

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

WTA No.1 of 2004 and
WTAs No. 2 and 3 of 2004
Reserved on: 14.7.2009
Decided on:31.7. 2009

WTAs No . 1, 2 and 3 of 2004

Commissioner of Wealth Tax

...Appellant.

Versus

Jagat Ram.

...Respondent.

Coram

The Hon'ble Mr. Justice Jagdish Bhalla, C.J.

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

Whether approved for reporting ?¹. yes

For the Appellant : Mr. Vinay Kuthiala, Advocate.
(in all the appeals)

For the Respondent : Mr. M.M. Khanna, Sr. Advocate with Mr. Goverdhan
(in all the appeals) Sharma, Advocate.

Since common questions of law and facts are involved in these appeals, the same are being disposed of by a common judgment.

Brief facts necessary for the adjudication of these appeals are that return of wealth was filed by the appellant on 26.2.1997 for the assessment years 1990-91, 1991-92 and 1992-93 declaring net wealth of

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* yes.

Rs. 12,96,200/-, 12,70,000/- and 15,33,000/-. These returns were processed under section 16 (1) of the Wealth Tax Act, 1957 (hereinafter referred to as 'the Act' for brevity sake). Wealth tax assessment was completed under section 16 (3) of the Act on 29.4.1997. In the year 2000, notices under section 25 (2) of the Act were issued by the Commissioner Wealth Tax and the assessment orders made by the Wealth Tax Officer were set aside with a further direction to reframe the assessment in the light of his order dated 17.1.2000. Accordingly, the assessment was completed by the Wealth Tax Officer vide order dated 28.3.2002. The Wealth Tax Officer added a sum of Rs. 17,18,443/- received by the assessee on account of enhanced compensation, including interest. The assessee preferred appeals against the order dated 28.3.2002 of the Wealth Tax Officer, Ward No.-2 before the Commissioner of Income Tax (Appeals), Shimla pertaining to assessment years 1990-91 to 1992-93. The learned Commissioner of Income Tax (Appeals) by a well reasoned order dismissed the appeals preferred by the assessee. The assessee filed six appeals against two different consolidated orders of learned CIT (P) Shimla and CWT, Shimla under sections 23 (5) and 25 (2) for assessment years 1990-91 to 1992-93. The Income Tax Appellate Tribunal, Chandigarh Bench (B) on the basis of the decision rendered by it in earlier appeals bearing Nos. 28 to 33/Chandigarh/99 for the assessment years 1984-85 to 1989-90 accepted the appeals on 19.3.2004. These appeals have been admitted on the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case the ITAT was right in cancelling the order of the CWT passed u/s 25(2) holding that necessary

conditions laid down under the said section were not complied with and the order was illegal.

2. Whether on the facts and in the circumstances of the case, the ITAT was right in holding that assessee did not have any enforceable right in the enhanced compensation as on the date of valuation relevant to the assessment year whereas the order of enhanced compensation had been passed by the Court in the year 1987 and the enhanced compensation had become due well before the valuation dates of assessment year 1992-93.
3. Even if, for the sake of argument it is assumed that order of enhanced compensation was not passed before the valuation dates, whether the ITAT was right in law holding that only original compensation could be treated as value of asset and not the enhanced compensation which becomes due from the date of acquisition of an asset, though payable on much later date than valuation date.
4. Whether the ITAT was right in law holding that 'present' value referred to in the S.C. judgments in the case of CWT vs Anjamli Khan (supra) and Pt. Lakshmi Kant Jha vs CWT (supra) relate only to the right to receive compensation and does not include right to receive enhanced compensation."

Mr. Vinay Kuthiala, Advocate has strenuously argued that the Income Tax Appellate Tribunal Chandigarh Bench (B) has erred in law by not following the ratio laid down by their Lordships of the Hon'ble Supreme Court in ***Pandit Lakshmi Kant Jha versus Commissioner of Wealth Tax, Bihar and Orissa***, 90 ITR 97, ***Commissioner of Wealth Tax versus Smt. Anjamli Khan***, 187 ITR 345 and ***Commissioner of Wealth Tax versus U.C. Mehatab***, 231 ITR 501. He further contended that the award was passed by the learned Land Acquisition Collector on 24.2.1984

and the compensation was enhanced by the learned District Judge on 31.10.1987. According to him, this enhanced compensation could not be excluded by the assessee for the assessment years 1990-91 to 1992-93.

Mr. M.M. Khanna, Senior Advocate has vehemently argued that the amount was received by the assessee on 25.8.1993 and the same could not be included for the assessment years 1990-91 to 1992-93.

We have heard the learned counsel for the parties at length and have gone through the case law cited at the Bar carefully.

It is made clear that both the learned counsel for the parties have advanced their arguments on substantial question No.2 and we have also adjudicated the matter accordingly.

The assessee had filed return of wealth on 26.2.1997 declaring net wealth of Rs. 12,96,200/-, 12,70,000/- and 15,33,000/-. The Wealth Tax Officer had accepted the returns and he passed the orders under section 16 (3) of the Act. The notices were issued to the assessee under section 25 (2) by the Commissioner Wealth Tax and assessments made by Wealth Tax Officer were set aside. The Wealth Tax Officer passed the fresh orders of assessment on 28.3.2002. He added Rs. 17,18,443/- received by the assessee on account of enhanced compensation, including interest.

The award was made by the Land Acquisition Collector on 24.2.1984. The amount was enhanced by the learned District Judge on 31.10.1987. The right to receive enhanced compensation became vested in the assessee immediately when the award was made by the learned District Judge on 31.10.1987. The enhanced compensation was required to be added by the assessee in the returns filed for the years 1990-91 to 1992-93 despite his receiving the actual amount on 25.8.1993. It may be

true that the enhanced compensation was not received by the assessee as on evaluation date i.e. 31.3.1990, 31.3.1991 and 31.3.1992. However, the award was already made by the learned District Judge, Shimla in the year 1987. This was to be included in the total wealth of the assessee. The moment, the learned District Judge had passed the award, the assessee became entitled to receive the enhanced compensation and interest. The learned Income Tax Appellate Tribunal Chandigarh Bench (B) has erred in law by making a distinction between compensation and enhanced compensation. The right to seek compensation in the present case was statutory. The right accrued to the assessee in this case, the moment his lands were required by the Government under the Land Acquisition Act, 1894

The substantial question of law involved in this petition has also been considered by their Lordships of the Hon'ble Supreme Court in ***Pandit Lakshmi Kant Jha versus Commissioner of Wealth Tax, Bihar and Orissa***, 90 ITR 97. Their Lordships have held as under:

“Assuming for the sake of argument that the amount of compensation payable to the assessee had not been determined by the Compensation Officer by the valuation date, that fact would not justify the exclusion of the compensation payable from the assets of the assessee. The right to receive compensation became vested in the assessee the moment he was divested of his estate and the same got vested in the State in pursuance of the provision of Bihar Land Reforms Act. As the estate of the assessee which vested in the State was known and as the formula fixing the amount of compensation was prescribed by the statute, the amount of compensation was to all intents and purposes a matter of calculation. The fact that the necessary calculation has not been made and the

amount of compensation had consequently not been quantified by the valuation date would not take compensation payable to the assessee out of the definition of assets or make it cease to be property. The right to receive compensation from the State is a valuable right, more so when it is based upon statute and the liability to pay is not denied by the State. It is no doubt true that the compensation is not payable immediately and its payment might be spread over a period of 40 years, but that fact would be relevant only for the purpose of evaluating the right to compensation. It would not detract from the proposition that the right to receive compensation, even though the date of payment is deferred, is property and constitutes asset for the purpose of Wealth Tax Act.”

The Apex Court has reiterated the same principle in ***Commissioner of Wealth Tax versus Smt. Anjamli Khan***, 187 ITR 345.

Their Lordships have held as under:

“It is clear that, where the compensation, as here, is to be determined and is payable at a date much later than the valuation date, the value of the assessee's right to receive the compensation can only be the ,present value (i.e., the value as on the valuation date of the amount) that may be determined and paid as compensation in future. It cannot be equal to the amount of compensation payable under the Act. The present value of the future compensation wherefore, have to be determined on a consideration of all relevant aspects that may be put forward before the Tribunal.”

Similarly, the Hon'ble Supreme Court in ***Commissioner of Wealth Tax versus U.C. Mehatab***, 231 ITR 501 has followed ***Commissioner of Wealth Tax versus Smt. Anjamli Khan*** (supra). Their Lordships have held as under:

“When these appeals came up for hearing before us, it is brought to our notice by Sri J. Rama Murty, learned senior counsel that the question aforesaid is concluded in favour of the Revenue (and against the assessee) by the decision of this Court in *Commr. of Wealth Tax v. Smt. Anjamli Khan* (1991) 187 ITR 345: (AIR 1991 SC 2023). On a perusal of the said decision, we find that this Court has specifically disapproved the judgment under appeal herein. Though the said case arose under the Bihar Land Reforms Act, 1950, the Bench found, on a comparison of the provisions of the Bihar Act as well as the West Bengal Act that the provisions of both the enactments are identical. The Bench further found that the moment as assessee's land is acquired or otherwise vested in the State, he becomes entitled to compensation and merely because the amount of compensation is not determined immediately, it cannot be said that there is no right to compensation in the erstwhile holder.

Following the said decision, we allow these appeals and answer the aforesaid re-framed question in the affirmative, i.e. in favour of the Revenue and against the assessee. At the same time, we think it appropriate to give a direction with respect to the manner of valuation of the said asset in the same terms as was given in the said decision. It has been directed by this Court that "the value of the assessee's right to receive the compensation can only be the "present" value (i.e. the value as on the valuation date of the amount) that may be determined and paid as compensation in future. It cannot be equal to the amount of compensation payable under the Act. The present value of the future compensation will, therefore, have to be determined on a consideration of all relevant aspects that may be put forward before the Tribunal". The same direction shall be followed herein.”

In view of the definitive law laid down by their Lordships of the Hon'ble Supreme Court, it is clear that the moment the Land Acquisition Collector has made the award under the Land Acquisition Act, 1894, the assessee is entitled to get the compensation. The entire process of acquisition from the award passed by the Collector and subsequent judgments passed by the competent courts of law enhancing the compensation amount shall constitutes total wealth of the assessee. In the present case, as noticed above, the amount was enhanced by the learned District Judge on 31.10.1987 and it was required to be declared by the assessee on the evaluation dates i.e. 31.3.1990, 31.3.1991 and 31.3.1992 even though he received the amount actually on 25.8.1993. The Income Tax Appellate Tribunal Chandigarh Bench (B) was bound by the ratio laid down by their Lordships in above cited cases. The law declared by the Hon'ble Supreme Court is binding on all the authorities under Article 141 of the Constitution of India. Once the issue has been conclusively settled by the Hon'ble Supreme Court the manner in which the total wealth of the assessee was to be worked out, it was not open to the Income Tax Appellate Tribunal Chandigarh Bench (B) to distinguish the judgment of the Apex Court. The dichotomy created by the learned Income Tax Appellate Tribunal by construing compensation and enhanced compensation separately was erroneous. The compensation was to be treated as one composite unit.

Mr. M.M. Khanna, Senior Advocate has relied upon ***Sher Singh versus Commissioner of Wealth Tax*** (1995) 211 ITR 792. We have gone through the judgment carefully. We are not able to persuade ourselves to agree with the law laid down by the Delhi High Court. The Delhi High Court has also created distinction between compensation and

enhanced compensation, which according to us in view of the law laid down by the Hon'ble Supreme Court was not permissible. In view of this the judgment cited by Mr. M.M. Khanna is distinguishable.

Consequently, the substantial question is answered accordingly and the appeals are allowed. No costs.

(Jagdish Bhalla), C.J.

31.7. 2009
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(Rajiv Sharma), J.