



IN THE HIGH COURT OF DELHI

ITA No.244/2002

Date of Decision : 03 December 2002.

PUSHPA GODHWANI Appellant.

Through : Mr.Rakesh Gupta, Advocate.

V E R S U S

THE COMMISSIONER OF INCOME TAX Respondent.

Through : Ms.Prem Lata Bansal, Advocate.

CORAM:-

HON'BLE MR.JUSTICE D.K.JAIN, J

HON'BLE MR.JUSTICE MAHMOOD ALI KHAN, J

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest

D.K.JAIN, J (ORAL) -

An order dated 27 November 2001 passed by the Income Tax Appellate Tribunal, Delhi Bench 'F', New Delhi in WTA Nos.71/Del/97 and 654/Del/96 pertaining to the assessment years 1991-92 & 1992-93 is under challenge in this appeal by the assessee under Section 27A of the Wealth Tax Act, 1957 (for short the Act).

Briefly stated the background facts are:

In her return of wealth for the assessment year 1992-93, the assessee 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 assessment for the



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relevant assessment year, the Wealth-tax Officer adopted the value of the properties at Rs.44,08,992/-. Being aggrieved, the assessee preferred an appeal before the Commissioner of Wealth Tax (Appeals), (for short 'the CWT(A)'). Before the CWT(A), it was argued on behalf of the assessee that a mere possession, unaccompanied by the right to be in possession or ownership to 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 Sir Mir Usman Ali Khan Vs. Commissioner of Wealth Tax (A), (1986) 162 ITR 888. Although the CWT (A) 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 under Section 16A of the Act.

Not being satisfied with the said remand, the assessee 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:-



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"The Hon'ble CIT(A) has erred in not appreciating the facts that the Paharganj property is unauthorized occupation of the assessee and the property is neither owned by the assessee nor it belongs to the assessee and as such does not fall within the definition of net wealth of the assessee under Section 2(m) of the Wealth Tax Act."

The Tribunal, while upholding the order to the CWT(A) declined to go into the question whether the said property was an "asset" in the hands of the assessee 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 assessee that the value of the subject property could not be included in her net wealth. Hence the present appeal.

The assessee has raised the following questions, stated to be substantial questions of law:-

"A) Whether 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 Commissioner of Wealth Tax(A) and therefore this ground does not arise out of the order of Commissioner of Wealth Tax(A).

B) Whether 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 Tribunal.

C) Whether Tribunal was justified in not giving a relief even though assessee was entitled to the relief and even if there is



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no plea raised on behalf of assessee. Whether Tribunal was justified in estopping the assessee from pleading on the ground that the value of impugned property was shown in the return by the assessee herself even though nothing was includible in net wealth in respect of impugned disputed property in view of the decision of Hon'ble Supreme Court in the case of Nawab Sir Mir Osman Ali Khan Vs. CWT 162 ITR 888.

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

We have heard learned counsel for the parties. It is submitted by learned counsel for the assessee 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 CWT(A) is ex-facie erroneous. To buttress the argument, learned counsel has referred us to the grounds of appeal filed before both the Appellate authorities.

We find force in the submission of learned counsel for the assessee. Though it is true that in the original grounds of appeal filed by the assessee 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, but 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



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into consideration all the grounds urged in the appeal memo. Similarly, from a bare reading of the order of the CWT(A) it is clear that the issue of inclusion of the said asset in her net wealth was specifically raised before the Commissioner, 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 application on the facts in hand, and therefore, Tribunal's observation that no permission was sought to urge additional ground is untenable. The Tribunal has been too technical in dealing with the issue.

In our opinion therefore, the Tribunal was not correct in law in declining to consider the aforementioned issue raised by the assessee. 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 assessee or (2) to direct the assessing officer to consider the objection of the assessee 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



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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 assessee 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 assessee's claim.

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


D.K. JAIN, J


MAHMOOD ALI KHAN, J

DECEMBER 03, 2002

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