(2010) 05 P&H CK 0083

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Wealth Tax		APPELLANT
	Vs	
Parminder Singh		RESPONDENT

Date of Decision: May 21, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 155, 155(16), 45, 45(5)
- Land Acquisition Act, 1894 - Section 23, 23(1A), 23(2), 4, 4(1)

Citation: (2010) 232 CTR 195

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.
As identical questions of law and facts are involved in the aforesaid appeals, pertaining to the asst. yrs. 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04, under the provisions of the WT Act, 1957 (for short "the WT 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 WT Appeal No. 31 of 2009.

2. 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 (sub-urban), District Amritsar. She died on 12th May, 2000. During her lifetime, 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 24th April, 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 dt. 17th Nov., 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 dt. 28th Nov., 2003. However, the Government had further allowed increase at the rate of 12 per cent per annum as appreciation in the valuation of acquired land.

3. 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 WT Act were initiated and accordingly a show-cause notice was issued to her ultimate legal heir, the present assessee, in this relevant connection.

4. 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 31st March, 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.

5. The explanation put forth by the assessee did not find favour and the AO included the value of the land at the rate of Rs. 20 lacs and Rs. 18 lacs per acre on the basis of sale instance dt. 24th April, 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 28th March, 2006 (Annex. A1).

6. Aggrieved by the order (Annex. Al), the assessee filed the appeal before the CWT(A). The first appellate authority held that the value taken by the AO is on the higher side, without any basis, cannot be sustained and, therefore, directed the AO to adopt the value as determined by the Collector. The CWT(A) partly allowed the appeal of the assessee, vide order dt. 24th March, 2008 (Annex. A2).

7. Neither the Revenue nor the assessee felt satisfied with the order (Annex. A2) of the first appellate authority and filed cross-appeals before the Tribunal. The Tribunal, on the basis of its earlier decision in the case of CWT v. Kulbir Singh and Ors. WTA Nos. 7 to 22 of 2008 decided on 9th July, 2008, reiterated and directed the AO to adopt the value of the land on the basis of market price determined by the Collector on 17th Nov., 2000, vide award dt. 28th Nov., 2003, with respect to the land situated in village Sultanwind

(urban) and (sub-urban), in the relevant assessment years before acquisition.

8. Sequelly, the Tribunal, relying upon its another judgment in the case of CWT v. Amrit Lal Jindal & Sons WTA No. 39 of 1999 decided on 5th Nov., 2004, has held that the value of 25 kanals 6 marlas of land situated in village Sultanwind (urban) and (sub urban), 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 WT Act.

9. At the same time, the Tribunal has also held that as the solatium payable in terms of Section 23(2) of the LA 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 dt. 22nd Aug., 2008 (Annex. A3).

10. The Revenue still did not feel satisfied with the impugned order (Annex. 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 Tribunal 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 Tribunal 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 Tribunal 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 WT 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 ?

11. 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 the case of CIT v. Ghanshyam (HUF) (supra).

12. 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 WT Act, therefore, no interference is warranted in this respect. Learned Counsel has relied on the judgments of this Court in the cases of Commissioner of Wealth-tax Vs. S. Baldev Inder Singh, and CAT v. Nand Lal, Mohan Lal Etc. WT Appeal No. 55 of 2009, decided on 19th May, 2010 [reported at (2010) 232 CTR (P&H) 185- Ed.].

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

14. The bare perusal of the material on record would reveal that the original owner Soma Devi died on 12th May, 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 dt. 24th April, 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 17th Nov., 2000, the date of notification issued u/s 4 of the LA Act.

15. 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.

16. The main celebrated argument of the learned Counsel for the Revenue that the sale instance dt. 24th April, 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 CWT(A) as well as the Tribunal, after placing reliance on the earlier decision in Kulbir Singh"s case (supra), has rightly directed the AO to take the market price of the land in question, as determined by the Collector, for the purpose of wealth-tax.

17. The solitary sale instance dt. 24th April, 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, does 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.

18. The matter did not rest there. The Collector determined the adequate market price of the acquired land u/s 23 of the LA 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 Index Singh''s case (supra).

19. Therefore, it is held that the market price as determined by the Collector u/s 23 of the LA 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 Tribunal. No infirmity has been pointed out in the impugned order by the learned Counsel for the Revenue in this relevant direction.

20. Now adverting 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 LA 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 (Annex. A3) deserves to be and is hereby modified accordingly.

21. Again, it is not a matter of dispute that the land in question was acquired on 17th Nov., 2000 and State became its owner for all intends 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.

22. 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 WT Act and includible in the assets of relevant subsequent period of assessment or not ?

23. 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 IT 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 IT, 1961, is this. Section 45(5) was inserted w.e.f. 1st April, 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) w.e.f. 1st April, 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).

24. Be that as it may, as the learned Counsel for the Revenue has fairly acknowledged that there is no such parallel amendment in the WT Act as compared to Section 45(5) of the IT 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 WT 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.

25. 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 WT Act w.e.f. 1st April, 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.

26. Not only that, in the instant case, the Tribunal has noticed that it has been stated at the 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.

27. As is evident from the record that the assessee did not remain the owner of the land in question after its acquisition, vide notification dt. 17th Nov., 2000, which stood vested in the State for all intends and purposes. He was only entitled to receive the enhanced compensation, if any. As the mere right to receive the enhanced compensation docs not fall within the purview of assets, as envisaged u/s 2(ea) of the WT 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 dt. 15th Sept., 2009 of this Court in the case of Amrit Lal Jindal & Sons (HUF) v. WTO WT Appeal No. 12 of 2009 [reported as (2010) 228 CTR (P&H) 189 : (2009) 29 DTR (P&H) 33-Ed. 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 the case of CWT v. Amrit Lal Jindal & Sons, WT Appeal No. 11 of 2005, decided on 3rd March, 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.

28. 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.

29. In the light of the aforesaid reasons, it is held that the market price determined under the LA 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 WT 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.

30. For the reasons recorded above, the instant appeals are partly dismissed and partly allowed and the impugned order (Annex. A3) is accordingly modified, in the manner indicated hereinabove.