

**V. Sagar Vs. Inspecting Assistant**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Sep-02-1987

**Reported in :** (1988)27ITD535(Delhi)

**Judge :** S Kapur, M Agarwal, S

**Appellant :** V. Sagar

**Respondent :** inspecting Assistant

**Judgement :**

1. These are cross-appeals by the assessee, a resident individual and the Revenue, involving assessment years 1979-80 and 1980-81 for which the respective valuation dates are 30-6-1978 and 30-6-1979.
2. In WTA No. 417/Del/87, which involves assessment year 1979-80, the assessee is aggrieved on the following two counts: (i) Treatment of refund relating to assessment year 1977-78 as net wealth of the assessee for the assessment year 1979-80; and (ii) Taking the value of Kanchanjunga flat in the net wealth of the assessee.
3. For the assessment year 1980-81, i.e., in WTA No. 418/Del/87, the sole grievance revolves around the valuation of Kanchanjunga flat.
4. The Revenue in its WTA Nos. 423 & 424/Del/87 has taken the following two common grounds in relation to both the assessment years under appeal: On the facts and in the circumstances of the case, the learned CWT (A) erred in treating

the market value of the books as exempt under Section 5(1)(xii) of the WT Act, 1957.

On the facts and in the circumstances of the case, the learned CWT (A) has erred in reducing the value of valuable right in the share of flat to Rs. 3,12,300 from Rs. 4,10,000 assessed by WTO.5. Parties have been heard at length and orders of the learned lower authorities have been duly noted. In the original return, filed by the assessee for assessment year 1979-80, the assessee declared a sum of Rs. 4,45,335 as income-tax refund due for the assessment year 1977-78, while in the revised computation of net wealth, it was excluded on the plea that the assessment for the assessment year 1977-78 was as yet pending, i.e., on the valuation date (30-6-1978), relevant to assessment year 1979-80. The Wealth-tax Officer treated the said amount of Rs. 4,45,335 as net wealth of the assessee with the reasoning that the perusal of the income-tax return reveals that the assessee declared income of Rs. 10,25,250 and paid the advance tax of Rs. 10,99,120 and in the return a claim of refund of Rs. 4,45,335 was made. However, the assessment was completed by the ITO, ex parte, under Section 144 of the IT Act, 1961, on an income of Rs. 25,00,000 and this assessment was reopened and another assessment made on 26-3-1980 on an income of Rs. 25,18,145. This latter assessment was also reopened and as yet the assessment is pending finalisation. The WTO treated the amount as net wealth of the assessee because he was of the opinion that on the basis of assessee's own stand, the assessee was entitled to a refund, since tax paid is more than the returned income. The learned CWT (Appeals) upheld, on principle, the finding of the assessing officer, but relying upon the ratio of decision of the Hon'ble Supreme Court in CWT v. Vadilal Lallubhai [1984] 145 ITR 7, directed the assessing officer to include the refund, if any, as may be finally determined for the assessment year 1977-78, as net wealth of the assessee for the assessment year under appeal.

6. The assessee is aggrieved and before us has strongly relied on the decision of the Hon'ble Gujarat High Court in CWT v. Arvind-bhai Chinubhai [1982] 133 ITR 800. Their Lordships of the Hon'ble Gujarat High Court was seized of the following issue: Whether the Tribunal was right in law in holding that the amount of Rs. 76,867, representing income-tax refund due to the assessee, did not form part of

his taxable asset under Section 2(e) of the Wealth-tax Act, 1957, on the valuation date. The mere possibility of getting income-tax refund in future as and when the assessment proceedings are to be finalised would not form part of an asset of the assessee belonging to him on the valuation date. On the valuation date what the assessee does is to discharge his legal obligations by paying advance tax, which, otherwise, if undischarged, will remain as a debt owed by him on the valuation date. Hence, payment of any advance tax cannot be treated as an asset of the assessee which belongs to him. The future possibility of getting refund of the advance tax paid represents a mere chance to get an asset in future, may be years after the valuation date, when the assessment proceedings under the IT Act would get finalised.

Even assuming that the mere likelihood of obtaining a refund, in future, of tax paid for the relevant assessment year could be characterised as an asset in the hands of the assessee on the relevant valuation date especially when the assessment proceedings for the relevant assessment years are pending on the valuation date, it would be impossible to comprehend and predicate with any degree of certainty as to what would be the actual amount of tax refund, if any, which would be available to the assessee in future and which could be treated as his asset on the valuation date. The right of the assessee to receive a particular amount of refund vis-a-vis tax paid for a given assessment year is a mere possibility. Equally so is the corresponding liability of the department to refund to the assessee a particular amount. So long as the assessment proceedings are not processed and finalised by the department, the alleged right and the corresponding liability remain in a fluid state. Therefore, even assuming that the likelihood of obtaining refund of the amount may be an asset, it is not capable of evaluation as on the valuation date and such an asset is not capable of being ascertained and cannot be treated as an asset for the purpose of arriving at the net wealth of the assessee during the relevant assessment year.

7. In *Vadilal Lallubhai's case* (supra), the question for adjudication before their Lordships of the Hon'ble Supreme Court, was to the following effect: Whether in computing the net wealth of the assessee, the amount deductible in respect of liability of tax for any year, for which the assessment is completed after the

valuation date, is the liability as ascertainable on the valuation date or the actual amount of tax, subsequently assessed. Their Lordships held that just as an income-tax liability becomes crystallised on the last day of the previous year relevant to the assessment year and a wealth-tax liability becomes crystallised on the relevant valuation date and these liabilities are perfect debts on the last day of the previous year or the valuation date, as the case may be, a gift-tax liability becomes crystallised and, therefore, a perfected debt, on the last day of the previous year relevant to the particular assessment year. If the wealth-tax assessment year is carried in appeal, the appellate authority has to take into account the ultimate quantification of tax liability even though such ultimate quantification has been reached after the relevant valuation date and during the pendency of the wealth-tax appeal. In computing the net wealth of the assessee, the deduction admissible, must be calculated on the basis of the tax, as finally quantified on assessment, even though the assessment may have been made subsequent to the valuation date.

Once an assessment order is passed in relation to the particular tax, of which the deduction is claimed, the date disclosed by the assessee in his return, are no longer determinative of the assessee's tax liability, because in law, they stand superseded by the assessment order.

8. In our considered opinion the ratio laid down by the Hon'ble Gujarat High Court is more relevant for the purpose of the present case, since there the question referred to (as reproduced above), was the same as the issue is before us. We hold accordingly. The amount of Rs. 4,45,335, which is, in terms, an estimated refund, relating to assessment year 1977-78, which assessment was as yet pending as on 30-6-1978, i.e., the valuation date relevant for the assessment year under appeal as such could not be included in the hands of the assessee as his net wealth.

9. As regards the issue of valuation of the flat in Kanchanjunga building, admittedly there is no conveyance deed in favour of the assessee and none has been executed and registered as required under the provisions of the Indian Registration Act, *Nawab Sir Mir Osman Ali Khan v. CWT* [1986] 162 ITR 888 (SC)

comes into play, but giving due consideration to the facts of the case, the assessee's rights in the said fiat have to be evaluated and these rights include his possession, peaceful enjoyment and his rights to transfer it, of course, with the permission of the builder. These rights, in our considered opinion, required to be evaluated and the valuation put by the learned CWT (A) has to be the value of the said right, since, the learned CWT (A) has based the computation on the rateable valuation as fixed by the New Delhi Municipal Committee. We will, as such, uphold the said valuation of Rs. 3,12,300 for both the years under appeal. We will also like to mention that in the 'statement of facts', filed by the assessee before the learned first appellate authority, the assessee claimed the valuation to be Rs. 3,12,300 and this having been upheld by the learned first appellate authority, the assessee cannot now turn back and make a grievance of it.

10. The net result is that WTA No. 417/Del/87, involving assessment year 1979-80, succeeds partly, since on issue No. 1 the assessee succeeds, while WTA No. 418/Del/87, involving assessment year 1980-81 fails and stands dismissed.

11. As regards common ground no. 2 of the Revenue for both the years under appeal, in view of our decision on common ground no. 2 in assessee's appeal for both the years, Revenue fails on this issue.

12. As regards Revenue's common ground no. 1 for both the years, in view of the reliance of the learned CWT (A) on the decision of the ITAT Delhi Benches in the case of A.K. Sen [WT Appeal Nos. 816 to 823 (Delhi) of 1980] for assessment years 1967-68 to 1974-75, this ground also stands rejected.

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