

Cwt Vs. Apar Ltd.

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Court : Mumbai

Decided On : Apr-03-2002

Reported in : [2002]122TAXMAN631(Bom)

Appeal No. : WT Appeal No. 921 of 2000 3 April 2002

Appellant : Cwt

Respondent : Apar Ltd.

Advocate for Pet/Ap. : R.V. Desai, P.S. Jetly and B.M. Chatterjee, *for the Revenue* Ms. A. Vissanji and S.J. Mehta, *for the Assessee*

Judgement :

V.C. Daga, J.

This appeal under section 27A of the Wealth Tax Act, 1957 (hereinafter referred to as the Act') is directed against the order of the Tribunal, Mumbai Bench 'B', in IT Appeal No. 44 (Mum) of 1997, dated 8-10-1999 holding that section 23(1A)(a) of the Act provides for a right of appeal against an intimation issued under section 16(1)(a)(i) of the Act so as to object to the amount of net wealth determined under the Act.

FACTS

2. The facts in a nutshell, as stated by the appellant, are as follows :

The assessee filed the return of wealth for the assessment year 1992-93 under protest. According to the assessee, the immovable property being office premises at Maker Chambers III, Nariman Point and land being non-agricultural land at village Durmal, Nadiad, were not chargeable assets under the Act. The office premises had been temporarily let out. The assessee held shares of the co-operative society in which the said office premises were located. The shares held in a co-operative society were not chargeable to tax under the Act. As regards the non-agricultural land, the ownership thereof was in dispute. The suit filed by the assessee against the person in occupation of the said land had been dismissed by the District Court at Nadiad, as such the contention was that the land was not includible in its net wealth. A note in support of its claim that the assets were not liable to wealth-tax was enclosed along with the return. Without prejudice, the wealth was computed recording due protest at Rs. 27,00,559 and, wealth-tax in the sum of Rs. 54,001 was paid under protest.

3. The assessing officer issued an intimation under section 16(1)(a) accepting the wealth returned (under protest) without adjudicating the issue on merits.

Aggrieved by the action of the assessing officer, the assessee preferred appeal to the Commissioner (Appeals) who was pleased to dismiss the appeal on two grounds, namely, (i) that the assessee was not an aggrieved person since the assessing officer had done nothing but merely accepted the return and (ii) an intimation under section 16(1)(a)(i) could not be said to be an order so as to make the appellate remedy available. It was, thus, held that the intimation was not appealable. The appeal, therefore, came to be dismissed.

The aforesaid order of the Commissioner (Appeals) was carried in further appeal before the Tribunal at the instance of the assessee. The Tribunal vide its order dated 8-10-1999, was pleased to hold that the appeal in the circumstances was very much maintainable under section 23(1A)(a) and allowed the same.

4. Being aggrieved by the aforesaid order of the Tribunal, the revenue has filed this appeal under section 27A raising following substantial question of law for consideration of this court :

Substantial question of law

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appeal filed by the assessee against an intimation issued under section 16(1)(a)(i) of the Act by the assessing officer accepting the return of wealth was maintainable ?'

THE STATUTORY PROVISIONS

5. Before we deal with the aforesaid question of law, it is appropriate to first consider the provisions applicable to the facts of the present case :

'16. Assessment.(1)(a) Where a return has been made under section 14 or section 15 or in response to a notice under clause (i) of sub-section (4),

(i) if any tax or interest is found due on the basis of such return after adjustment of any amount paid by way of tax or interest, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice issued under section 30 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee :

Provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the net wealth declared in the return, namely:

(i) any arithmetical errors in the return, accounts or documents accompanying it, shall be rectified;

(ii) any exemption or deduction, which on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed or made in the return, shall be allowed;

(iii) any exemption or deduction claimed or made in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie

inadmissible, shall be disallowed :

Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments :

Provided also that an intimation for any tax or interest due under this clause shall not be sent after the expiry of two years from the end of the assessment years in which the net wealth was first assessable.

(2) Where a return has been made under section 14 or section 15 or in response to a notice under clause (i) of sub-section (4) of this section, the assessing officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the net wealth or has not under paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the assessing officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return.

Provided that no notice under this sub-section shall be served on the assessee after the expiry of 12 months from the end of the month in which the return is furnished.

23. Appeal to the Deputy Commissioner (Appeals) from orders of assessing officer(1) ** ** *

(1A) Notwithstanding anything contained in sub-section (1), any person

(a) objecting to the amount of net wealth determined under this Act or objecting to the amount of wealth-tax determined as payable by him under this Act or denying his liability to be assessed under this Act, where the net wealth determined on assessment made under section 16 exceeds fifteen lakh rupees;

(b) *****

(c) objecting to any assessment or order referred to in clauses (a) to (h) (both inclusive) of sub-section (1), where such assessment or order has been made by the Deputy Commissioner in exercise of the powers or functions conferred on or

assigned to him under section 8 or section 11; or

(d) and (e) ** ** **

may appeal to the Commissioner (Appeals) before the 1-6-2000, against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner.'

SUBMISSIONS

6. Mr. R.V. Desai, the learned senior counsel for the revenue, submitted that in the present case the assessee had filed return under section 14 of the Act. The return was voluntary. It was merely accepted by the assessing officer. The assessing officer accepted the return and sent intimation under section 16(1)(a)(i) which indicated mere acceptance of return without there being any assessment. Against the said intimation, the assessee preferred an appeal. The first appellate authority rejected the said appeal as not maintainable. The learned counsel for the revenue submitted that no appeal was maintainable under the Act against such intimation. He further submitted that right of appeal is creature of statute. Since appeal is not provided under the statute against the intimation, the Tribunal could not have entertained further appeal at the instance of the present assessee. In his submission, the Tribunal was wrong in entertaining an appeal at the instance of the assessee for want of order of assessment. He submits that there is a conceptual difference between intimation and assessment. Since there was no determination and/or assessment, appeal was not maintainable.

7. Alternatively, the learned counsel for the revenue urged that the assessee did not deny its liability to be assessed under the Act, as such appeal was not tenable. There must be total denial of liability of being assessed under the Act for the purposes of falling within the purview of the phrase of 'denial of liability of being assessed'. In his submission, the grounds of appeal, which are included in the paper book, did not indicate that the assessee was denying its liability to be assessed under the Act. He pointed out that the assessee merely challenged illegalities or irregularities in the intimation issued under section 16(1)(a)(i). There was no submission that the Act itself did not apply to the facts of the case or that

the assessee could not have been assessed under the Act at all. In view of this, the learned counsel for the revenue submitted that appeal did not lie against the mere intimation issued by the assessing officer. He relied upon the judgments in CIT v. Kanpur Coal Syndicate : [1964]53ITR225(SC) , CIT v. Geeta Ram Kali Ram : [1980]121ITR708(All) , Sterling Machine Tools v. CIT : [1980]123ITR181(All) CIT v. Daimler Benz A.G. : [1977]108ITR961(Bom) , M.G. Bros. v. CIT : [1985]154ITR695(AP) and CIT v. Shantilal J. Mehta : [1981]132ITR453(Bom) in support of his submission.

8. The learned counsel for the revenue also submitted that the assessee had no right to deny its liability to be assessed under the Act once it had voluntarily submitted the return and was assessed accordingly. He relied upon the judgment of the Full Bench of this court in the case of Daimler Benz A. G. (supra), wherein it was held that if the assessee denies its liability under the Act, then only appeal would lie. The learned counsel for the revenue also brought to our notice a judgment of the Division Bench of this court in the case of Shantilal J. Mehta (supra), wherein the Full Bench's judgment in the case of Daimler Benz A. G. (supra) was followed. The question of denial of liability to be assessed was also for consideration before the Gujarat High Court in the case of Mandal Ginning & Pressing Co. Ltd. v. CIT : [1973]90ITR332(Guj) . That was the case, wherein rectification order was passed under section 35(1) of the Indian Income Tax Act, 1922. Assessment made under section 23 was rectified. It was held by Bhagwati, C.J. (as his Lordship then was) that no appeal lies against an order of rectification. It was observed that when an assessee claims that he is not liable to be proceeded against under section 35(1), he is not denying his liability to be assessed under the Act. His objection is only against a proceeding for assessment under the particular provision of the Act. The right of appeal is given under section 30(1) of the Indian Income Tax Act, 1922 against various orders and each of the orders against which the right of appeal was conferred was described by reference to the source of power under which it was made. An appeal lies from an assessment made under section 23. The assessee has, therefore, no right of appeal under section 30(1) against the order of rectification made under section 35(1). On the strength of the said observations, the learned counsel for the revenue contended that, in absence of any specific provision permitting an appeal

against the order under section 16(1)(a)(i), the assessee could not have been allowed to take shelter under section 21(1A) of the Act simply to deny its liability to be assessed once it had voluntarily declared its assets for being assessed under the Act.

9. Per contra, Ms. A. Vissanji, the learned counsel for the assessee, submits that mere filling of a return does not tantamount to acceptance of liability. In support of this submission, she relied upon the judgment in the case of *Rani Anand Kunwar v. CIT* (1940) 8 ITR 126. She submits that intimation under section 16(1)(a)(i) has to be preceded by an order accepting return. The assessing officer has to make an endorsement in the nature of formal order, on the return accepting it, and, then only, an intimation is sent out to communicate acceptance thereof coupled with demand for tax, if any. She submits that the intimation is nothing but communication of the order accepting the return. In her submission, section 23 permits an appeal against the order of assessment or such intimation issued under section 16(1)(a)(i) where the net wealth determined does not exceed Rs. 15 lakhs and in a case where net wealth exceeds Rs. 15 lakhs and the assessee objects to either the determination of (a) amount of net wealth under the Act or (b) amount of tax as payable by him under the Act, or denies his liability to be assessed under the Act, the appeal is maintainable under section 23(1A)(a). The learned counsel for the assessee also relied upon the Circular No. 229, dated 9-8-1977 issued by the Board which clarifies that any person, whose wealth determined under section 16 exceeds Rs. 15 lakhs, would be entitled to file an appeal against the assessment order.

10. The learned counsel for the assessee further submitted that the intimation is nothing but a form of communication of the summary assessment to the assessee. When an intimation is issued under section 16(1)(a)(i), the assessing officer is deemed to have applied his mind and arrived at the conclusions, namely, (i) that the return is valid and proper; (ii) that the assessee is liable to be taxed in respect of the assets shown in the returns; (iii) that the assets are not exempted; (iv) that the value of the assets has been correctly shown; (v) that on the part of the assessee there are no objections to being assessed on the net wealth shown in the return; and (vi) that no clarification or explanation in respect of the subject-

matter of the return is required. It is submitted that after consideration of the above various facts, the assessing officer accepts the return or makes unilateral adjustments and completes the assessment by making relevant endorsement in the nature of formal order indicating acceptance of return and issues an intimation along with the notice of demand under section 30. The above assessment procedure involves determination of net wealth and the amount of wealth-tax payable thereon. The learned counsel for the assessee submits that the assessing officer by issuing intimation determines the net wealth of the assessee and in the case at hand the assessing officer has actually determined the net wealth of the assessee at Rs. 27,00,599 and the tax payable thereon was calculated in the sum of Rs. 54,001 which amounted to an assessment of assessee and, therefore, appeal to the Commissioner (Appeals) was very much maintainable under section 23(1A)(a).

11. The learned counsel for the assessee further submitted that even an assessee who denies his liability to be assessed under the provision or provisions of the Act is also entitled to a right of appeal. The word 'assessed' has been used in a comprehensive sense to mean and imply the whole procedure necessary for ascertaining and imposing the liability on the taxpayer. The words 'under this Act' clearly show that reference in section 23(1A) is to the whole procedure laid down in the Act imposing liability on the taxpayer. The denial of liability to be assessed may be in respect of the entire wealth or a part thereof. The total denial of liability may be based on any ground whether of fact or law or denial of liability may be under particular circumstance. Each case is to be decided on its own facts. She submitted that in the case at hand, the assessee had filed return of wealth under protest to avoid any further demand for additional tax under the Act. In the note appended to the return it was contended that the assets were not chargeable to wealth-tax, thereby the assessee had denied its liability to be assessed under the Act. The appeal to the Commissioner (Appeals) against the rejection of this claim was maintainable under section 23(1A)(a), since there was a specific denial of liability to the assessed under the Act.

12. The learned counsel for the assessee submitted that para 7 of the intimation-cum-demand notice dated 2-12-1994 issued by the assessing officer itself notified

that appeal would lie against the said intimation, as such it is not open for the revenue to contend contrary to its own notice. The relevant portion of the notice brought to our notice reads as under :

'7. If you intend to appeal against assessment/fine/penalty, you may present an appeal under sub-section (1) of section 23 of the Wealth Tax Act, 1957, to the Appellate Assistant Commissioner of Wealth Tax/Commissioner of Wealth Tax (Appeals) VII, Bombay, within thirty days of the receipt of this notice in the prescribed form, stamped and duly verified as laid down in the form.'

13. The learned counsel for the assessee further submits that, even if it is assumed that the assessee by filing the return of wealth has accepted its liability to be assessed under the Act, still the assessee is not debarred from denying its liability to be assessed under the Act at a subsequent stage by preferring an appeal. The appeal being a continuation of assessment proceeding, it would be permissible for an assessee to agitate its grievance before the first appellate authority. The reliance was placed on the judgment of the Apex Court in the case of CWT v. Smt. Vimlaben Vadilal Mehta : [1984]145ITR11(SC) .

14. It is further submitted that the assessee who denies his liability to be assessed under the Act is entitled to appeal after the assessment is made, even if he has not denied his liability before the assessing officer. Such denial can be either before or after assessment. The assessee's right of appeal would not be affected in either case. The learned counsel for the assessee sought to rely upon the various decided cases including Indian Aluminium Co. Ltd. v. CIT : [1986]162ITR788(Cal) CIT v. M Pyngrope and Smt. Bhagwant Kaur v. CIT (1998) 223 ITR 242

The learned counsel for the respondent/assessee on the above canvas of the submissions prayed for dismissal of appeal and confirmation of the impugned order of the Tribunal.

CONSIDERATION

15. Having heard the parties at length, we are constrained to observe that parties tried to canvass their rival contentions and views on the larger canvas. We do not propose to decide question of law in abstract. We propose to confine ourselves to the facts and circumstances of the case before us. From the facts narrated hereinabove, it is not in dispute that the assessee filed appeal against the order of assessment passed by the assessing officer under section 16(1)(a)(i) for not having allowed the claim to which it was entitled.

16. In our opinion, without going to the various contentions raised by the assessee, the main contention raised by the learned counsel for the revenue, if considered and dealt with, must decide the question raised and involved in this appeal. The submission of the revenue was that the assessee had filed return and declared its assets, accordingly, it was assessed to tax without any variation. It had voluntarily declared its assets and brought it into the assessment without any objection, thereby the assessee had subjected itself to the assessment by voluntarily filing return, as such the assessee could not be permitted to deny its liability. Reliance was placed on various decisions referred to in the earlier part of the judgment, where in some of the cases it was held that there exist no inherent right of appeal, it being entirely a creature of the statute. The learned counsel for the revenue argued that an order under section 16(1)(a)(i) has not been made appealable under any part of section 23(1A)(a). There is no right of appeal vested in the assessee.

17. Now turning to the controversy involved in this case, the first question needs to be addressed is the contention raised by the revenue that when the return was made by the assessee, it amounted to an admission on the part of the assessee. Since the assessee had not objected before the assessing officer, no appeal was maintainable before the Commissioner (Appeals), as such the Tribunal was wrong in allowing the appeal filed by the assessee. In order to answer the question raised by the revenue, one has to turn to the peculiar facts of the case at hand. The assessee chose to file return specifically mentioning therein

'For the reasons stated in the notes below, net wealth of the company will be nil. However, without prejudice to the contentions stated in the said note the

computation of net wealth is made as under and, accordingly, the wealth-tax of Rs. 54,011 is paid out of abundant caution. '(Emphasis, here italicised in print, supplied)

The computation of net wealth was also done without prejudice to the rights of the assessee.

18. The assessee chose to file return without prejudice to its legal right out of abundant caution. Such return has been accepted by the assessing officer. It was open for the assessing officer not to accept such return, but having accepted the same now the question is: How the return filed without prejudice to the legal rights is to be understood In order to answer this question, first it would be necessary to understand what do you mean by 'without prejudice'. The Apex Court had occasion to consider the meaning of the said phrase without prejudice' in the case of Supdt. (Tech. I), Central Excise v. Pratap Rai : 1978 CriLJ1266 . The Apex Court held that the expression 'without prejudice' means (i) that the matter had not been decided on merits and (ii) that fresh proceedings according to law were not barred. 'Without prejudice' means if the terms are accepted, the dispute shall end, if not, they cannot be used against the writer. In the commercial world, the words 'without prejudice' normally import into any transaction that the parties have agreed that as between themselves the receipt of money by one and its payment by the other shall not, of themselves, have any legal effect on the right of the parties, but they shall be open to settlement by legal controversy, as if money has not been paid. In common parlance, 'without prejudice' denotes protest. In the case on hand, the words 'without prejudice' were used to convey to the assessing officer that mere filing of return and payment of tax shall have no effect on the rights of the assessee and it shall be open to claim settlement of the controversy as if it has not filed the return under the Act. Filing of return 'without prejudice' to the legal rights signifies filing or submission of return accompanied by declaration that if protest is accepted, the dispute shall end, if not, mere filing of return will not be allowed to be used against the assessee implying its admission. 'Without prejudice' implies future rectification in accordance with law.

19. Having noticed the background under which the return was filed and having seen the meaning of the words 'without prejudice', can it be said that the assessee did not object to the assessment before the assessing officer, so as to deny the right of appeal to the assessee under section 23(1A)(a). It is, no doubt, true that the right of appeal is a statutory right given by the statute. Therefore, it has to be decided on the touchstone of the provision providing for appeal. It is correct that no appeal is provided under section 23(1A)(a) against the intimation issued under section 16(1)(a)(i). It is also true that section 23(1A)(a) refers to the nature or type of specific circumstances, in absence of which the assessee cannot file an appeal. One such circumstance, so as to make right of appeal available, as seen earlier, arises from the situation where the assessee denies his liability to be assessed under the Act. In this case, the assessee had filed return for the assessment year 1992-93 under protest/without prejudice to its legal rights. After scrutiny of return, order under section 16(1)(a)(i) was passed and intimation was issued accepting the wealth declared in that assessment year. The assessee challenged the said intimation in appeal before the Commissioner (Appeals). The question which arises is whether the assessee can be said to have denied its liability to be assessed under the Act, after having filed the return, without prejudice to its legal rights and after the return so filed having been accepted by the assessing officer, charging the wealth declared therein to tax, so as to permit the assessee to challenge the order subsequently.

20. In the case before us, the denial of liability by the assessee is apparent on the face of the return filed. The very fact that the return was filed 'without prejudice' to its legal rights is sufficient to indicate that the assessee had denied its liability to be assessed under the Act. The act of filing return under protest and/or without prejudice itself is sufficient to convey to the assessing officer that the assessee is not liable to be assessed under the Act. As held by the Apex Court in Kanpur Coal Syndicates case (supra), the expression 'denial of liability' is comprehensive enough to take into account not only total denial of liability of tax but also the tax under consideration. Therefore, in the facts and circumstances of the present case, the very fact that the assessee had filed its return under protest will have to be treated as denial of liability to be assessed under the Act. This would enable the assessee to acquire right of appeal under section 23(1A)(a).

21. Apart from the above findings recorded by us, we may observe that there is no dispute that the assessee was not liable to pay wealth-tax. The issue on merits has now been concluded in the case of assessee itself by the judgment of this court in the case of CWT v. Cema (P) Ltd. : [2001]248ITR629(Bom) wherein it has been ruled that the office premises in the nature of business asset is not liable to wealth-tax. The same was the contention raised in the return filed by the assessee without prejudice to its legal rights. In the above backdrop, we are also of the opinion that the assessee had raised valid contention that the assessee was not liable to be taxed under the Act. A detailed note was appended to the return justifying the assertion made by the assessee. In this view of the matter, the assessing officer ought to have issued notice to the assessee and ought to have assessed under section 16(2). The assessee was very much entitled to an opportunity of hearing. The said opportunity of hearing could not have been denied to the assessee by the assessing officer by resorting to the provision of section 16(1)(a)(i), especially when potent defence was raised by the assessee in support of its contention for denying its liability to be assessed under the Act. In this view of the matter, we are of the confirmed view that the right of appeal being valuable right could not have been taken away by the assessing officer by resorting to the provision of section 16(1)(a)(i). If that be so, which we believe to be, the assessee could not be precluded from claiming the same relief at the appellate stage; equally that would not preclude the appellate authority to entertain the appeal and grant relief to the assessee if the assessee is otherwise entitled to that under the Act.

22. For the above reasons, we do not find any illegality in the approach or in the order of the Tribunal. So far as other rival contentions are concerned, we do not think it necessary to deal with them in view of our findings based on the facts of the case. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue. The appeal is dismissed with no order as to costs.