Pradeep Narang Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-11-1990

Reported in : (1991)36ITD325(Delhi)

Judge : K Vishwanathan, Vice, M Bakshi

Appellant : Pradeep Narang

Respondent : inspecting Assistant

Judgement :

1. We find it convenient to dispose of these two appeals by a common order. The assessee is an individual. He owns a property which he valued for the two assessment years at Rs. 1,64,000. The WTO, however, did not accept this valuation as correct. He found that, in the prior assessment years, the value of this property was fixed at Rs. 10,06,000. He adopted the same value and completed the assessment.

2. The assessee appealed. It was submitted before the CIT (Appeals) that, on the facts, the WTO ought to have referred the matter to tjhe Valuation Officer and the non-compliance with this mandatory requirement had vitiated the proceedings. It was submitted that, in case the WTO did not make a reference to the Valuation Officer, it could be presumed that he has chosen to accept the value declared by the assessee and so he had no option to change the valuation. Reference was made to the Board's Circular which gave instructions to the officers to this effect. The CIT(Appeals) accepted the assessee's contention that, on the facts, reference

to Valuation Officer was mandatory. But he could not accept the contention that, in the event of non-reference, the returned value should be accepted. According to him, it was a mistake in the procedure with regard to the valuation. In this view of the matter, he sent back the matter to the assessing officer.

3. The assessee is in further appeal. It was submitted by Shri Mittal, the learned counsel for the assessee that the WTO not having referred the matter to the Valuation Officer, had no alternative, but to adopt the value given in the return. He further submitted that the CIT(Appeals) was not justified and had no power to require the WTO to refer the matter to the Valuation Officer. Shri Mittal first pointed out that the Delhi High Court in the case of Sharbati Devi Jhalani v.CWT [1986] 159 ITR 549, had held that the provisions of Section 16A are mandatory. A similar view has been expressed by the Punjab and Haryana High Court in the case of Raj Paul Oswal v. CWT [1987] 35 Taxman 509/[1988] 171 ITR 489. He submitted with reference to the provisions of the Act that there is a total ouster of the WTO's jurisdiction in respect of the valuation of properties which have to be referred to the Valuation Officer. The WTO has no jurisdiction at all. This position has been recognised by the CBDT in their circular dated 25-11-1972. In view of this, it was submitted that the assessing authority had exceeded his jurisdiction in ignoring the provisions of Section 16A. He then referred to the decision of the Madhya Pradesh High Court in the case of M.V. Kibe v. CWT [1987] 168 ITR 82/34 Taxman 364 and submitted that the CIT(Appeals) had no jurisdiction to direct the WTO to refer the matter to the Valuation Officer. In support of his contention, he had referred to a number of decisions.

4. Smt. Kumar, for the Department, submitted that such a ground was not taken up by the assessee before the CIT(Appeals). Therefore, the assessee should not be permitted to take this ground. She next submitted that it is not the department's case that Section 16A would not be applicable. In fact, the CIT(Appeals) has referred the matter to the Valuation Officer who had the proper jurisdiction to assess the value of the property. With reference to the submission that the CIT(Appeals) had no jurisdiction to direct the WTO to refer the matter under Section 16A, she pointed out that the CIT(Appeals) has plenary powers. He could completely set aside the assessment. On setting aside, the WTO can refer the

matter to the Valuation Officer. In those circumstances, it can never be said that the reference by the WTO was erroneous. If, in a case, where the CIT(Appeals) can completely set aside the matter and then reference is made to the Valuation Officer, there is no reason why the CIT(Appeals) requiring the WTO to make such a reference to the valuation officer. She then pointed out that the CIT (Appeals) can correct all the errors committed by a WTO. He can do what the WTO had done and he can also make good an omission or what the WTO had failed to do. She then posed a question as to what would happen, if, in the course of assessment, the succeeding WTO had assumed jurisdiction over the matter. If the earlier WTO has not made any reference under Section 16A, could it preclude the succeeding officer also to make a reference. He submitted that the entire argument is misconceived and it ignores the vast jurisdiction exercised by the appellate authorities in the assessment proceedings.

5. We have considered the submissions. There cannot be any dispute that the provisions of Section 16A are mandatory and, where the circumstances exist, the WTO has to make a reference to the Valuation Officer. Where the fair market value, in the opinion of the WTO, exceeds the value of the asset as returned, by more than Rs. 50,000, the rules and the section require the WTO to make a reference to the Valuation Officer. Factually, these conditions have been satisfied. So the failure of the WTO to make a reference has given rise to a grievance and the CIT (Appeals) rightly had accepted that the WTO ought to have referred the matter to the Valuation Officer.

6. But the point raised by Shri Mittal is that, having failed to refer the matter to the Valuation Officer, the WTO has to complete the assessment by accepting the return. The CIT(Appeals) cannot direct the WTO to make a reference. This submission of Shri Mittal is supported by a decision of the M.P. High Court in the case of M. V. Kibe (supra). In that case also, the WTO failed to refer to the Valuation Officer the question of value where the facts required such a reference. The AAC therein directed a reference to the Valuation Officer. Holding this direction as beyond the jurisdiction of the AAC, the Court observed :- Now, it is well-settled that while framing an order of assessment under a taxation law, the assessing authority exercises quasi-judicial functions. Where discretion is

conferred on an authority exercising quasi-judicial functions, that authority cannot be directed by the appellate authority to exercise or not to exercise that discretion; For the purpose of making a reference to the Valuation Officer under Section 16A of the Act, the WTO has to form the requisite opinion as required by Section 16A. That he should form such an opinion, cannot be dictated to him by the appellate authority.

So the ratio of this case is, where discretion is conferred to an authority exercising quasi-judical functions, that authority cannot be directed by the AAC to exercise or not to exercise that discretion. In this connection, we may refer to the provisions of Section 144 B of the Income-tax Act. Under this provision, where the computation of income, as fixed by the ITO, exceeds the income returned by the assessee by more than Rs. 1 lakh, the ITO shall forward a draft of the proposed order by assessment to the IAC. There are provisions in Section 144B that the IAC would consider the objections raised to the proposed addition and then give the necessary directions to the ITO to complete the assessment. Now, there are cases where the ITO had proposed additions exceeding Rs. 1 lakh and had failed to refer the matter to the IAC as required under Section 144B. As in the case before us, arguments were taken up before the authorities that the entire assessment is null and void. In the case of Banarsidas Bhanot &Sons v.CIT [1981] 129ITR488(MP),the ITO served a draft assessment order proposing an addition of more than Rs. 1 lakh and called for the assessee's objections. As the objections were not received within the time-limit, he completed the assessment. On appeal the AAC held that the draft order was defective and remitted the matter back. On further appeal, the Tribunal held that the draft which was served on the assessee contained the proposed additions and disallowances and there was sufficient compliance with Section 144B(1). The ITO was directed to make fresh assessment after serving a fresh and complete draft of the order. It was submitted before the High Court that the order passed by the ITO was a nullity and the Tribunal could not have given the direction. Reference was made to the well-known principle that if a power is conferred and the manner of exercising the power is indicated, it must be exercised in that manner. Dealing with this point, the High Court observed at page 493:- Learned counsel for the assessee relied on the well-known principle that if a power is conferred and the manner of exercising the

power is also indicated, the power must be exercised in the manner indicated by the Act conferring the power and not otherwise. But this principle does not mean that every defect in the manner of exercise of the power makes the ultimate order passed in the exercise of the power invalid. A question of this nature has to be answered having regard to the relevant statutory provision, the object behind it and the deviation in the particular case from its strict compliance.

7. It will be seen from the above that, even if there is deviation in the way in which the power has to be exercised, the order does not become a nullity.

8. In another decision of the Madhya Pradesh High Court, M.P. State Mining Corporation v. CIT [1988] 170 ITR 459, the ITO made a reference to the IAC, where no such reference was called for. The assessee questioned the reference on the ground that the facts do not require the reference and the assessment order passed after taking into account the additional time for completing the assessment under Section 144, is really barred by limitation. Even then, the High Court held that the assessment order was perfectly valid and the Tribunal was justified in holding it to be valid. In the case of K. Ashok Kumar v. CIT [1986] 162 ITR 543/29 Taxman 173 (Kar.), the ITO had completed the assessment of the income of a deceased assessee on the legal representatives, but without issuing notices to all the legal representatives and without observing the requirements of Section 144B. As in this case, an argument was taken that the entire proceedings were null and void, the High Court did not accept this submission. They held that the directions of the Tribunal to the ITO to refer the matter to the IAC under Section 144B was perfectly valid.

9. In the above cases, we have referred to the irregularities arising in observing the procedure under Section 144B. Parallel between Section 144 B of the Income-tax Act and 16 A of the WT Act would be very clear even on a cursory reading. In both the cases, the assessment proceedings are to be initiated by the ITO and WTO as the case may be and completed by those very officers. In between, in the course of some matters, their jurisdiction is ousted. In Income-tax, where the proposed addition is more than Rs. 1 lakh, a reference to the IAC was necessary. In Wealth-tax, where the market value exceeded the value of an asset as per

return, reference to the Valuation Officer is mandatory. After getting the approval of the IAC in Income-tax and the report of the Valuation Officer in Wealth-tax, it is again the respective officers, who have to complete the assessments. It would be noticed that the ITO and the WTO, as the case may be, are in serin of jurisdiction for the assessment. It continues to be with them till the assessment orders are passed. It is under these circumstances that the case-laws under Section 144B are fully applicable to the proceedings of the Wealth-tax also.

10. We may also refer to a decision of the Kerala High Court in penalty matters. In the case of V. Subramonia Iyer v. CIT [1978] 113 ITR 685, the ITO had initiated penalty proceedings and passed penalty order without considering the assessee's written submissions why penalty should not be levied. It was argued in that case that the section required the ITO to consider the facts of the case and decide, whether penalty is to be levied or not and if it had failed to do so, the levy is invalid and the appellate authorites cannot make good his omission.

The order was submitted to be null and void. Dealing with this submission, the Kerala High Court observed at page 688:- An order ab initio void will not become a valid order by virtue of the fact that it has been confirmed by an appellate authority. An order, which is not void ab initio but which suffers from some infirmity, however great, that infirmity may be, can merge with an appellate order which is valid and the appellate order can, therefore, govern the matter. The principles of natural justice are not embodied rights but must take its content and scope from the statutory provisions where such provisions exist. If there has been an infringement of fundamental rights guaranteed by the Constitution by an order which violated a statutory provision which had provided for compliance with the principles of natural justice, the order would be void and such order would be incapable of being resurrected by an order passed in appeal from that void order.

After stating the position in law, the High Court referred to the powers of the AAC and observed at page 690:- The appellate power conferred on the AAC seems to be unlimited.

Section 250 does not specifically state the powers of the appellate authority. But we conceive that the appellate authority has the power to set aside the order and

remit the case back to the ITO to allow the appeal on the merits or pass an order calling for fresh findings from the first authority and thereafter deal with the appeal in one of the above manners or alter or amend or modify the order under appeal. In other words, the power conferred on the appellate authority by Section 246 and which is exercised in accordance with the procedure in Section 250 indicates an amplitude and width which is no less wide than that of the ITO. He does not merely satisfy himself as to whether the ITO acted properly. He considers the question as enjoined by the specific provision in the statute by giving a personal hearing to the appellant or his representative. This insistence on a personal hearing, which is not a general procedure in all cases, indicates the width of the examination by the appellate authority.

11. It will be seen from the above that the Kerala High Court, relying on the vast powers enjoyed by the first appellate authority, had held that the authority himself can do what the ITO had failed to do.

12. In view of the above exposition, we are of opinion that the WTO, in failing to refer the matter to the Valuation Officer, had committed a procedural irregularity. Such procedural irregularities are curable.

The CIT(Appeals) is justified in directing the WTO to cure the irregularity.

13. It remains to deal with the decision of the Madhya Pradesh High Court in M.V. Kibe's case (supra). No doubt, this decision is directly on all fours, but it will be noticed that the discussion in this decision is very brief and is on the limited point of an authority having a quasi-judicial function. It has been stated there that the appellate authority cannot give a direction to exercise the direction.

We have referred to a large number of Madhya Pradesh High Court decisions themselves in analogous matters where different views have been expressed. We have also referred to the well known proposition of irregularity in procedure being curable as laid down by the Supreme Court in the case of Guduthur Bros. v. ITO [1960] 40 ITR 298. In view of this, we would prefer to follow the other decisions already quoted by us than the Madhya Pradesh High Court in M.V. Kibe's case (supra).

In this connection we may refer to the decision of the Bombay High Court in the case of CIT v. Jayantilal Ramanlal & Co. [1982] 137 ITR 257. The High Court has observed therein at page 265 "unless the judgments of other High Courts dealing with an identical or comparable provision can be regarded as per incurium, it should originally be followed". In our opinion, the decisions of the Madhya Pradesh High Court in all other analogous matters being more in line with the Supreme Court decision in Guduthur Bros', case (supra) and the decisions of the Karnataka and Kerala High Courts, we would prefer to follow those decisions.

14. We may also notice a submission of Mrs. Kumar, Departmental Representative, which makes the entire discussion above, academic. She had pointed out that there is no rule direction given by the CIT(Appeals). He has only set aside the assessment. The relevant part of that order reads as follows:- In this view of the matter, I will send this matter to the file of the assessing officer, who will take necessary action in accordance with the provisions of Rule 16A before valuing the property.

15. We agree with Mrs. Kumar that it is possible to read in the above finding only the total setting aside of the order. But since the provisions of 16A is mentioned, we may take it that such a direction has been given by the CIT(Appeals), 16. The assessee has also raised certain other points in the grounds of appeal. Deduction in respect of death due to Kapil Dev & Co. amounting to Rs. 19,292 is one of the grounds. The deduction has been disallowed by the WTO following the reasoning in the earlier assessment orders. We find that, for the assessment years 1973-74 to 1978-79, this issue had been remitted back to the WTO. We follow the same procedure. The matter is remitted back to the WTO. The other two issues, i.e., deduction of Rs. 2,891 and Rs. 90,001 as liabilities are already covered by the earlier decisions of the Tribunal. The order of the WTO on this point will be upheld.