

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

WTA No. 01 of 2009.

Reserved on: 31.10.14

Decided on: 19.11.2014.

Amin Chand Mehta

Versus

Commissioner of Wealth Tax

.....Appellant.

.....Respondent.

Coram

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? ¹ Yes.

For the appellant:

Mr. Vishal Mohan, Advocate.

For the respondent:

Mr. Diwan S. Negi, Advocate, vice Ms. Vandana Kuthiala, Advocate.

Justice Rajiv Sharma, J.

This appeal is instituted by the appellant-assessee against the order rendered by the learned Income Tax Appellate Tribunal in WTA Nos. 49 to 54/Chd/2008 dated 30.1.2009.

2. The appeal was admitted on the following substantial questions of law:

“1. Whether the ld. Tribunal is right in law in holding that agricultural land within the municipality are subjectable to Wealth Tax being a part of the assets as defined under Section 2 (ea) of the Wealth Tax Act?

2. Whether in law the ld. Tribunal is right in holding that land covered by trees on which construction for the time being is not possible well within the definition of assets for the levy of Wealth Tax Act even though construction was not possible on the valuation date?

3. Whether land on which construction is not possible, being covered by trees possesses market value that too similar to that of the lands on which construction is possible?”

¹ Whether reporters of the local papers may be allowed to see the judgment?

3. Key facts, necessary for the adjudication of this appeal are that the notice was issued to the appellant under Section 17 of the Wealth Tax Act, 1957. He filed reply/return to the same. The assessment order was passed by the Wealth Tax Officer against the appellant on 27.12.2006. He preferred appeal against the order dated 27.12.2006 before the Commissioner of Wealth Tax (Appeals), Shimla. The Commissioner of Wealth Tax (Appeals), Shimla, dismissed the same on 22.9.2008. The appellant challenged the order dated 22.9.2008 before the Income Tax Appellate Tribunal, Chandigarh Bench 'B'. The Income Tax Appellate Tribunal, Chandigarh Bench 'B', dismissed the same on 30.1.2009. Hence, this present appeal.

4. Mr. Vishal Mohan, Advocate, for the appellant has vehemently argued that the impugned land is agriculture land and does not fall within the definition of "urban land". In other words, his submission is that it was beyond the purview of Wealth Tax. He also argued that the trees are standing on the land, thus the construction was not possible without seeking permission from the statutory authorities. He has also relied upon the demarcation report carried out by the Assistant Collector, Shimla (Urban) on 14.3.2008, whereby the land was found to be covered by trees. He lastly contended that the land on which the trees are standing cannot be used for construction purpose without seeking permission of the competent authority. On the other hand, learned counsel for the department has supported the orders passed by the learned authorities below.

5. We have gone through the orders passed by the Wealth Tax Officer dated 27.12.2006, Commissioner of Wealth Tax

(Appeals) dated 22.9.2008 and Income Tax Appellate Tribunal, Chandigarh Bench, dated 30.1.2009. The appellant has also placed on record the copy of the *jamabandi* in respect of the agricultural/non-agricultural land owned by the appellant.

6. Mr. Vishal Mohan, Advocate, for the appellant has drawn the attention of this Court to the amendment carried out in Section 2 (ea)(b) retrospectively w.e.f 1.4.1993, as per the Finance Act, 2013. It reads as under:

“2 (ea)(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 kilometers 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, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette,

but does not include land classified as agricultural land in the records of the Government and used for agricultural purposes or 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.”

7. It is evident from the amendment carried out retrospectively that the land classified as agricultural land in the records of the government and used for agriculture purposes or land on which construction of building is not permissible under any law for the time being in force, in the area in which the land is situated, would not fall within the ambit of expression “urban area”. The land of the assessee is agricultural land though situated in the municipal limits of M.C. Shimla. No construction is permissible in the forest land without the permission of the Municipal Corporation Building Bye-laws and Town and Country Planning Act.

8. In the case of **Commissioner of Wealth Tax versus D.C.M. Ltd.**, reported in **(2007) 290 ITR 615 (Delhi)**, the Hon’ble Division Bench has held that once the land or any building thereupon making it a combination of land and building is not urban land, then it could not be an asset as defined under Section 2(ea) of the Act. Their lordships also held that the “urban land” would not include land, on which construction of a building is not permissible under any law for the time being in force in the area whether the land is situated or land occupied by any building. The intention of the legislature appears to be that the land which falls within this exception would have to be excluded from the ambit and scope of the expression “urban land”.

9. Thus, the land owned and possessed by the appellant-assessee would not fall within ambit of the Section 2(ea)(b) and the learned Authorities were also not right in coming to the conclusion that the construction was possible on the lands covered by the trees. The land on which the trees are standing cannot be treated at par for the purpose of market value with the land on which the construction is possible. The land on which the trees are standing, construction is not possible without seeking permission from the competent authorities and thus the market value of this land would be lower. The substantial questions of law are answered accordingly.

10. Consequently, the appeal is allowed. Order dated 30.1.2009, rendered by the learned Income Tax Appellate Tribunal, Chandigarh, is set aside. The proceedings initiated against the appellant are dropped.

(Rajiv Sharma),
Judge.

November 19, 2014,
(karan)

(Sureshwar Thakur),
Judge.