

Cwt Vs. Ct. Chidambaram

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Court : Chennai

Decided On : Jul-15-2004

Reported in : (2004)192CTR(Mad)444

Appeal No. : Tax Case Nos. 61 & 162 to 168 of 2000 15 July 2004

Appellant : Cwt

Respondent : Ct. Chidambaram

Advocate for Pet/Ap. : Mrs. Pushya Sitharaman, *for the revenue* Ms. Maya J Nichani, *for the Assessee*

Judgement :

M.V. Balasubramanian, J.

Pursuant to the directions of this court in TCP Nos. 283 to 290 of 1992 dated 16-11-1992, the Tribunal has stated a case and referred the following question of law for our opinion with reference to the assessments. of two assessees, namely, CT. Chidambaram and CT. Karuppan Chetty for the assessment years 1979-80 to 1982-83 :

'Whether the Tribunal was correct in law in confirming the cancellation of reassessments ignoring the fact that even though acquisition proceedings had been dropped by the government, the amount of compensation offered by the

government in respect of the property in question, viz, Julutang property was an indication of its market value and it was much more than the value assessed originally for the assessment years 1979-80 to 1982-83 ?'

2. The tax case references arise under the provisions of the Wealth Tax Act, 1957. The two assessees are brothers. They have one other brother, by name, CT. Muthukaruppan, and their grandfather was the owner of a large piece of land measuring 2,16,820 sq. ft. in Malaysia in a portion of which buildings were standing. On the death of the grandfather, the father of the three brothers became the owner of 1/5th interest in the property and on his death, each assessee became the owner of 1/15th share along with other brothers. In the original assessments made for the assessment years 1979-80 to 1982-83, the assessees returned the value of the property on the basis of the valuation certificate relating to the year 1980-81. The Wealth Tax Officer determined the valuation of the Malaysian properties and enhanced the value by 50 per cent of the value returned by the assessee. Subsequently, it came to the knowledge of the department that a portion of the property was proposed to be acquired by the Malaysian Government in August, 1982. The Wealth Tax Officer also noticed that a portion of the vacant site with eleven houses in Julutang property was sold in August, 1982, and the assessees furnished the valuation report from the valuer at Pinang regarding the market value of the site of the property as on 1-1-1964. The Wealth Tax Officer came to the conclusion that the assessees have not offered the real value of the property and in the valuation report the site and houses in Julutang property were valued at a higher price as on 1-1-1964, and the said valuation report was filed for computation of capital gains under the Income Tax Act, 1961. From the above materials, the Wealth Tax Officer prima facie came to the conclusion that for the valuation of the Julutang property a lower figure was adopted and hence, reopened the assessments made for the assessment years 1979-80 to 1982-83 in the assessees cases and made reassessments under the relevant provisions of the Wealth Tax Act, 1957. Both the assessees preferred appeals challenging the orders of reassessment before the CWT(A).

3. The CWT(A), on appeal, held that the reassessment proceedings initiated by the Wealth Tax Officer were erroneous as there was no escapement of wealth in

the original assessment made and dismissed the appeals. The Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), on further appeal by the revenue, following its earlier decision rendered in the case of another co-owner, CT. Muthukaruppan, held that the reassessments were liable to be cancelled because the Wealth Tax Officer, had not established any escapement of wealth and only on the basis of change of opinion the reassessment proceedings were initiated. The Tribunal, therefore, dismissed the appeals preferred by the revenue. Aggrieved by the orders of the Tribunal, the revenue sought for a case and on the basis of the directions of this court, the Tribunal has stated a case and referred the common question of law referred to earlier.

4. At the time of hearing of the reference, learned counsel for the assessee has placed before us a copy of the order passed in CT. Muthukaruppan case in WTA Nos. 417 to 419 and 446/Mds/1990, dated 27-12-1990, which was followed by the Tribunal in the instant case to hold that the Wealth Tax Officer was not justified in ordering reassessment. We have also gone through the said order of the Tribunal and the facts of the case are fully set out in the order. We find that the Tribunal in that case has found that any valuation at a figure other than that taken in the original assessments would be a mere change of opinion on material already on record apart from being arbitrary and without any basis at all. The Tribunal also noticed that there were no materials to make reassessments with respect to other items of property.

5. Mrs. Pushya Sitharaman, learned senior standing counsel for the department, submitted that there were materials for the Wealth Tax Officer to make reassessments. She referred to the acquisition proceedings initiated by the Government of Malaysia to acquire the property and the price offered by the Government of Malaysia for the acquisition of property indicated the market value of the property. However, it is seen from the orders of the Tribunal that the property is a large piece of land adjoining the sea in which there is a row of buildings adjoining the road and the buildings were let out to pre-war tenants with rent being pegged at old rates while the taxes got increased. It was also found as a matter of fact that the land was subject to erosion by the sea and though the Government of Malaysia initiated proceedings to acquire the land, but

subsequently, the acquisition proceedings were dropped. We are of the view that the amount offered by the Government of Malaysia cannot be indicative of the market price of the property on the relevant valuation date as the acquisition proceedings had fallen through.

6. Moreover, a careful reading of the order of the Wealth Tax Officer shows that he has not relied upon the acquisition proceedings as a material for initiating reassessment proceedings. The Wealth Tax Officer relied upon the valuation report and it was found by the CWT(A) and also by the Tribunal that the valuation certificate given for income-tax purpose cannot be taken, as the same valuer valued the property subsequently on 11-4-1985, at Malaysian dollar of 5,280 as at 1980 and it was also found that even though the amount estimated was large, the value did not reflect the correct market value on the valuation date. We find as a matter of fact that the property was unsaleable due to the fact that the rent was paid at low rate and in the valuation certificate it has been clearly stated that the rear portion of the property was eroded by the sea and 35,619 sq. ft. of the land had no value at all. The Tribunal has correctly found that the valuation cannot be made on the basis of valuation certificate and the valuation certificate had to be rejected and if the valuation certificate is rejected, there are no materials for the Wealth Tax Officer to come to the conclusion that there was escapement of wealth. We are of the view that it is a case of change of opinion and the escapement, if any, had not resulted from any default on the part of the assessee to disclose the material facts but because of the erroneous view entertained by the Wealth Tax Officer when he made the assessments and he had enhanced the value of the property at the time of original assessment by 50 per cent of the value returned. It shows that he has applied his mind to the question of valuation of the property and enhanced the same to the extent done by him. We also find that apart from the report of the valuer, there were no materials before the Wealth Tax Officer to hold that there was escapement of wealth. In our opinion, the valuation report may constitute information to reopen the assessment with reference to which we are not expressing any opinion, but there must be positive materials at the time of making the reassessment to show that the wealth has escaped assessment which lack on the facts of the case.

7. As far as acquisition proceedings are concerned, they have been dropped and the price offered by the government in the abortive acquisition proceedings cannot be taken as reflective of the market value of the property. Moreover, the assessment years involved are 1979-80 to 1982-83 and the acquisition proceedings were initiated by the Malaysian Government in August, 1982, which were also dropped subsequently. We are of the view that the amount offered as compensation would have reflected the market value of the land acquired, had the acquisition proceedings culminated in the acquisition of the land and we are of the view that the amount offered would not reflect the market value of the land in the dropped acquisition proceedings as there is nothing to show that the proceedings were dropped not on account of the fact that though the amount offered as compensation reflected the market value, yet it was dropped for other reasons. The Tribunal also noticed at the time of the original assessment, the Wealth Tax Officer enhanced by 50 per cent of the value returned by the assessee. Further, there were no materials before the Wealth Tax Officer to show that there was escapement of wealth with reference to the properties other than the property at Julutang. We find that the conclusion arrived at by the Tribunal on the facts of the case that there were no materials before the Wealth Tax Officer to come to the conclusion that there was escapement of wealth and only on the basis of mere change of opinion the reassessment proceedings were initiated and completed cannot be faulted as there were no materials before the Wealth Tax Officer to hold that the wealth during the relevant assessment years had escaped assessment warranting initiation and completion of reassessment proceedings. We hold that the view of the Tribunal that there were no materials for the Wealth Tax Officer to establish that there was escapement of wealth in respect of which reassessment proceedings were initiated has been arrived at on the basis of materials on record and the said finding is a pure finding of fact.

Accordingly, we answer the common question of law referred to us in the affirmative, i.e., against the revenue and in favour of the assessee. However, in the circumstances, there will be no order as to costs.