IN THE HIGH COURT OF SINDH AT KARACHI

Wealth Tax Appeals No.938 & 939 of 2000

Present:
Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Faisal Kamal Alam

Date of hearing: 10.09.2020.

Appellant: The Commissioner of Income/Wealth Tax through Mr. Muhammad Aqeel Qureshi, Advocate.

Respondent: Sadruddin Hashwani through Mr. Abid H. Shaban, Advocate.

J U D G M E N T

IRFAN SAADAT KHAN, J. These two Wealth Tax Appeals **(WTAs)** have been filed by the department by raising the following two questions of law:

I. Whether on the facts and in the circumstances of the case, the learned Income Tax Tribunal was justified in deleting the addition of US $ 12,000,000/- on account of investment for renovation of Hilton Hotel?

II. Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was justified in admitting additional evidence?

2. Briefly stated, the facts of the case are that the assessee /taxpayer is an individual, who filed his wealth tax returns declaring wealth of Rs.72,110,806/- and Rs.56,522,852/- for the assessment

years 1994 – 1995 and 1995 – 1996 respectively. The Deputy Commissioner of Income Tax **(DCIT)** made the assessment of both these years, under discussion, under the provisions of Section 16(3) of the Wealth Tax Act 1963 **(the Repealed Act)** by observing that an amount of US $ 12,000,000/- was not declared in the wealth of the respondent, therefore, by converting the said amount into Pak Rupees he made additions of Rs.363,367,200/- and Rs.373,908,000/- in his wealth for the above two years. Being aggrieved with the said orders appeals were preferred before the Commissioner of Income Tax (Appeals) **[CIT(A)]** under the provisions of Section 23 of the Repealed Act, who, vide order dated 05.07.1999, affirmed the additions made by the DCIT. Being aggrieved with the order of the DCIT and CIT(A) appeals were preferred before the Income Tax Appellate Tribunal **(ITAT)** in WTA No.60/KB of 1999-2000 and WTA No.61/KB of 1999-2000. The matter proceeded before the ITAT, who, vide order dated 19.06.2000, deleted the said additions made in the wealth of the respondent. It is against those orders of the ITAT that the present WTAs have been filed by raising the above referred questions of law, which were admitted for regular hearing on 01.03.2001.

3. Mr. Muhammad Aqeel Qureshi, Advocate, has appeared on behalf of the Appellant /department and stated that the respondent was not justified in not disclosing the investment made by him amounting to US $ 12,000,000/- being the renovation of Hilton Hotel in which the respondent is a shareholder. He stated that DCIT and the CIT(A) quite rightly added Rs.363,367,200/- and Rs.373,908,000/- in the

wealth of the taxpayer since the respondent has failed to disclose the amount of US $ 12,000,000/- invested by him from his own pocket for renovation in the Hilton Hotel. He stated that it is a settled law that if a taxpayer is an owner of any asset, he is required to disclose and declare the same in his wealth tax return. He stated that in the instant case the respondent had made a huge investment of US $ 12,000,000/- but has failed to declare and disclose the same, as an investment /asset, in his wealth tax returns, which amount was rightly added by the DCIT and affirmed by the CIT(A). He stated that before making the said additions the DCIT confronted the respondent about the said amount but when the reply furnished by the respondent was not found to be plausible, the said additions were made in the wealth of the respondent /taxpayer. He stated that the ITAT was not justified in deleting the said additions, as no plausible reasons were given by the ITAT for deleting the said additions and hence, in his view, the ITAT erred in deleting the said amounts. He, therefore, has prayed that the additions so made in the wealth of the respondent may kindly be affirmed and the answer to the question No.1 may be given in negative.

4. Mr. Qureshi further stated that the ITAT erred in admitting the additional evidence produced before it. He stated that since the additional evidence was neither produced before the DCIT nor the CIT(A), hence, firstly there was no justification available with the respondent to furnish additional evidence before the ITAT and secondly the ITAT went wrong in admitting the said additional evidence at such belated stage of the proceedings. The learned counsel

submitted that if the ITAT was of the view that these documents were not produced before the DCIT but are to be accepted, the ITAT at best could have remanded the case to the concerned DCIT for examining and considering the same rather than out rightly accepting the additional evidence and deleting the additions. He, therefore, prayed that the answer to the question No.2 also may be given in negative i.e. in favour of the department and against the respondent.

5. Mr. Abid H. Shaban Advocate has appeared on behalf of the respondent and submitted that the orders framed by the DCIT and the CIT(A) were wholly incorrect and uncalled for and the order of the ITAT is in accordance with law. He, while elaborating his viewpoint, submitted that no investment whatsoever was made by the respondent and hence there was no occasion of disclosing any investment /asset in the wealth tax returns of the respondent. He stated that the respondent is neither a shareholder nor owner of Hilton Hotel, as incorrectly observed by the DCIT. He stated that either before the FIA authorities or other government agencies the respondent has categorically stated that he neither has any overseas asset nor had made any foreign investment. He invited our attention to various paragraphs of the order of the DCIT wherein replies furnished by the respondent have been reproduced. He stated that even the Inland Revenue Department of USA has endorsed that the respondent has no shareholding in Hilton Hotel. He further submitted that all the matters with regard to holding various assets by the respondent have already been thrashed out by different government agencies and nothing adverse has been found by them against the respondent. He stated that

the department itself has not made any addition of the said US $ 12,000,000/- in the wealth of the respondent in the succeeding years. To support his argument the learned counsel has also produced before us letter of Inland Revenue Department of USA, an undertaking duly attested by the Notary Public of USA and wealth tax assessment orders of the subsequent years. The learned counsel further stated that if the respondent was the owner of the investment /asset, the same could not vanish in the subsequent years, as if the department was of the view that the said amount of investment /asset was not disclosed in the years under consideration, the same amount /investment /asset would be available with the respondent in the subsequent years as well. According to him it is strange and interesting to note that the appellant department, while making the assessment of the respondent in the succeeding years, has neither made any addition of this alleged investment /asset nor has asked any question about the same which, according to the learned counsel, clearly proves that in the two years under consideration the amount of US $ 12,000,000/- added by the department as an investment /asset of the respondent, was uncalled for and the additions were rightly deleted by the ITAT. The learned counsel further submitted that complete details of the assets owned by the respondent and his family members, outside Pakistan, were provided to the DCIT. He, therefore, stated that the answer to the question No.1 may be given in affirmative as firstly, according to him, this is a question of fact and secondly if it is considered to be a question of law, then the said amount was rightly deleted by the ITAT keeping in view the facts and circumstances of the case, as noted

above, as the respondent had made no investment on the renovation of Hilton Hotel, as alleged by the department.

6. Apropos the question of additional evidence is concerned, Mr. Shaban stated that ITAT has taken the additional evidence in accordance with Rule 24 & 25 of the Income Tax Appellate Tribunal Procedure Rules, 1981 **(Tribunal Rules-1981)**. [Now the above referred Rules have been replaced by the Appellate Tribunal Inland Revenue Rules, 2010 **(Tribunal Rules-2010)** as Rule 25 & 26 of the Rules-2010 which are parametria to Rule 24 & 25 of the Rules-1981]. He stated that the said Rules clearly provide that the ITAT is fully authorized to take additional evidence to be adduced, looking to facts of the case. He, therefore, stated that the answer to the question No.2 is also quite clear as nothing illegal has been done by the ITAT as per Rule 24 & 25 of the Tribunal Rules-1981, hence according to him, the answer to this question may also be given in affirmative i.e. in favour of the respondent and against the department.

7. We have heard both the learned counsel at some length and have also perused the record and the documents furnished before us during the course of arguments.

8. Perusal of the record reveals that while making the wealth tax assessment of the two years under consideration the DCIT came across a letter of Habib Bank New York Branch that some renovation work has been done in the Hilton Hotel, which is being operated by M/s. Rushlake Hotel Inc. The DCIT then formed an opinion that since the respondent has given a personal guarantee in respect of the loan so

the amount invested on the renovation of the Hotel must have been funded by the respondent. He then confronted the respondent with the said aspect and the respondent vehemently denied of making any investment on the renovation of the Hilton Hotel. The respondent categorically produced before him certain documents showing that he has got nothing to do with the investment on renovation but by disbelieving the explanation of the respondent, the DCIT made the above referred additions in his wealth. The CIT(A) agreed with the DCIT but the ITAT while examining the case at length examined this aspect thoroughly thereafter, vide paragraph No.54 on typed page 29 of its order, observed as under:

> *"54. Regarding the impugned addition of US $ 12,000,000/- to appellant's wealth on account of investment from his own pocket on Hyatt Regency Hotel managed by Hyatt Corporation, we find no evidence on record to hold that any separate and independently assessable asset has come into existence on the two valuation dates, on account of the alleged investment of US $ 12,000,000/- on renovation of the Hotel. It could be either in the form of a loan to Hyatt Corporation, a property of Zaver Inc. or a deposit for allotment of share or the value of shares acquired. But non of the three situations is alleged. Thus no addition on this account is warranted; hence deleted in each of the two years."*

9. From the above referred paragraph of the order of the ITAT it is evidently clear that there was no evidence available with the department to prove that any separate and independently assessable asset has come into existence. Further the ITAT, which is the last fact finding authority, also observed that the amount, even if for argument's sake, is considered to be an asset, the parameters for treating the said amount as an asset does not fulfill in the instant matter, as the amount could neither be considered to be a loan or a

property of the company owned by the respondent or an amount deposited or invested in shareholding or an amount equivalent to the share capital of the respondent, to term it as an asset or investment of the respondent. It is noted from the record that none of these criteria since has been pointed out or proved by the DCIT, the amounts added could neither be considered to be an investment or an asset of the respondent. The amounts under consideration added, as stated above, were nothing but based on a letter of Habib Bank New York Branch that some personal guarantee was given by the respondent but whether the department was able to prove that the said investment /asset, if any, or furnishing of guarantee in any way could be attributable to the respondent? We are afraid; the answer to the above question is in 'No'. The ITAT, which is the last fact finding authority, has categorically observed that there is no evidence on record to hold that any separate and independently assessable asset came into existence so as to warrant addition of the above amounts in the wealth of the respondent. We are of the view that since the above referred facts have remained uncontroverted, we therefore see no reason to interfere in the order passed by the ITAT. Moreover, if it is considered that the amount of investment was an asset of the respondent, then why the appellant department has not added the amount in the succeeding years; this again had remained an unanswered question. If the investment was there and had not been withdrawn, why the department had not added these amounts in the succeeding wealth tax assessments of the respondent, again no plausible explanation is available with the learned counsel appearing for the department. It is

also noted that the IRS Department of the USA has categorically stated in their letter October 13, 1998 that *"Research of the Public records of Osceola and Orange counties in Florida failed to locate property under the ownership of Mr. Sadar-ud-din Hashwani"*. Moreover in the affidavit by Terry M. Shaikh President of Rushlake Hotels (USA) Inc. dated 26.10.99 (duly attested by Notary Public of USA and Embassy of Pakistan) it has been mentioned that *"Mr. Hashwani very kindly became our guarantor and has only acted in this capacity and not as an investor in the company"*.

10. We, therefore, in view of the above facts, have come to the conclusion that the ITAT quite rightly deleted the two additions made in the years under consideration and therefore answer the question No.1 referred to us in 'Affirmative'.

11. So far as the answer to question No.2 is concerned, before proceeding any further, we would like to reproduce herein below Rule 24 & 25 of the Income Tax Appellate Tribunal Procedure Rules, 1981, as prevalent at that time, since now it has been replaced by the Inland Appellate Tribunal Rules, 2010, as Rule 24 & 25 of the Tribunal Rules-1981 which are parametria to Rule 25 & 26 of the Tribunal Rules-2010:

> *24.* ***Production of additional evidence before the Tribunal****- No party to the appeal shall be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders, or for any other substantial cause or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the*

Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

*25. **Mode of taking additional evidence**—(1) Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.*

(2) If the document is directed to be produced or witness examined or evidence adduced before any income-tax authority, he shall comply with the directions of the Tribunal and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced to the Tribunal".

12. The above Rules clearly demonstrate that the ITAT, being the last fact finding authority, is fully authorized under the Rules to take additional evidence, looking to the facts and circumstances of the case. If in the instant matters the ITAT has accepted the additional evidence, the same is within its powers and no illegality or infirmity has been found in this behalf. We, therefore, answer this question also in 'Affirmative' i.e. in favour of the respondent and against the department.

13. In a nutshell, both these questions referred to us are answered in 'Affirmative' i.e. in favour of the respondent (taxpayer) and against the appellant (department). The instant WTAs stand disposed of in the above manner.

14. Above are the reasons of our short order dated 10.09.2020 whereby we have answered both the questions referred to us in 'Affirmative'.

15. Let a copy of this order be sent to the Registrar ITAT for information and necessary action.

JUDGE

JUDGE

Karachi:
Dated: .09.2020.