



13

HIGH COURT OF DELHI : NEW DELHI+ **WTA No.9 of 2002**Judgement reserved on: January 06, 2005% Judgement delivered on: February 3rd, 2005# Commissioner of Wealth Tax
Delhi (Central-II), New Delhi ...Appellant! Through Mr. Sanjeev Khanna with
Mr. R.D. Jolly, Ms. Prem
Lata Bansal and
Ms. Rashmi Chopra,
Advs.

Versus

\$ M/s R.K.K.R International Pvt. Ltd.
Jeevan Tara Building,
5, Parliament Street
New Delhi ...Respondent^ Through Mr. C.S. Aggarwal, Sr.
Adv.with Mr. Prakash
Kumar and Mr. Aman
Jain, Advs.



14

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR**
HON'BLE MR. JUSTICE MADAN B. LOKUR

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

* **MADAN B. LOKUR, J.**

For orders, see WTA No.4/1999.

Madan Lokur
 (Madan B. Lokur)
 Judge

February 3rd, 2005
 ncg

Swatanter Kumar
 (Swatanter Kumar)
 Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.

Lokur
 WTA No.9 of 2002

PS
5-2-05

page 2 of 2



HIGH COURT OF DELHI : NEW DELHI

(16)

+ **WTA No.4 of 1999**

Judgement reserved on: January 6, 2005

% Judgement delivered on: February 3rd, 2005

**Commissioner of Wealth Tax
Delhi-III, New Delhi**

...Appellant

! Through **Mr. Sanjeev Khanna with
Mr. R.D. Jolly, Ms. Prem Lata
Bansal and Ms. Rashmi Chopra,
Advs.**

Versus

\$ **M/s Allied Finance Pvt. Ltd.
5, Parliament Street
New Delhi**

...Respondent

^ Through **Mr. C.S. Aggarwal, Sr. Adv.
with Mr. Prakash Kumar and
Mr. Aman Jain, Advs.**

Coram:

* **HON'BLE MR. JUSTICE SWATANTER KUMAR
HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether the Reporters of local papers may
be allowed to see the judgement?

Yes



21

2. To be referred to Reporter or not? Yes
3. Whether the judgement should be reported in the Digest? Yes

* MADAN B. LOKUR, J.

It is often said, though mistakenly, that consistency is the virtue of fools. The complete lack of it by the Revenue (as the facts of this batch of cases demonstrates) really puts the theory to an acid test.

2. Three companies, M/s Allied Finance Pvt. Ltd., M/s R.K.K.R. Industries Pvt. Ltd. and M/s R.K.K.R. International Pvt. Ltd. purchased property bearing No. 12, Aurangzeb Lane, New Delhi by a sale deed dated 22nd July 1972 for a sum of Rs. 8,00,000/-. It was then let out to two directors of these companies at Rs. 22,500/- per month.



3. When the question of valuing the property came up before the Wealth Tax Officer, for the relevant assessment year 1985-86, he was of the view that it should be valued at Rs. 7,50,00,000/-. Since the assessee was 1/3rd owner of the property, its net wealth was valued at Rs. 2,50,00,000/-.

4. Feeling aggrieved, all three companies filed appeals before the Commissioner of Wealth Tax (Appeal) [for short CWT (A)] who was of the view that the value of the property should be calculated on the basis of its annual letting value worked out in the income tax assessment.

5. The Revenue challenged the order of the CWT (A) before the Income Tax Appellate Tribunal (ITAT). By the impugned order dated 1st January 1999 the ITAT disposed of the appeal on the basis of its earlier order dated 4th May 1998 and directed the



assessing officer to adopt the value of the property on the basis of its municipal valuation.

6. The Revenue has preferred the present appeal under Section 27-A of the Wealth Tax Act directed against the order of the ITAT dated 1st January 1999, which follows the order dated 4th May 1998.

7. Learned counsel for the Respondent placed before us a chart (which we have since completed on the basis of all pending cases) indicating how the Revenue has dealt with similar orders of the ITAT in respect of each of the three companies for various assessment years. This chart makes for some rather interesting reading.



Assessment Year	Allied Finance Pvt. Ltd	R.K.K.R. Industries Pvt. Ltd.	R.K.K.R. International Pvt. Ltd.
1984-85	No appeal against ITAT order of 18 th May 1998	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998
1985-86	<i>WTA No.4/99</i> filed against order of ITAT dated 1 st January 1999 [following order dated 4 th May 1998]	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998
1986-87	No appeal against ITAT order of 18 th May 1998	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998
1987-88	No appeal against ITAT order of 18 th May 1998	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998
1988-89	No appeal against ITAT order of 18 th May 1998	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998
1989-90	No appeal against ITAT order of 18 th May 1998	No appeal against ITAT order of 4 th May 1998	No appeal against ITAT order of 4 th May 1998



1990-91	WTA No. 7/02 filed against order of ITAT dated 3 rd April 2001 [following order dated 4 th May 1998]	WTA No. 6/02 against order of ITAT dated 12 th May 2000 [following order dated 4 th May 1998]	WTA No. 8/02 filed against order of ITAT dated 12 th May 2000 [following order dated 4 th May 1998]
1991-92	No information	No information	WTA No. 9/02 against order of ITAT dated 13 th June, 2001 [following orders dated 4 th and 18 th May 1998]
1992-93	WTA No. 12/03 filed against order of ITAT dated 19 th December 2002 [following orders dated 4 th and 18 th May 1998]	WTA No. 1/03 filed against order of ITAT dated 21 st September 2001 [following order dated 4 th May 1998]	WTA No. 21/02 filed against order of ITAT dated 21 st September 2001 [following order dated 4 th May 1998]
1993-94	WTA No. 13/03 filed against order of ITAT dated 19 th December 2002 [following orders dated 4 th and 18 th May 1998]	WTA No. 2/03 filed against order of ITAT dated 21 st September 2001 [following order dated 4 th May 1998]	WTA No. 22/02 filed against order of ITAT dated 21 st September 2001 [following order dated 4 th May 1998]



1994-95	WTA No. 11/03 against order of ITAT dated 19 th December 2002 [following orders dated 4 th and 18 th May 1998]	No information	No information
1995-96	WTA No. 10/03 filed against order of ITAT dated 19 th December 2002 [following orders dated 4 th and 18 th May 1998]	WTA No. 6/04 filed against order of ITAT dated 10 th December 2002 [following orders dated 4 th and 4 th May 1998]	No information
1996-97	WTA No. 5/04 filed against order of ITAT dated 17 th September 2003 [following orders dated 4 th May 1998]	No information	No information
1998-99	WTA No. 16/04 filed against order of ITAT dated 22 nd April, 2004 [following order 18 th May, 1998]	No information	No information



1999-2000	No information	WTA No. 27/04 filed against order of ITAT dated 5 th May, 2004 [following order dated 4 th May 1998]	No information
2000-2001	WTA No. 7/05 filed against order of ITAT dated 5 th May, 2004 [following order dated 4 th May 1998]	No information	No information

8. A perusal of the above chart clearly shows that the basic orders in all these appeals are the orders of the ITAT dated 4th May 1998 and 18th May 1998. These two basic orders have merely been followed by the ITAT while deciding all subsequent appeals. The Revenue has accepted the correctness of these two basic orders and has not filed any appeal against them; it has only challenged subsequent orders, which follow these two orders. To say the least, this is a rather anomalous situation, and we are called



upon to act upon it. Fortunately, we have the benefit of some decisions of the Supreme Court that makes our task quite simple.

9. In *Union of India vs. Kaumudini Narayan Dalal, (2001) 249 ITR*, what was challenged by the Revenue was an order which merely followed an earlier decision of the High Court in the case of *Pradip Ramanlal Sheth vs. Union of India, (1993) 204 ITR 866*. The Supreme Court noted that no appeal had been filed against the decision in *Pradip Ramanlal Sheth*. Consequently, it was held that:-

“It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assesseees without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal.”



10. The same Bench reiterated its view in respect of an identical matter in *Union of India vs. Satish Panalal Shah*, (2001) 249 ITR 221.

11. In *Berger Paints India Ltd. vs. CIT*, (2004) 266 ITR 99, the Supreme Court noted the decision in *Kaumudini Narayan Dalal* and also referred to *CIT vs. Narender Doshi*, (2002) 254 ITR 606 and *CIT vs. Shiv Sagar Estate*, (2002) 257 ITR 59 and held that:-

“.....the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause.”

12. Earlier, in *Radhasoami Satsang vs. CIT*, (1992) 193 ITR 321, the Supreme Court noted that the principle of *res judicata* does not apply to income-tax proceedings, since each assessment



year is a unit by itself. But, at the same time, where there is a fundamental aspect permeating through different assessment years and the authorities have allowed that position to be sustained, it would not be appropriate to allow the position to be changed in a subsequent year. In arriving at this conclusion, the Supreme Court referred to a Full Bench decision of the Madras High Court in *T.M.M. Sankaralinga Nadar and Bros. vs. CIT*, (1929) 4 ITC 226, *Hoystead vs. Commissioner of Taxation*, (1926) AC 155 (PC) and *Parashuram Pottery Works Co. Ltd. vs. ITO*, (1977) 106 ITR 1. The Supreme Court, however, also made it absolutely clear that the facts of *Radhasoami Satsang* being very special, the decision would be confined to the facts of that case and may not be treated as an authority on aspects which have been decided for general application.

13. A Division Bench of this Court in *CIT vs. Neo Poly Pack (P) Ltd.*, (2000) 245 ITR 492 held that even though the doctrine of



res judicata would not apply to income-tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years in a particular manner, then for the sake of consistency, the same view should continue to prevail in subsequent years unless there is some material change in the facts.

14. In view of the law laid down by the Supreme Court and also by a Division Bench of this Court, we have no reason to discard the principle of consistency which requires that when the Revenue has accepted a particular view by not filing an appeal, that view should be adhered to unless there is just cause for departure.

15. In so far as the present batch of cases is concerned, the view taken by the ITAT in its orders dated 4th May, 1998 and 18th May, 1998 has remained unchallenged in respect of several assessment years. These orders were not only in respect of the




present assessee but in respect of the other two owners of the concerned property. For some reason, an appeal was filed in respect of the present assessee for the assessment year 1985-86 but no such appeal was filed in respect of the other two assessees for that year. For the earlier assessment year, that is, 1984-85 and for subsequent years, that is, 1986-87 to 1989-90, no appeal was filed by the Revenue in respect of any of the assessees. Similarly, there appears to be no information with regard to any appeal having been filed by the Revenue for a couple of other assessment years in respect of all the three assessees. In cases where an appeal has been filed by the Revenue, it is on an absolutely ad hoc basis and without any intelligible pattern whatsoever. The fact, however, remains that the two basic orders passed by the ITAT on 4th May, 1998 and 18th May, 1998 have been accepted by the Revenue. Subsequent orders which merely follow these two orders have been challenged, without any just cause having been shown for the departure by the Revenue. Since the Revenue has accepted the




two basic orders, we are not inclined to permit it to randomly challenge a subsequent order in respect of an assessee or in respect of a random assessment year. There cannot be pick and choose in this regard, without sufficient reason.

16. Under the circumstances, we decline to entertain this appeal as well as all the other connected appeals. Dismissed.


(Madan B. Lokur)
Judge

February 3rd, 2005
ncg


(Swatanter Kumar)
Judge

Certified that the corrected copy of the judgment has been transmitted in the main Server.