioner of Wealth Tax (Appeals) has already held that the tubewell should be treated as part of residential house and its value be frozen as on 1-4-1971. Similarly, CWT(A) has directed that the boundary wall be treated as a part of residential house and its value be frozen as on 1-4-1971. He has thus accepted in principle that value of certain assets which formed part of residential house should be frozen as on 1-4-1971. The department is not in appeal on this issue. Thus, having regard to the provisions of Section 7(4), whereunder value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may at the option of the assessee be taken to be the price which, in the opinion of assessing officer, it would fetch if sold in open market on the valuation date next following the date on which he became owner of the house or on the valuation date relevant to assessment year commencing on 1-4-1971, whichever valuation date is later, and the aforesaid orders of Commisioner of Wealth Tax (Appeals), we find force in the submission made by learned Counsel. We, therefore, direct assessing officer to work out value of residential house as on 31-3-1971, in the light of aforesaid order of the Tribunal and adopt the same value for all subsequent years under consideration.

5. However, in para 2.9 of the same order, the Tribunal proceeded to hold that the classification of land into different categories, area of land and valuation of land, is fair and reasonable. Therefore, the residential property and the land appurtenant to it be classified into different categories and so valued differently. It would also be necessary to reproduce in extenso para 2.9, which reads as under:

The further submission made by learned Counsel pertained to rate of land, area of land and classification. The assessee is agitated mainly about bifurcation of land into two categories with reference to adoption of rate of land. It has been urged that there was no change in nature of property or use and that value as on 31-3-1971 may be adopted. In the written submissions, it is pointed out that Valuation Officer reserved an area of 1,425 sq. yds. as land appurtenant to residential house and the assessee represented to the Inspecting Assistant Commissioner that total area covered was 2,706 sq. yds. and the property had metallic road measuring 981 mts. and CC pavements measuring 1135 mts. and brick pavements measuring 1,239 mts. value whereof had been included in valuation of the property. The assessee is also agitated that oral representation was made to Inspecting Assistant Commisioner, who assured to issue necessary instructions and the letter placed at page 77 of the paper book vol. 1 only confirms the said discussion and there was no agreement to the viewpoint of Valuation Officer with reference to classification of land into categories 4 and 5. It is observed that in para 2 of the said letter, it has been mentioned that the bifurcation between first two categories is imaginary and is not supported by any law. However, this matter has finally been settled at the time of discussion held by the undersigned with you in the presence of Shri B.S. Dahia, Inspecting Assistant Commissioner, Central Range, Ludhiana, in the office of the Income Tax Officer, CC, Patiala. As regards commercial land, the same has already been sold and the assessee possesses only one plot measuring 577 sq. yds. The said letter has been written to the VO on behalf of learned Counsel and Shri Jagmohan Singh. We feel that the reasoning given by Commissioner of Wealth Tax (Appeals) for classification of land into different categories, area of land and valuation of land is not only based on the aforesaid letter but is otherwise fair and reasonable and his orders do not call for any interference. Apart from reasons given by Commissioner of Wealth Tax (Appeals), which have been upheld by us, the aforesaid letter on the part of learned Counsel is nothing short of an agreement insofar as classification of land into different categories made by VO is concerned. It is also observed from para 19 of impugned order that in subsequent years, the assessee did convert lands appurtenant to residential house into commercial plots and sold them as such. The said observations had not been controverted before us.

6. The assessee appellant felt aggrieved by the apparent contradictions in paras 2.7 and 2.9 of the order. Accordingly, miscellaneous applications were filed with the grievance that the observation in the aforesaid paras were contrary to each other inasmuch as in para 2.7, the Tribunal had taken note of the fact that tile

department had conceded the tubewell and the boundary wall to be part of the residential property. The Tribunal then went on to make observations that the valuation of the properties should be frozen on 1-4-1971. However, in para 2.9, the Tribunal had accepted the classification of land into different categories as made by the valuation officer by taking into consideration the letter of the assessee to which reference has been made in para 2.9 of the order. Accordingly miscellaneous petitions filed were accepted by the Tribunal on 1-2-2002 by observing as under:

On carefully going through the observations of the Bench made in paras 2.7 and 2.9 of its order referred to by the assessee in these applications we find that the observations regarding classification of land into different categories made by the Bench in paras 2.7 and 2.9 are contrary to each other because from the observations made in para 2.7 it appears that the residential house and land appurtenant thereto according to the Bench is to be valued as residential property whereas as per para 2.9 it seems that the land appurtenant to residential house is to be valued at different rates as per the different categories of land classified by the valuation officer in his order. Since these two observations in paras 2.7 and 2.9 are contrary, we are of the opinion that this mistake apparent from record is crept into the order of the Bench, requires to be rectified by recalling the order for the limited purpose of valuation of land appurtenant to the residential house. Accordingly all the above applications moved by the assessee are allowed and the orders passed in above-mentioned appeals are hereby recalled for a limited purpose of determining the valuation of land appurtenant to residential house in question.

7. It is, thus, evident that the Tribunal recalled the order dated 21-10-1998 (P-3) for a limited purpose of determining the valuation of land appurtenant to residential house in question.

8. When the appeals were listed for hearing, the same Bench of the Tribunal vide order dated 4-2-2003 concluded that there was no contradiction in the findings recorded by the Tribunal in paras 2.7 and 2.9 of the order dated 21-10-1998. The view of the Tribunal is discernible from a perusal of para 5.1, which reads as under:

We have also observed that the issue raised before the Tribunal not only related to value of residential house but also to value of land. The total area covered by Leela Bhawan was 52,100 sq. yds. While valuing the residential house, the Valuation Officer had also allowed rebate @ 20 per cent of the total area on account of providing road, pathways etc., which required to be frozen as on 1-4-1971. Thus, the value of land appurtenant to residential house was taken at 13,689 sq. yds. The value of such land was held to be frozen because of Section 7(4) of the Wealth Tax Act. As regards the remaining land, the Valuation Officer had categorized the same as commercial land and residential land sold in the subsequent years. Margin for providing roads, pathways etc. was also provided. The said land was valued at different rates. Such bifurcation of the land and the value thereof was upheld by the Tribunal after taking into account the rival submissions made by both the parties. This is clear from the finding recorded in paras 2.9 and 2.10 of the aforesaid order. Thus, we do not find any merit in the submissions of the learned Counsel that there was contradiction- in the findings recorded by the Tribunal in paras 2.7 and 2.9 of its aforesaid order. In fact, the land merits (sic) in para 2.9 of the aforesaid order has not been treated and considered as part of the residential house. We, therefore, do not find any ambiguity or contradiction in the aforesaid finding of the Tribunal. Therefore, the finding recorded by the Tribunal does not call for any modification. We order accordingly.

9. Mr. Akshay Bhan, learned Counsel for the appellant, has argued that contradiction in the impugned order dated 4-2-2003 (P-5) is writ large. According to the learned Counsel, the approach of the same Bench of the Tribunal is very strange inasmuch as at one time it has concluded that paras 2.7 and 2.9 are contradictory to each other and later it refused to accept any contradiction. Learned Counsel has maintained that both things cannot be right and the mutually destructive approach cannot be permitted in the orders of the Tribunal. He has submitted that the impugned order in fact amounts to reviewing the order dated 1-2-2002and dismissal of miscellaneous petitions filed by the assessee which have been earlier allowed.

10. Ms. Urvashi Dugga, learned State counsel for the revenue has attempted to support the impugned order and has argued that the value of the land appurtenant to the residential house Leela Bhawan belonging to the assessee was taken to be 13,689 sq. yds. The value of the land was held to be frozen by taking into account Section 7(4) of the Wealth Tax Act. The remaining land has been categorized as commercial land and residential land sold in subsequent years. The aforesaid land was valued at different rates. However, the learned State counsel has not been able to clarify and explain the apparent contradiction in para 2.7 which clearly states that the value of the residential house and land appurtenant to it was to be made as per the provisions of Section 7(4) of the Act. Whereas in para 2.9, the Tribunal has asked for the classification of land into two different categories.

11. Having heard the learned Counsel for the parties, we are of the view that the Tribunal has not proceeded on sound reasoning, it amounts to blowing hot and cold in the same breath. It has come on record in the order dated 1-2-2002 (P-4) that in para 2.7 and para 2.9, there are mutual contradictions which were required to be reconciled. The aforesaid contradictions were pointed out at the instance of the assessee when he filed miscellaneous, petitions. However, when the main appeals were taken up, the Tribunal recorded a finding that there was, in fact, no contradiction which would be evident from the perusal of para 5.1. The Tribunal has recorded we do not find any merit in the submissions of the learned Counsel that there was contradiction in the findings recorded by the Tribunal in paras 2.7 and 2.9 of its order. We cannot endorse this line of

reasoning. The same paras of the order dated 21-10-1998 were found to be contradictory by the same Bench of the Tribunal in its order dated 1-2-2002 and it changed its view on 4-2-2003 by stating that there was no contradiction.

12. The approach adopted by the Tribunal in the impugned order smacks of review of the earlier order passed on 1-2-2002. There is no express power of review and therefore, the impugned order is not sustainable in the eyes of law. We are further of the view that the Tribunal should have made efforts to reconcile paras 2.7 and 2.9 figuring in the order dated 21-10-1998 instead of writing a perfunctory order. We wish that the Tribunal should have applied its mind closely to the whole controversy and had creased out paras 2.7 and 2.9 in the order dated 21-10-1998.

13. In view of above, the order dated 4-2-2003 is set aside. The Tribunal is directed to reconsider the matter in accordance with law and decide the issues on merit. The needful shall be done within a period of three months as the issue pertains to the assessment year of 1971-72onwards.

14. The appeals stand disposed of in the above terms.