

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

WTAs No. 1, 2, 3 & 4 of 2001

Date of decision : April 8, 2008

Commissioner of Wealth Tax ...Appellant

Versus.

Raghunath Singh Thakur ...Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge .

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

Whether approved for Reporting ? Yes

For the Appellant : Mr. Vinay Kuthiala, Advocate.

For the Respondent: Mr. K.D.Sood, Advocate.

Deepak Gupta, J (Oral).

This judgment shall dispose of four appeals since all the appeals are admitted on the following two common substantial questions of law:-

1. "Whether on the facts and in the circumstances of the case the ITAT was right in law in holding that where the assessee's figures are supported by valuation report of Registered Valuer & Wealth Tax Officer has not made a reference to the Valuation cell, then the assessee's figures are required to be accepted?
2. Whether on the facts and in the circumstances of the case the ITAT was right in law in holding that the sale consideration of plot 'A' would not be relevant for purpose of determining the valuation of the adjoining plot i.e. 'B'

vis-à-vis the assessment years 1987-88 and 1988-89 and subsequent Asstt. Year 1989-90 & 1990-91?"

In our opinion, the second question is consequential to the first question and if we decide the first question in favour of the assessee and against the revenue, the second question would not arise at all, it being more in the nature of a question of fact.

The assessee was in possession of an estate known as 'Combermere'. Out of this estate, he sold one plot measuring 90 sqr yards in November 1988, for a consideration of Rs. 30.50 lacs. The agreement to sell had been entered into on 28.8.1987. According to the assessee, this was his best plot and the remaining two plots were not of the same valuation and he disclosed much lower valuation for the other two plots 'B' and 'C' measuring 1375 and 850 sqr. yards, respectively.

The assessee, in respect of his returns for the assessment years 1987-88, 1988-89, 1989-90 and 1990-91 had submitted the valuation of registered valuer in respect of plot 'B' which was valued at Rs. 5, 47,800/-. The Assessing Officer did not agree with this valuation and valued plot 'B' at Rs. 29,50,115/- and plot 'C' at Rs. 20,45, 800/-.

In this case, we are only concerned with one question. Whether the Assessing Officer could reject the report of the registered valuer relied upon by the assessee without referring the matter to the valuation cell of the revenue and was bound to accept the figures produced by the assessee?

The question which arises for consideration is whether it is a mandatory for the Wealth Tax Officer to obtain report of the Valuation Officer or he can make the valuation of the property on his own estimation.

Section 16A(1) of the Wealth Tax Act, 1957 reads as follows:

“16A. Reference to Valuation Officer

(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, [where under the provisions of section 7 read with the rules made under this Act, or, as the case may be, the rules in Schedule III, the market value of any asset is to be taken into account in such assessment,] the 80[Assessing Officer] may refer the valuation of any asset to a Valuation Officer—

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the 80[Assessing Officer] is of opinion that the value so returned is less than its fair market value ;

(b) in any other case, if the [Assessing Officer] is of opinion.”

The department issued a circular on 29.11.1972 which obviously is binding on the revenue. Para 35 of the circular, deals the Section 16A of the Wealth Tax Act. The circular specifically mentions thus:-

“35.....In cases covered by section 16A(1), it will be incumbent on the Wealth-tax Officer to refer the valuation of the asset in question to the Valuation Officer and it will not be open to him to decide the question of valuation on his own.”

There is no manner of doubt that this circular is binding upon the department. It was clearly held by the Apex Court in **K.P.Varghese v. Income-Tax Officer, Ernakulam and another**, [1981] 131 I.T.R. 597 that the Wealth-tax Officer is bound by such circular.

The Delhi High Court considered the provision of Section 16A in **Sharbati Devi Jhalani v. Commissioner of Wealth-Tax, Delhi-VII and others**, [1986] 159 I.T.R. 549 and held as follows:-

".....In the context in which the word "may" is used in section 16A, we have no doubt that where there is a question of conflict of opinion with regard to the value of a particular asset, then the word "may" has to mean "shall" and, on being called to do so, the Wealth-tax Officer has to refer the question of valuation of the asset to the Valuation Officer."

The Delhi High Court also referred to the circular in the aforesaid judgment and held that the revenue could not contend that the provisions of Section 16A are not mandatory. Similar view has been taken by the Punjab and Haryana High Court in **Raj Paul Oswal v. Commissioner of Wealth-Tax**, wherein it held as follows:-

"In our view, there is no merit in the stand in the stand taken on behalf of the Revenue. In our view, the provisions of section 16A(1), clause (b), when read with rule 3B, *ibid*, mandatorily require the Wealth-tax Officer to make a reference."

Similar view has been taken by the Delhi High Court in **Commissioner of Wealth-tax v. L.N.Ahuja** [2000] 159 Taxation 446 (Del).

It is obvious that the legislative intent was not to give unbridled discretion to the Wealth-tax Officer whether to make a reference to the Valuation Officer or not. No doubt, the word “may” has been used. However, keeping in view the context in which it has been used and the nature of clauses (a) & (b) of sub section (1) of Section 16A, there can be no manner of doubt that the intention of the legislature was that the Wealth-tax Officer was bound to make a reference to the Valuation Officer if he did not agree with the report of the registered valuer relied upon by the assessee.

We are of the considered view that while interpreting the section we must take into consideration the power vested with the authority as in the present case is Wealth-tax Officer. It cannot be left to the sole discretion of the Wealth-tax Officer to make a reference to the Valuation Officer in some cases and in other cases to evaluate the property by following his own formula. We are in respectful agreement with the judgments of the Delhi High Court and Punjab & Haryana High Court referred to above and answer the first question against the revenue and in favour of the assessee. The second question need not be answered since it is only an ancillary question.

In view of the above discussion, we find no merit in the
aforesaid appeals which are accordingly dismissed. ◇

(Deepak Gupta), J.

April 8 , 2008

(Rajiv Sharma), J.

s.