

(2009) 01 P&H CK 0245

High Court Of Punjab And Haryana At Chandigarh

Case No: WT Reference No. 38 of 1995 (O and M)

Commissioner of Wealth Tax,
Jalandhar

APPELLANT

Vs

Onkar Nath Prop.

RESPONDENT

Date of Decision: Jan. 14, 2009

Acts Referred:

- Wealth Tax Act, 1957 - Section 27, 35

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

Bench: Division Bench

Advocate: Sanjay Bansal, Ms. Namit Verma and K.K. Mehta, for the Appellant;

Judgement

M.M. Kumar, J.

This order shall dispose of WTR No. 38 of 1995 and WTR Nos. 1 to 4 of 1998. The assessee, through the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, "the Tribunal") has sought reference u/s 27 of the Wealth Tax Act, 1957 against the consolidated order dated 1-12-1997, passed by the Tribunal in WTA Nos. 197, 198 and 199 (ASR)/1993, in respect of assessment year 1985-86, 1986-87 and 1987-88. The following questions of law have been referred for the opinion of this Court:

1. Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was right in law in holding that value of the share if quoted in two recognized stock exchanges, value quoted by the nearest exchange is more rational and reasonable ?
2. Whether on the facts and in the circumstances of the case, the ITAT was right in holding that the issue involved is rightly covered u/s 35 of the Wealth Tax Act.
2. The total tax effect involved in these references is Rs. 6,056, Rs. 5,617 and Rs. 5,313, respectively. Ordinarily, we would have expressed an opinion on the question raised on account of small amount involved. In that regard, we have been following

the view taken by the Full Bench of this Court in the case of [Commissioner of Income Tax Vs. Aruna Luthra,](#)

3. However, Mr. Sanjay Bansal, learned senior counsel appearing for the assessee has stated that the revenue did not challenge order dated 16-10-2000 passed by the Tribunal in respect of the assessment year 1988-89 which has gone in favour of the assessee Onkar Nath and order dated 30-7-2001 in respect of the assessment year 1990-91 which has also been decided in favour of assessee Onkar Nath. According to the learned senior counsel, once the revenue had accepted view expressed by Tribunal, the principle of consistency should have been followed and the benefit of the order passed by the Tribunal in the aforementioned two orders should have been extended to the assessee. In that regard, he has placed reliance on the judgments of Hon"ble the Supreme Court in the cases of [Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta,](#) and CIT v. J.K. Charitable Trust [2008] 175 Taxman 251. Therefore, he has claimed that in cases, like the one in hand, where the assessee has approached the Court the question deserves to be answered against the revenue and in favour of the assessee.

4. Having heard the learned senior counsel, we are of the considered view that the submissions made by him are unexceptionable and deserve to be accepted. In J.K. Charitable Trust's case (supra), it has been held that the revenue would be precluded from filing an appeal when in respect of some other assessment year of the same assessee or different assessee involving identical dispute, no appeal has been filed. In para 17 of the judgment, it has been observed that if the fact situation in all the assessment years is the same, then the revenue would be precluded from the same disability.

5. In the present case also, the fact situation continues to be the same as was obtaining in respect of the assessment years 1985-86, 1986-87 and 1988-89. Therefore, following the principles of consistency as laid down in J.K Charitable Trust's case (Supra), in all these references the question deserve to be answered against the revenue and in favour of assessee. The references are disposed of accordingly.