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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Jan-07-2003

Reported in : (2004)89ITD542(Mum.)

Judge : S Mehrotra, B S K.K.

Appellant : Floatglass India Limited

Respondent : The A.C.W.T., Range 10(1)

Judgement :

1. This appeal has been filed by the assessee against the order dated 12.6.02 of CWT(A)-X, Mumbai. The first ground of appeal is as under: "The CWT(A)-X erred in holding that the Addl.CWT was justified in considering the insured value of the motor cars as their market value. The appellant submits that the insured values of the motor cars do not represent their market values. The appellant, therefore pay that the Addl.CWT be directed to value the motor cars on the basis of insured values after allowing a suitable deduction to arrive at their market values as on the valuation date." 2. The facts are that the market value of motor cars was disclosed in the return of net-wealth filed by the assessee at Rs. 14,90,600/-. This value was accepted by the AO with following short discussion: "The total wealth of the assessee comprises of value of movable properties being motor cars of Rs. 14,90,600/-. The authorized representative, has explained that the value of motor cars have been adopted at the insured value." 3. The assessee agitated this issue before the ld.CWT(A) relying upon the ITAT 'B' Bench, Mumbai decision in the case of Samarath Knitters Pvt. Ltd. v. DCWT-140 Taxation 105, wherein it was

held that the market value of motor cars for the purpose of Wealth Tax Act can be taken at 80% of the Insured value. The ld.CWT(A) rejected this plea on the ground that the appellant company itself disclosed the value of Rs. 14,90,600/-. The ld.CWT(A) decided this issue with the following observations: "In the present case, the appellant company never raised this point before the AO that the market value of the motor cars should be taken at a discounted figure of the insured value. As this point has not been raised and contended before the AO and it is also not a legal issue, the action of the AO is confirmed and this ground of appeal is dismissed." 4. In the backdrop of the abovementioned facts, the ld. counsel appearing on behalf of the assessee contended that the ld. CWT(A) was not justified in not dealing with the assessee's claim on merits. It is submitted that the first appellate authority has plenary powers and such powers are co-terminus with the powers of the AO. The ld. counsel also invited our attention to the statement of facts filed before the CWT(A), wherein the following submission was incorporated.

"The Addl.CWT has determined the market value of motor cars at their insured values. The Addl.CWT has rejected your appellant's submission that cars if sold in the open market cannot fetch their insured values and therefore, the insured values should be reasonably discounted to arrive at the realizable market values." The ld.counsel submitted before us that the insured value of the motor cars do not represent the market value and therefore, the ld.CWT(A) should have accepted and decided the ground on merits raised before him. The ld. DR supported the order of the CWT(A).

5. We have carefully considered the rival submissions and have gone through the facts. In the assessment order, the AO has nowhere stated that any claim was made before him to the effect that the value of motor cars disclosed by the assessee should be reduced. The assessee was at liberty to file a revised return of net-wealth within the prescribed time limit before the AO if it wanted to make any variations in the returned net-wealth. Admittedly, no such revised return was filed. Even though there is a mention in the statement of facts that the Addl.CWT rejected the assessee's claim, the ld. CWT(A) has recorded a clear finding that this issue was never raised before the AO. In our view, the ld. CWT(A) has rightly decided the issue and his order does not call for any interference. Accordingly, his

order on this issue is confirmed.

"The CWT(A) erred in holding that the Addl.CWT was justified in assessing the appellant's wealth tax in respect of the resident houses belonging to the appellant and allotted to its employees as 'assets' within the meaning of Section 2(ea) of the WT Act. The appellant submit that on a proper interpretation of the provisions of Section 2(ea) of the Act, the CWT(A) should have held that the residential houses are not 'assets' for the purposes of computing the net wealth under the Act." 7. The relevant facts are that the assessee company claimed before the AO that certain residential flats belonging to the assessee company were allotted for the residential purpose of its employees and accordingly such flats were exempt from the levy of wealth tax by virtue of Section 2(ea) of the WT Act. The AO examined the claim and found that in all there were three flats out of which one flat was allotted to an employee whose annual salary was less than Rs. 2 lakhs whereas two flats were allotted to employees whose annual salary exceeded Rs. 2 lakh each. The AO was of the view that, to the facts of the case, Section 2(ea)(i)(1) of the WT Act is applicable and not Section 2(ea)(i)(3) as claimed by the assessee. The AO, therefore, brought to the charge of tax the market value of the two flats which resulted into an addition to Rs. 1,24,22,220/- to net-wealth of the assessee. The ld. CWT(A) concurred with the view of the AO, after considering the facts and the provisions of law in detail as per discussions contained at para 3 of his order.

8. The ld. counsel submitted before us that the assessee's case is squarely converted under part (3) and therefore the ld. CWT(A) was not justified in applying part (1) of Section 2(ea)(i). It is argued that the flats which have been allotted for the residential use of the employees are business assets occupied by the assessee for the purpose of business and depreciation has been allowed thereon. It is pointed out by the ld. counsel that analogus provisions are contained in Section 22 of the IT Act. Section 22 does not apply to a property occupied by the assessee for the purpose of any business or profession carried on by him. The ld. counsel submitted that in the context of Section 22, it has been held that the exclusion from the provisions of Section 22 would apply to a property allotted to Directors, Executives or employees of the assessee. In such cases, it has been held that the property is occupied by the assessee for the purpose of business.

For this proposition, reliance is placed upon the Hon'ble Andhra Pradesh High Court decision in the case of CIT v. Vazir Sultan - 173 ITR 290 and Hon'ble Delhi High Court decision in the case of CIT v. Modi Industries Ltd.-210 ITR I. The ld. counsel also submitted that if there is any doubt as to under which of the relevant provisions the case of the assessee is covered, the assessee has an option to choose a particular provision. It is also pointed out that if two legal courses are available to the AO, he should adopt the course which is beneficial to the assessee. For this proposition, the ld. counsel has drawn support from the Hon'ble Madras High Court decision in the case of CIT v. Bosotto Brothers-8 ITR 41 and the Hon'ble Bombay High Court decision in the case of CIT v. J.C. Thakker-27 ITR 658. It is argued that if there is some doubt as to whether part(1) or part(3) would be applicable to the case of the assessee, the assessee has an option to choose the provision under which it desires to avail of the benefit.

The ld. counsel also invited our attention to the speech of the Hon'ble Finance Minister documented at 194 ITR (St.) 1, wherein while introducing the amendments to Section 2(ea) of the WT Act, it was stated that the object was to bring within the ambit of Section 2(ea), such assets which were unproductive. It is, therefore, forcefully contended that the flats in question fall under part (3) and are therefore excluded from the definition of 'assets' as contained in Section 2(ea) of the WT Act.

9. The ld. DR supported the order of the ld. CWT(A) and submitted that the specific provisions of part (1) are applicable to the case of the assessee.

10. We have given a careful consideration to the rival submissions vis-a-vis relevant facts of the case and have also gone through the cases cited on behalf of the assessee. The relevant provisions of Section 2(ea) may be extracted below: "2(ea)(i) any building or land appurtenant thereto (hereinafter referred to as 'house'), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within 25 kms. From local limits of any municipality (whether known as municipality, municipal corporation or by any other name) or a cantonment board, but does not include- (1) a house meant exclusively for residential purposes and which is

allotted by a company to an employee or an officer or director who is in whole-time employment, having a gross annual salary of less than two lakhs rupees.

(3) any house which the assessee may occupy for the purposes of any business or profession carriedon by him." 11. The controversy raises a very interesting and important issue viz., as to whether the case to which part (1) of Section 2(ea)(i) is clearly applicable can be excluded from the purview of that part and can be considered as falling under part (3). Apparently and admittedly, the facts of the assessee's case clearly fit into part (1). The facts in question are meant exclusively for residential purposes. The assessee is a company and the flats are allotted to the employees who are in whole-time employment of the assessee company. Such flats have been excluded from the ambit of charge of wealth tax with a rider that gross annual salary drawn by the concerned employee should be less than Rs. 2 lakh as applicable for the AY under appeal. Part (3) of Section 2(ea)(i) is applicable to any house which the assessee may occupy for the purpose of any business or profession carried on by him, while part (1) is applicable specifically in the case of only a company and to residential flats allotted to employees. Part (3) is a general provision applicable to any house occupied or the purpose of business.

Part (3) also applies to all assessees and not specifically in the case of a company. In our view, if the proposition of the ld. counsel for the assessee is accepted, part (1) of Section 2(ea)(i) would be rendered completely redundant. We are of the view that such an interpretation would do violence to Section 2(ea) of the WT Act and would be against the well established principles of interpretation of statute. Such principles of interpretation may be summarized as under: i. No part of the statute should be considered as redundant and no provisions of a statute can be just ignored.

ii. Interpretation must advance the object and purpose and also the intention of legislature.

iii. If a special provision is made on a subject matter, that matter is excluded from the general provision. This principle is expressed in the maxim 'generalia specialibus non derogant and generalibus specialia derogant'.

12. To illustrate the abovementioned principles of interpretation, a reference may first be made to the Hon'ble Supreme Court decision in the case of CIT v. Distributors (Baroda) Pvt. Ltd.-83 ITR 377. In this case, the apex court was concerned with the interpretation of Explanation 2 Section 23A of the IT Act, 1922. It may be fruitful to reproduce below the observations of the Hon'ble Supreme Court from page 383: "We cannot say that the legislature did not know its own mind when it used that expression in Section 23A. We must give some reasonable meaning to that expression. No part of a provision of a statute can be just ignored by saying that the legislature enacted the same not knowing what it was saying. We must assume that the legislature deliberately used that expression and it intended to convey some meaning thereby." 13. Reference may also be made to Hon'ble Supreme Court decision in the case of Smt. Tarulata Shyam and Ors. v. CIT - 108 ITR 345. In this case, the Hon'ble Apex Court was called upon to interpret Section 2(6A(E) and 12(1B) of IT Act, 1922. The observations of the Apex Court from page 356 are reproduced below: "We have given anxious thought to the persuasive arguments of Mr.

Sharma. His arguments, if accepted, will certainly soften the rigour of this extremely drastic provision and bring it more in conformity with logic and equity. But the language of Section 2(6A)(e) and 12(1B) is clear and unambiguous. There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only be legislation and not by judicial interpretation.

To us, there appears no justification to depart from the normal rule of construction according to which the intention of the legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt J. in Cape Brandy Syndicate v. Inland Revenue Commissioners (1921) 1 KB 64 (KB) at page 71, that: '.....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be." 14. Lastly, a reference may be made to the Hon'ble Bombay High Court decision in the case of Forebes Forbes Campbell & Co. v. CIT - 206 ITR 495. The ratio of the Hon'ble Bombay High Court is reproduced below from the headnote: "It is a well settled principle of interpretation that a statute must be read as a whole and every provision must be construed with reference to the context and other clauses in the statute so as to make a consistent enactment of the whole statute. IT is equally well settled that the sub-sections or sub-clauses must be read as parts of an integral whole and as being interdependent and an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and a avoid repugnancy. If there are two conflicting provisions in the same section or clause, the courts should find out which of the two provisions is more general and which is more specific and construe the more general one as to exclude the more specific. The principle is expressed in the maxim generalia specialibus non derogant and generalibus specialia derogant. If a special provision is made on a certain subject matter, that mater is excluded from the general provision (see p.

499 D-G).

Sub-clause (iii) of Clause (b) Sub-section (1) of Section 35B of the IT Act, 1961, contains a specific prohibition on allowance of weighted deduction on expenditure incurred on carriage of goods to their destination outside India and on insurance of such goods while in transit whether incurred in India or outside India. It is prohibits allowances of weighted eduction on expenditure on the distribution, supply or provision outside India of such goods, services, etc., if incurred in India Weighted deduction on such expenditure is, however, allowed if it is 'incurred outside India'.

That being so, no weighted deduction is allowable at all on expenditure on freight and insurance whether incurred in India or outside India. It is also not allowable on expenditure incurred on account of (i) export inspection charges, (ii) brokerage, (iii) bank charges, and (iv) clearing charges incurred in India (see pp. 498H, 499A,B).

Sub-clause (iii), which is a special provision dealing with allowance of weighted deduction on expenditure mentioned therein including expenditure on freight and insurance,w ill prevail over Sub-clause (viii) which is a general provision and deals with 'expenditure on performance of services outside India in connection with the execution of any contract for the supply outside India of any goods, services or facilities'. Sub-clause (viii) does not deal with expenditure which has been specifically dealt with in Sub-clause (iii) wherein the conditions and restrictions on the allowability of weighted deduction have been laid down. Therefore, the allowability of weighted deduction on expenditure filling under Sub-clause (iii) will have to be determined with reference to the conditions and restrictions specified therein and not with reference to any other sub-clause which deals with expenditure of a general nature (see pp.499G,H, 500A,B).

Held that in view of the specific exclusion made in Sub-clause (iii) of Section 35B(1)(b), the assessee was not entitled to weighted deduction under the section in respect of freight charges, export inspection charges, brokerage, insurance, bank charges and clearing charges. Moreover, even on the facts, these items of expenditure did not fall under Sub-clause (viii) because none of them had been incurred on performance of any service outside India in connection with or incidental to the contract for supply of gods outside India." 15. The provisions of Section 3(ea) of WT Act may be considered in the light of the abovementioned binding decisions of the Hon'ble Supreme Court and Hon'ble Bombay High Court. It cannot be assumed that when part (3) was added by the legislature by Finance Act, 1966 w.e.f.

1.4.97, it was not aware of the existing part (1) of Section 2(ea)(i).

The Section in our view cannot be interpreted in a way that part (1) is completely ignored and is thereby rendered redundant. Further, part (1) is a specific provision applicable to the case of a company and in respect of residential house allotted to an employee. On the other hand, part (3) is a general provision applicable to all houses occupied by an assessee for the purposes of business. In our view, the specific type of accommodation referred to in part (1) is to be excluded from part (3) to advance a constructive and harmonious interpretation of the provisions of Section 2(ea) of the WT Act. The cases relied upon on behalf of the assessee, in our view, will not be of much help for the simple reason that in the IT Act, there is no specific or special provision overriding the effect of Section 22. However, Section 2(ea)(i) contains five excluded categories of house. Category I refers to a special and specific house while category 3 is of a general nature. We, therefore, hold that in the present case, part (1), which is a specific provision, would apply. Accordingly, we reject this ground of appeal and uphold the finding of the ld. CWT(A).