

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 70 OF 2003

1. Kishindas Ramchand Nagpal
C/o. Idnani & Idnani Advocates
53-A, Mittal Tower,
Nariman Point, Mumbai-400 021.

....Appellant

: V E R S U S :

1. Asst. Commissioner of Wealth Tax
Inv. Circle 27(1), Mumbai
having his office at Piramal Chambers,
Lalbaug, Parel, Mumbai-400 012.

2. Commissioner of Wealth-Tax, XXIX,
Mumbai City, having his office at
Piramal Chambers, Lalbaug, Parel,
Mumbai-400 12.

....Respondents

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Mr. M.B. Idnani with Mr. P.C. Tripathi, Advocate for the
appellant.

Mr. Sham Walve, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

JUDG. RESD. ON : 19TH JULY, 2018.

JUDG. PRON. ON : 27TH JULY, 2018.

JUDGMENT (PER : SANDEEP K. SHINDE, J) :-

1. This Appeal filed under Section 27A of the Wealth Tax Act, 1957 relates to Assessment Year 1992-93 against the order dated 29th April, 2002 passed in Wealth Tax Appeal No. 154/MUM/1997 by the Income-Tax Appellate Tribunal, Mumbai. The Appeal was admitted vide order dated 24th March, 2009 on the following question :

“Whether on the facts and circumstances of the case and in law the Appellate Tribunal was justified in holding, despite the legal opinion to the contrary, that a Blank Bill of Exchange is a document pregnant with value and whether such value is the market value of the asset on the valuation date i.e. 31.3.92 ?”

2. In the return of wealth filed on 31st August, 1992 the appellant-assessee declared total wealth of Rs.16,67,926/-. It consisted, inter-alia, of Capital of Rs.10,47,926/- and deemed income declared voluntarily of Rs.6,20,000/-. The deemed income showed in the return filed represents unaccounted income declared on account of seizure of unaccounted Bills of Exchange at the time of search. The assessee was asked to explain why unaccounted income actually determined on account of unaccounted Bills of Exchange after giving effect to Income Tax Appellate Tribunal's order for Assessment Year 1992-93 in income-tax proceedings at Rs.30,99,375/- should not be substituted against the sum of Rs.6,20,000/-

3. The Wealth Tax Officer, by order dated 30th March, 1995 passed the assessment order making the following additions to the wealth declared;

- (a). unaccounted wealth on account of seized hundis on the basis of Tribunal's findings-

Rs.30,99,375/-.

(b) cash found but not seized of Rs.24,000/-.

. Thus, assessing the appellant to tax on Rs.41.27 lacs of wealth by assessment order dated 30th March, 1995.

4. Being aggrieved by the order dated 30th March, 1995 of the Wealth Tax Officer, the appellant filed appeal to the Commissioner of Wealth Tax (Appeals) XXIX, (CWT(A)), Bombay. By order dated 19th November, 1996, the CWT (A), dismissed the appellant's appeal.

5. The appellant being aggrieved by the order passed by the CWT (A) dated 19th November, 1996 had preferred an Appeal to the Income Tax Appellate Tribunal being WTA No. 154/MUM/1997. The Tribunal vide order dated 29th April, 2002 partly allowed the appeal by reducing the value of seized hundies by 25% while rejecting the appellant's contention that, it should be valued at Rs.6,20,000/-. It is against the above rejection, the present appeal is preferred.

6. Heard Mr. Idnani, Learned Counsel for the appellant and Mr. Walve, for the respondent.

7. The issue relates to sustenance of addition towards the unaccounted wealth on the basis of the seized hundis. It appears, the premises of the assessee were searched on 21st January, 1990 and the assessee being a Finance Broker, 911 blank hundis were found. The matter travelled upto the Tribunal in income-tax proceedings. That for the Assessment Year 1992-93, a sum of Rs.30,99,375/- was sustained by the Income-Tax Appellate Tribunal on account of undated Bills of Exchange in income-tax proceedings. The Tribunal considered all the factual details and as such the value of Blank Bills of Exchange/hundis found during the search operations, was held to be liable for tax in the hands of the assessee in the proceedings under the Income-Tax Act. Consequently, additions to the above extent were maintained even by Tribunal in income-tax proceedings.

8. It appears before the Tribunal, in the income-tax proceedings, the assessee had filed affidavits of the borrowers and denied the receipts and loans confirmation. These affidavits were rejected by the Tribunal having found there was enough material evidence, that the assessee had advanced money to these persons. In the proceedings before the Appellate Tribunal in the wealth tax proceedings, such Affidavits were also examined by the Tribunal and held that no credence can be attached to these Affidavits. Resultantly, the Tribunal in the wealth-tax proceedings upheld the order of the CIT (Appeals) and sustained the additions on this ground, after discounting the value determined by the Tribunal in income-tax proceedings by 25%.

9. The alternate ground advanced by the assessee before the Tribunal was that, in the given set of facts, the market value of the asset i.e. of hundis/Bills of Exchange has to be taken at Rs.6,20,000/- as declared.

10. Mr. Idnani, Learned Counsel for the appellant has taken us through the order passed by the authorities and in particular the finding recorded by the Tribunal in para-6 of the impugned order. Mr. Idnani, would submit that, the Tribunal being the last fact finding forum, has recorded a finding that such hundis and the Bills of Exchange were “inchoate” negotiable instruments and the realisation of the actual value of such Bills of Exchange/hundis was not possible. He would thus submit that the Bills of Exchange/hundis having been found of no actual value, the Tribunal ought to have held that such hundis/Bills of Exchange being inchoate negotiable instruments, had no market value. He submits that provision of Section 7 of the Wealth Tax Act, regulates how the value of the asset is to be determined and thus has taken us through the provisions of Section 7, as well as, Rules namely “Rules for determination of the value of the Assets” appended to Schedule-III of the Act. Mr. Idnani, would therefore submit, that the authorities below,

including the Tribunal have committed an error by taking recourse to the proceedings under the Income-Tax Act for determining the value of such hundis/Bills of Exchange under the Wealth Tax Act. He would further submit that, once the Tribunal which being last fact finding Court, once concludes that such Bills of Exchange/hundis were inchoate negotiable instruments and had no realisation value, it ought to have not taken recourse to the value of such inchoate instruments determined in the proceedings under the Income-Tax Act. On this premise, he would submit that the orders passed by the Tribunal, upholding the order of CWT (Appeals) be quashed and set aside.

11. On the other hand, Mr. Walve, Learned Counsel appearing for the respondent-Revenue, has supported the orders and the findings recorded by the authorities under the Wealth Tax Act, as well as, supported the order passed by the Tribunal against which this Appeal is preferred.

12. Section 7 of the Wealth Tax Act reads as under :

“7. (1) Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule-III.”

. Thus the value of asset for the purposes of this Act is to be determined strictly in terms of the provisions of this Section and not by any other mode. Rule 14 of Schedule-III of the Wealth Tax Act provides that the value of any asset in its books should be taken as the value for wealth tax purposes. In the case in hand, the Wealth Tax Officer, CWT (Appeals), as well as, the Tribunal has not done the aforesaid exercise, but instead adopted value of such inchoate instruments as found in the proceedings under the Income-Tax Act. In our view, the mode adopted to determine the value of the Bills of Exchange/hundis by the authorities under the Wealth Tax Act, as well as, by the Tribunal was contrary to the provisions of Section 7 of the Wealth-Tax Act.

13. That even otherwise, the Tribunal in para-6 of the impugned order, has recorded the finding in the following terms :

“Coming now to the alternate ground, we find that the contention of the assessee is correct. In our opinion, the market value of the asset ought to be appropriately discounted. We have noted that these were the inchoate, negotiable instruments. Litigation was pending. Asset was in the possession of the Department. Realisation of the actual value was not possible. Ends of justice would meet adequately if some discount is allowed for ascertaining the value, which the property would fetch if sold in the open market. In our opinion, in the facts and circumstances of the present case, 25% from the value as adopted for wealth-tax purposes on account of depressing factors and to modify the assessment accordingly.” (emphasis supplied)

In view of the aforesaid discussion, we answer the question in negative i.e. in favour of the assessee and

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against the Revenue.

14. Accordingly, **Appeal allowed.**

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)

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Shailesh
Sawant

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by Neeta
Shailesh
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2018.08.14
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