

# HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Yousuf Ali Sayeed

## **Wealth Tax Appeal No.445 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Mrs. Kausar Sultana .....Respondent.

## **Wealth Tax Appeal No.446 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Mr. Shahid Iqbal..... Respondent.

## **Wealth Tax Appeal No.447 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Miss Sadaf Jawaid .....Respondent.

## **Wealth Tax Appeal No.448 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Mrs. Uzma Iqbal .....Respondent.

## **Wealth Tax Appeal No.449 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Mrs. Zulekha Iqbal .....Respondent.

## **Wealth Tax Appeal No.450 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Miss Seher Jawaid .....Respondent.

## **Wealth Tax Appeal No.453 of 2004**

Commissioner of Wealth Tax .....Appellant.

Versus

Mrs. Nazish Jawaid .....Respondent.

**Wealth Tax Appeal No.454 of 2004**

Commissioner of Wealth Tax .....Appellant.  
Versus  
Miss Misbah Jawaid .....Respondent.

Date of hearing : 05.11.2020 .  
Appellant (in all matters) : Through Mr. Kafeel Ahmed Abbasi, Advocate.  
Respondent (in all matters) : Nemo .

**J U D G M E N T**

**IRFAN SAADAT KHAN, J. :-** These Wealth Tax Appeals (**WTAs**) were filed by the department, which were admitted to regular hearing vide order dated 26.01.2005, to consider the following questions of law:-

*“Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was justified to dismiss the miscellaneous application without considering the interim order of the Honourable Supreme Court of Pakistan on the same issue, by which, operation of impugned order of the Honourable High Court of Lahore was suspended?”*

*“Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was justified in rejecting appeal filed by the Department while the decision of the Honourable High Court regarding valuation of share of Private Limited Company and un-quoted Public Company has been reversed by the Honourable Supreme Court of Pakistan vide its decision bearing CP. NO.2221 to 2229 of 1998 holding that the valuation of the shares of the Private Limited Company and un-quoted Public Limited Company are to be taken at break-up value or face value, whichever is higher?”*

2. Briefly stated the facts of the case are that the respondents/taxpayers were directors in M/s. Asian Food Industries Ltd. The assessment year under consideration is 1999-2000. The Returns of Wealth for the said year under were duly filed by the directors. Thereafter the assessments, under the provision of Section 16(3) of the Wealth Tax Act, 1963 (now repealed), was finalized by adopting the value of the

shares held in the private limited company at their face value. Being aggrieved with the orders passed by the Assessing Authority (AA), appeals were filed before the Commissioner of Wealth Tax Appeals [CWT(A)], who was pleased to delete the additions made by the AA, vide order dated 27.7.2000, by keeping in view the decision given by the Lahore High Court reported as (1993) 78 Tax 217 (Munir Ahmed and others Vs. Federation of Pakistan). However, it may be noted that no appeals against the orders of the CWT(A) were filed by the department. Thereafter, the department moved applications for rectification to the CWT(A) on the ground that since the order of the Lahore High Court was suspended by the Hon'ble Supreme Court, therefore the orders passed by the CWT(A) may be revised/rectified. The said applications for rectification however were dismissed by the CWT(A). The department then preferred appeals before the Income Tax Appellate Tribunal (Pakistan), Karachi (ITAT) against the orders of the CWT(A). The ITAT also dismissed the appeals filed by the department after finding no force in them. Thereafter the present WTAs have been filed before this Court by raising the above referred questions of law.

3. Mr. Kafeel Ahmed Abbasi, advocate has appeared on behalf of the department and stated that since the order of the Lahore High Court was suspended by the Hon'ble Supreme Court through its decision passed in C.P. Nos.2221 to 2229 of 1998, therefore mistake was apparent from the record in the orders passed by the CWT(A), which according to him, ought to have rectified by the CWT(A) itself or on the applications as filed by the department. The learned counsel stated that since the orders of the CWT(A) were not in conformity with the decision of the Hon'ble Supreme Court, therefore, the relief granted by the CWT(A) in its orders was legally

incorrect and therefore when the applications for rectification were filed by the department before the CWT(A), the same ought to have been allowed by the CTW(A) by amending the orders. He, submitted that the CWT(A) erred in not entertaining the rectification applications filed by the department, hence according to him, the answer to the questions raised in the instant WTAs may be given in negative i.e. in favour of the department and against the respondent/taxpayers.

4. Nobody is in attendance on behalf of the respondents despite proper service of notice upon them.

5. We have heard the learned counsel for the department at some length and have also perused the record.

6. We have specifically asked a question from Mr. Abbasi that what was the mistake apparent in the orders dated 27.07.2000 passed by the learned CWT(A), as the said orders have been passed on the basis of the decision given by the Lahore High Court, which was prevailing at the time of passing of the impugned order; whereas the decision of the Supreme Court was subsequent in time hence how could any mistake be apparent from the record in respect of future orders. Though Mr. Abbasi tried to wriggle out the situation by saying that the CWT(A) on his own motion could also rectify the orders but could not controvert the fact that at the time of the passing of the orders by the CWT(A) the order of the Hon'ble Apex Court was not in the field, rather it was the order of the Lahore High Court which was in the field at that moment in time, hence it could not be said that any mistake was apparent or patent from the orders of the CWT(A), who has simply passed the orders in conformity with the order

passed by the Lahore High Court, which was prevailing at that time and admittedly the order of the Supreme Court was subsequent in time.

7. Mr. Abbasi, was again asked to point out any mistake apparent and floating on the surface in the orders of the CWT(A), since the order of the CWT(A) was on the ground of valuation of the shares as per the decision given by the Lahore High Court, which the CWT(A) was required to follow in its letter and spirit at that time. Again no plausible explanation is available with Mr. Abbasi, and in our view it could not be claimed that the mistake was apparent or floating on the surface in the orders of the CWT(A). The orders of the ITAT also reveal that the departmental representative appearing before the ITAT also did not rebut and explain as to what mistake was apparent in the orders of the CWT(A) to justify rectification of the orders, as the order of the Supreme Court was passed subsequently (i.e. on 20.8.2001). Hence, we are of the view, that no illegality or infirmity has been committed by the CWT(A) in following the judgment of the Lahore High Court, as prevalent on 20.7.2000, on which date the CWT(A) has passed the orders.

8. On a query by the Court that if the department was aggrieved with the orders passed by the CWT(A) dated 27.07.2000 as to why the department did not prefer appeals against the said orders before the ITAT. Again no plausible explanation of this query was available with the counsel for the department. The department admittedly has not preferred appeals against the orders dated 27.07.2000 of the CWT(A), rather sought to give the matter a new lease of life by filing a rectification application before the CWT(A) to cover up the deficiency on its part. No mistake has been found in the orders passed by either the ITAT or the CWT(A) as the CWT(A) as noted above has simply passed the order dated 27.07.2000 on the basis of

the decision given by the Lahore High Court prevailing at that very particular time.

9. Interestingly, the department, if was of the opinion, that the value of the shares ought to have been assessed at break-up or face value, whichever is higher, the department could have invoked the provisions of Section 17 of the Act, 1963, which too admittedly was not done. It seems that the department has not adopted the proper procedure in the matter rather has adopted an incorrect method by approaching the CWT(A) by filing rectification applications to him. We, therefore, under the circumstances refrain ourselves in answering the questions raised in the instant WTAs, as in our view both these questions of law do not arise out of the order of the ITAT. These WTAs therefore stand dismissed.

JUDGE

JUDGE