

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Yousuf Ali Sayeed

Wealth Tax Appeal No.222 of 2002

Commissioner of Income TaxAppellant.

Versus

Mst. Seema Sattar.....Respondent.

And

Wealth Tax Appeal No.50 of 2003

Commissioner of Income TaxAppellant.

Versus

Mst. Farkhanda DawoodRespondent.

Date of hearing : 22.10.2020.

Appellant (*in both matters*) : Through Mr. Imran Ali Mithani, Advocate.

Respondent (*in both matters*) : Through Mr. Arshad Siraj Memon, Advocate.

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 for regular hearing on 14.01.2003 and 11.09.2003 respectively, to consider the following questions of law:-

- “i) Whether on facts and in the circumstances of the case, the learned Tribunal was justified in holding that it had not been established directly and conclusively that the assessment framed as erroneous in law and prejudicial to the interest of revenue?*
- ii) Whether on facts and in the circumstances of the case, the learned Tribunal was justified to vacate the order instead of setting it aside particularly in view of their own observation that further enquiries in the matter should have been conducted?*

iii) Whether on facts and in the circumstances of the case the property in question had attained the commercial status on the date of payment of commercialization fee or on approval of construction plan by the Karachi Building Control Authority?"

2. Briefly stated the facts of the case are that the respondents filed their returns of Wealth Tax for the year 1995-96 at a wealth of Rs.1,883,996/-, in the case of Mst. Seema Sattar, and at a wealth of Rs.5,28,700/-, in the case of Mst. Farkhanda Dawood. The assessment of Mst. Seema Sattar was made under Section 16(3) of the Wealth Tax Act 1963 (**repealed Act**) at a wealth of at Rs.5,194,076/-; whereas that of Mst. Farkhanda Dawood at a wealth of Rs.3,838,780/-, by the concerned Deputy Commissioner of Wealth Tax (**DCWT**). The concerned Inspecting Additional Commissioner (**IAC**) then vide order dated 29.10.2001 cancelled the assessments made by the DCWT, by exercising his powers under Section 17-B of the repealed Act as according to the IAC the orders of the DCWT were erroneous in so far as they were prejudicial to the interest of revenue. In the opinion of the IAC the value of the share in plot of land bearing No.1-C-F-1-5, Clifton, Karachi, shown by the ladies, was less than the rates as notified by the Collector and that the said plot in his view was commercial in nature. Being aggrieved with the orders of the IAC appeals were preferred before the Income Tax Appellate Tribunal (**ITAT**). The appeal filed by Mst. Seema Sattar was assigned WTA No.564/KB of 2001, whereas the appeal filed by Mst. Farkhanda Dawood was assigned WTA No.565/KB of 2001. Both those appeals were heard simultaneously by the ITAT who, vide its order dated 12.06.2002, found the orders of the IAC not sustainable under the law and vacated the same by allowing the appeals. It is against these orders that the present WTAs have been filed.

3. Mr. Imran Ali Mithani, advocate has appeared on behalf of the department and stated that the ITAT was not justified in vacating the orders of IAC as the taxpayers have declared a commercial property to be residential and since there is a vast difference in the valuation of a commercial property in comparison to that of a residential property, therefore the valuation and the assessments made by the DCWT were erroneous insofar as prejudicial to the interest of revenue. He read out the orders of the IAC and stated that the reasons given by the IAC in his orders

under Section 17-B of the repealed Act for cancelling the orders of DCWT were valid and cogent and has prayed that the orders of the IAC may be restored and that of the ITAT may be set aside. The learned counsel finally stated that answer to the questions No.1&2 may be given in "Negative" whereas the answer to the question No.3 may be given in "Affirmative".

4. Mr. Arshad Siraj Memon, advocate has appeared on behalf of the respondents/taxpayers and stated that no incorrect declaration was made by the taxpayers as the DCWT, while assessing the wealth of the respondents, has rightly treated the property belonging to the taxpayers as residential hence neither the assessments were erroneous nor prejudicial to the interest of the revenue. He submitted that if the department was of the view that the property jointly owned by the taxpayers was liable to be assessed as the property of an Association Of Person (**AOP**) then he should have initiated action against the said AOP but from the record it is evident that the IAC has cancelled the assessments of the individuals, as being erroneous insofar as they were considered prejudicial to the interest of the revenue, rather than assessing the jointly owned property in the hands of the AOP, which action, according to him, was wholly illegal and uncalled for.

5. Mr. Memon further explained that if the IAC was of the view that the assessments ought to have been made under the status of AOP, he should have required under the law from the AOP to furnish a return as an AOP and the department could have thereafter proceeded in accordance with law but since this legal procedure has not been adopted, the ITAT was therefore fully justified in vacating the order of IAC and allowing the appeals. He, therefore, stated that the answer to the questions No.1 and 2 may be given in "Affirmative" whereas the answer to question No.3 may be given in "Negative".

6. We have heard both the learned counsel at some length and have also perused the record.

7. It is noted that full facts were available with the DCWT when the assessment for the year 1995-96 of the respondents was made with regard to the status of the plot whether it was commercial or residential. The DCWT, while making the assessments, has also noted that the

property is owned in equal shares by the respondents. However, the IAC came to the conclusion that firstly the property was commercial and not residential in nature and secondly the property since was jointly owned by the two ladies hence should have been declared as the property of the AOP. It, however, may be noted that the DCWT while passing the order under Section 16(3) of the repealed Act has discarded the valuation as shown by the respondents and has applied the Collector's rate as applicable to a residential plot. We specifically asked a question from the counsel for the department that if the IAC was of the view that the jointly owned plot should have been assessed as AOP whether any notice was given to the AOP for filing the Wealth Tax Return as an AOP before initiating the action under Section 17-B of the repealed Act? to which he candidly replied in negative. It may further be noted that on the one hand the learned IAC has considered the property to be jointly owned by the AOP but has made no effort to fulfill the legal requirements as provided under the Wealth Tax, in this behalf. In our view, the only course available with the IAC, when he opined that the jointly owned property was to be assessed as the property of an AOP, was that the department should have asked the respondents to file a wealth tax return as an AOP and only thereafter the department could have proceeded in accordance with law, which procedure admittedly has not been adopted by the department, as in our view once this procedure had been followed only then the question of treating the jointly owned plot either as residential or commercial or applicability of Collector's rate would arise.

8. In the instant matter the IAC seems to have erred in cancelling the assessments whereas the only legal option available with the department, as stated above, was to proceed against the AOP after requiring the said AOP to file its return and then to make the assessment but the present action of the IAC appears to be patently illegal and was thus rightly vacated by the ITAT. Interestingly even when the order of IAC was vacated it is not brought to our knowledge that any attempt was made by the department to treat the jointly owned property, if any, as the property of the AOP. It may further be noted that the learned ITAT while passing the order has also discussed the matter on factual plane with regard to the status of the plot. The ITAT has also considered the fact that before cancelling the assessments of the DCWT, the IAC has not initiated action

for making the assessment of the AOP; hence in our view the orders of the IAC were rightly vacated by the ITAT.

9. In the light of what has been stated above, we answer the questions No.1 and 2 in "Affirmative". However, so far as question No.3 is concerned, the same appears to be a question of facts, hence does not require any answer from the Court. Both these WTAs are disposed of in the above manner.

10. Let a copy of this order be sent to the Registrar ITAT for doing the needful in accordance with law.

JUDGE

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