

(2002) 12 DEL CK 0088

Delhi High Court

Case No: Income Tax A. No. 244 of 2002

Pushpa Godhwani

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Dec. 3, 2002

Acts Referred:

- Wealth Tax Act, 1957 - Section 16A, 2

Citation: (2003) 179 CTR 540 : (2003) 260 ITR 582 : (2003) 128 TAXMAN 172

Hon'ble Judges: Mahmood Ali Khan, J; D.K. Jain, J

Bench: Division Bench

Advocate: Rakesh Gupta, for the Appellant; Prem Lata Bansal, for the Respondent

Judgement

D.K. Jain, J.

An order dated November 27, 2001, passed by the Income Tax Appellate Tribunal, Delhi Bench "F", New Delhi, in W. T. A. Nos. 71/Delhi of 1997 and 654/Delhi of 1996 pertaining to the assessment years 1991-92 and 1992-93 is under challenge in this appeal by the assessed u/s 27A of the Wealth-tax Act, 1957 (for short "the Act").

2. Briefly stated the background facts are :

In her return of wealth for the assessment year 1992-93, the assessed declared the value of her share in immovable properties, bearing Nos. 2137-2140 and 2152, Chuna Mandi, Paharganj, New Delhi, at Rs. 2.50 lakhs. However, while completing the assessment for the relevant assessment year, the Wealth-tax Officer adopted the value of the properties at Rs. 44,08,992. Being aggrieved, the assessed preferred an appeal before the Commissioner of Wealth-tax (Appeals), (for short "the CWT(A)"). Before the Commissioner of Wealth-tax (Appeals), it was argued on behalf of the assessed that a mere possession, unaccompanied by the right to be in possession or ownership of the property would not bring the said property within the ambit of Section 2(m) of the Act and, Therefore, the value of the said asset was not includible in her net wealth. In support of the proposition, reliance was placed on the decision

of the apex court in the case of [Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax, Hyderabad, .](#) Although the Commissioner of Wealth-tax (Appeals) noticed the said argument, but without expressing any view thereon, restored the matter of valuation of the said properties to the Assessing Officer, with the direction that he should refer the matter to the Valuation Officer u/s 16A of the Act.

3. Not being satisfied with the said remand, the assessed carried the matter in further appeal to the Tribunal. Since the grounds of appeal raised were in the narrative form, under directions of the Tribunal, fresh grounds of appeal were filed. One of the grounds urged was as under ;

"The Commissioner of Income Tax (Appeals) has erred in not appreciating the facts that the Paharganj property is unauthorized occupation of the assessed and the property is neither owned by the assessed nor it belongs to the assessed and as such does not fall within the definition of net wealth of the assessed u/s 2(m) of the Wealth-tax Act."

4. The Tribunal, while upholding the order of the Commissioner of Wealth-tax (Appeals) declined to go into the question whether the said property was an "asset" in the hands of the assessed includible in her net wealth, on the ground that in the grounds of appeal there was no specific challenge to the inclusion of the value of the property in the net wealth and further no permission was sought for admission of an additional ground in that behalf. Thus, the Tribunal rejected the plea of the assessed that the value of the subject property could not be included in her net wealth. Hence, the present appeal.

5. The assessed has raised the following questions, stated to be substantial questions of law :

"(A) Whether the Tribunal was justified in holding that the issue as to the value of the property was not at all liable to be included in the net wealth, was not raised before the Commissioner of Wealth-tax (Appeals) and Therefore, this ground does not arise out of the order of the Commissioner of Wealth-tax (Appeals) ?

(B) Whether the Tribunal was justified in holding that the issue as to the very taxability of value of impugned property was not covered by the ground of appeal taken before the Tribunal ?

(C) Whether the Tribunal was justified in not giving a relief even though the assessed was entitled to the relief and even if there is no plea raised on behalf of the assessed. Whether the Tribunal was justified in stopping the assessed from pleading on the ground that the value of impugned property was shown in the return by the assessed herself even though nothing was includible in net wealth in respect of impugned disputed property in view of the decision of the Supreme Court in the case of [Late Nawab Sir Mir Osman Ali Khan Vs. Commissioner of Wealth Tax,](#)

[Hyderabad, ?](#)

(D) Whether the Tribunal was justified in law in holding the value of the impugned disputed property includible in the net wealth ?"

6. We have heard learned counsel for the parties. It is submitted by learned counsel for the assessed that the Tribunal's observation that no specific challenge to the inclusion of the said property in her net wealth was laid before it or before the Commissioner of Wealth-tax (Appeals) is *ex facie* erroneous. To buttress the argument, learned counsel has referred us to the grounds of appeal filed before both the appellate authorities.

7. We find force in the submission of learned counsel for the assessed. Though it is true that in the original grounds of appeal filed by the assessed before the Tribunal there was no precise and clear ground on the issue except a factual averment that the ownership of the property is in dispute, in the revised grounds, filed as per the directions of the Tribunal a specific and precise ground on the issue was raised. Once the Tribunal entertained the revised grounds of appeal, it was incumbent upon it to take into consideration all the grounds urged in the appeal memo. Similarly, from a bare reading of the order of the Commissioner of Wealth-tax (Appeals) it is clear that the issue of inclusion of the said asset in her net wealth was specifically raised before the Commissioner of Wealth-tax (Appeals), but he failed to return any finding on the same. We are of the view that, strictly speaking, Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963, was not applicable on the facts in hand, and, Therefore, the Tribunal's observation that no permission was sought to urge the additional ground is untenable. The Tribunal has been too technical in dealing with the issue.

8. In our opinion, Therefore, the Tribunal was not correct in law in declining to consider the aforementioned issue raised by the assessed. Having held so, two options are available to us, namely :, (1) to remit the matter back to the Tribunal to consider the issue of inclusion of the said asset in the net wealth of the assessed, or (2) to direct the Assessing Officer to consider the objection of the assessed on that score. We feel that to cut short the life of litigation, it would be better to go in for the second option, particularly when the matter with regard to the valuation of the subject property has already been restored to the file of the Assessing Officer. Accordingly, we set aside the impugned order to that extent and direct that it will be open to the assessed to urge before the Assessing Officer the issue of inclusion of the said asset in her net wealth. Needless to add that remission of the issue to the file of the Assessing Officer shall not be construed as expression of opinion on the merits of the assessed's claim.

9. The appeal stands disposed of in the above terms with no orders to pass.