

The Commissioner of Wealth Tax Vs The Trustees of HEH the Nizams Jewellery Trust

Court: Andhra Pradesh High Court

Date of Decision: Dec. 10, 2013

Citation: (2014) 361 ITR 668 : (2014) 225 TAXMAN 118

Hon'ble Judges: G. Chandraiah, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: S.R. Ashok, Assisted by Sri Sasidhar Reddy, for the Appellant; S. Ravi, Learned Senior Counsel, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G. Chandraiah, J.

As per the Orders of the Division Bench of this Court dated 09.11.1995 in W.T.C. Nos. 26 and 29 of 1994, the

following three questions of law have been referred, said to be arising out of the order of the Tribunal dated 25.02.1991, in W.T.A. No.

1432/Hyd/1989 for the assessment year 1982-1983, u/s 27(1) of the Wealth Tax Act, 1957 (in short "the Act").

1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in confirming the order of the Commissioner of the

Wealth Tax (Appeals) in so far as fixing the value of the beneficial interest in the corpus at 50% of the value fixed by the valuer on the alleged

grounds of uncertainties, hazards and risks of litigation, etc.?

2. Whether the Appellate Tribunal is justified in holding that the alleged uncertainties, hazards, risks of litigation and burden of tax liability, etc.,

pleaded by the assessee constituted factors for reduction of valuation upto 50% of the valuation fixed by the approved valuer?

3. Whether the Appellate Tribunal is justified in holding that the Wealth Tax Officer would be entitled to make further adjustments to the valuation

as determined by the Valuation Officer u/s 16A(5) of the Wealth Tax Act?

The issue involved in the order of the Tribunal is with respect of the remainder interest in the Jewellery Trust of the assessee, who is one of the

beneficiaries of the trust. The assessment of the interest of the assessee in turn was depending on the valuation of the jewellery, which was the asset

of the trust. The Tribunal disposed of the said appeal by following its own order for the assessment years 1980-81 and 81-82, which was reported

in (1990) 35 ITD 402 paragraph 106 of the said order, the Tribunal has recorded its opinion that the 1st appellate authority has correctly made a

deduction for adjustment on account of uncertainties, hazards and risk of litigation. The Tribunal also has referred to the factum of joint ownership,

cumulative burden of tax liabilities and various other uncertainties and held that the valuation adopted by the Departmental Valuer was rightly

reduced by 50% on account of these depressing factors, justifying such reduction of 50% in valuation.

2. Heard the learned Senior Counsel, Sri. S.R. Ashok assisted by Sri. Sasidhar Reddy, appearing for the Department and the learned Counsel, S.

Ravi assisted by Sri. S. Ravindra Chenji, appearing for the assessee.

3. Learned Senior Counsel for the Department has drawn the attention of this Court to the order of the Tribunal in W.T.A. Nos. 620 to

622/Hyd/88 and W.T.A. Nos. 672 and 753/Hyd/88 for the assessment years 80-81 to 81-82 (reported in (1990) 35 ITD 402 He would submit

that there is no basis for the Tribunal to give 50% reduction in valuation, in that view of the matter, it is submitted that inasmuch as u/s 16-A(5) of

the Act, the valuation as determined by the Valuation Officer is binding on the Wealth Tax Officer and in the absence of cogent reasons for

differing with the valuation as determined by the Wealth Tax Officer, giving of 50% discount in the valuation is totally unwarranted.

4. The learned Senior Counsel would refer to the Order of the Division Bench in W.T.C. No. 26 and 29 of 1994 dated 09.11.1995, wherein, this

Court observed as follows:

From these orders, the broad basis on which the Appellate Commissioner and the Tribunal ordered reduction of 50%, is no doubt discernible. But

still the question remains as to the effect of the alleged inhibiting factors and to what extent the deduction must be given on account of the

contingencies referred to by the assessee. As already noticed, the contentions were put forward on both sides in this regard and the Tribunal has

extensively referred to those contentions and recorded an omnibus finding at paragraph 106. We do not find the discussion and conclusion vis-

vis-à-vis the particular depressing factors pointed out by the assessee. There is no specific finding whether any or all of those factors did exist, how

far they were relevant and if so, to what extent they go to reduce the valuation.

5. On the other hand, Sri S. Ravi, learned Senior Counsel for the assessee would submit that the Tribunal has merely followed its earlier orders for

the Assessment Years 1980-81 and 81-82. He would point out that the said order remained unchallenged, whereunder after considering the

material on record and material placed before the Tribunal, the Tribunal came to the conclusion that reduction of 50% in value is required to be

made on account of various uncertainties surrounding sale of jewellery. He further submits that in the absence of challenge to the earlier Order of

the Tribunal dated 12.06.1990 whereunder the valuation of the asset has been arrived at a particular figure, it is not open to come to a different

conclusion without there being a specific challenge to the finding recorded by the Tribunal. He would further submit that these questions need not

be answered on account of the fact that they are pure questions of fact.

6. Having considered rival submissions, we desired to ascertain from the learned counsel for the Department whether any proceedings were

initiated, questioning the Order dated 12.06.1990 for the assessment years 1980-81, 81-82, the learned Senior Counsel for the Department was

not able to confirm, even after consulting the department officials, whether there was any appeal preferred by the Department.

7. On the other hand, the learned counsel for the Assessee, on instructions, from his client submitted that at no point of time the assessee had

received any notice about any case with respect to the Tribunal's order dated 12.06.1990. In those circumstances, we deem it that there was no

appeal, challenging the order of the Tribunal dated 12.06.1990. In the absence of challenge to the Order of the Tribunal, which was merely relied

on by the Tribunal in passing the orders, which were subject matter of the present reference case, whether the issue relating to the reduction of

50% in valuation of the asset can be challenged. Insofar as the Order of this Court in WTC Nos. 26 and 29 of 1994 is concerned, we should not

lose sight of the fact that they were made in the context of calling the Tribunal to refer the questions of law said to arise from the orders of the

Tribunal. While dealing with an application seeking to call for the reference of a question of law said to be arising from an order of the Tribunal, the

opinion expressed in a prima facie view and the examination of the order of the Tribunal is only for the purpose of coming to a conclusion about

whether a Question of law arises or not? As a matter of fact, consideration by the Court at that stage is perfunctory, and in the order the Division

Bench observed that ""the ultimate conclusion reached by the Tribunal may or may not be right. But we are unable to say that no debatable question

of law at all arises for the ostensible reason that a question of valuation is generally considered to be a factual question"". As a matter of fact the

Court had referred to its earlier order.

8. The learned counsel for the Assessee has drawn the attention of this Court to the judgments reported in Commissioner of Income Tax Vs.

Mohd. Bux Shokat Ali, and Commissioner of Income Tax Vs. Gnan Ganga Science Institution,

9. The Tribunal in its order dated 12.06.1990 had in fact approved the valuation which was determined by the Appellate Commissioner, who had

the benefit of going through the entire record placed before him. It is well settled that a finding of fact as recorded by the Tribunal is final and

binding on the High Court while answering a reference.

10. Learned counsel for the assessee also referred to the order of the Hon"ble Supreme Court dated 09-09-1996 in SLP No. 4195 of 1996 and

SLP No. 4665 of 1996.

11. As a matter of fact we may notice that when the order dated 10.11.1996 of this Court in W.T.C. No. 14 of 1993 was challenged before the

Hon"ble Supreme Court, the Hon"ble Supreme Court observed as under:

...some of the reasons given by the High Court in the order questioned herein do indicate as if the High Court has expressed its opinion on the

merits of the question. We see no basis for the said apprehension. It is obvious that the reasons given in the order questioned herein are merely the

reasons for directing the reference and do not amount to expression of the opinion on the merits of the questions.

12. We are completely in agreement with the Judgments cited supra 1 and 2 wherein it has been held that merely because a reference was called

for u/s 256(2) at a later stage, observations made at that stage are not conclusive and not binding on the Court while answering the reference. In

that view of the matter, the observations made by this Court while calling for reference of the questions in WTC No. 40 of 1994 are only prima

facie in nature and this Court while answering the questions may take entirely different view as it is, at that stage the facts and law relating to the

case in issue are considered in totality.

13. It is well settled by catena of judgments, that the Tribunal is the last fact finding authority and the High Court in exercise of its jurisdiction u/s 27

of the Act and Section 256 of the Income Tax Act has to accept the finding as recorded by the Tribunal as correct unless a specific question as to

the perversity of such finding of fact has been raised in the given case.

14. Question Nos. 1 and 2, relating to valuation of the asset in issue, in the present case are pure questions of fact. In view of the facts and in the

circumstances of the case, we deem it appropriate that the two questions are required to be answered in favour of the assessee and against

Revenue.

15. So far as 3rd question is concerned, we decline to answer the same in view of the fact that the Wealth Tax Officer had in fact adopted the

valuation as determined by the Valuation Officer and in that view of the matter the question does not arise from the order of the Tribunal and as

such the same is declined to be answered. Accordingly, this reference case is disposed of answering the Question Nos. 1 and 2 in favour of the

assessee and against the revenue. No order as to costs.