IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

WTA No.2 of 2014
Date of decision: 2.11.2015

The Commissioner of Wealth Tax, Patiala

……Appellant

M/s Dalmia Biscuits (P) Limited, Rajpura

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Jora Singh Klar, Advocate for the appellant.

None for the respondent.

Ajay Kumar Mittal,J.

1. This order shall dispose of WTA Nos. 2 to 6 of 2014 as according to the learned counsel for the appellant-revenue, the issue involved in all these appeals is identical. However, the facts are being extracted from WTA No.2 of 2014.

2. WTA No.2 of 2014 has been filed by the revenue under Section 27-A of the Wealth Tax Act, 1957 (in short, "the Act") against the order dated 22.11.2013, Annexure-A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B' Chandigarh in WTA No.5/Chd/2008 for the assessment year 1988-89, claiming following substantial questions of law:-

"i) Whether in the facts and circumstances of the case, the ITAT was right in law in not sustaining the action of AO/CIT(A) in imposing/upholding the penalty under section 18(1)(c) of the Wealth Tax Act, 1957 even when the valuation of land as adopted by the Valuation Officer has neither been disputed before the CWT(A) nor before the Hon'ble ITAT by the assessee and there is huge difference between the value of assets returned and assessed and the assessee failed to disclose true and correct value of its assets before the AO?

ii) Whether in the facts and circumstances of the case, the ITAT was right in law in not sustaining the action of AO/CIT(A) in imposing/upholding the penalty under section 18(1)(c) of the Wealth Tax Act, 1957 ignoring the fact that an assessee may have suffered loss under Income Tax Act but it does not mean that value of its assets liable to wealth tax does not increase or is not liable to wealth tax?

iii) Whether in the facts and circumstances of the case, the ITAT was right in law in deleting penalty under section 18(1)(c) of the Wealth Tax Act, 1957 by holding that the valuation of assets by a District Valuation Officer is only an estimate without appreciating that the assessee has itself not disputed the valuation of assets?

iv) Whether in the facts and circumstances of the case, the ITAT was right in law in deleting penalty under section 18(1)(c) of the Wealth Tax Act, 1957 whereas in view of section 40 of the Finance Act, 1983, the assessee was not entitled to any benefit under Part II of Schedule I of the Wealth Tax Act?

v) Whether in the facts and circumstances of the case, the ITAT was right in law in deleting penalty under section 18(1)(c) of the Wealth Tax Act, 1957 without appreciating the fact that the provisions of Explanation 4 below section 18(1)(c) were not satisfied by the assessee as it has admitted the valuation made by the DVO and as such has not proved that the value returned by it was correct?

3. A few facts as relevant for the decision of the controversy involved

as narrated in WTA No.2 of 2014 may be noticed. The assessee was the owner of plot of land measuring 77004 square yards. The value of this plot was declared by the assessee as part of its asset for the assessment years 1984-85 to 1986-87 on the basis of valuation report. The Assessing Officer received the information that the assessee had entered into an agreement to sell the said land and he consequently valued the said land and assessed the difference as wealth of the assessee. The Commissioner of Wealth Tax (Appeals) [CWT(A)] on appeal by the assessee upheld the valuation made by the Assessing Officer. Vide consolidated order dated 21.7.1995, the Tribunal set aside the assessment and directed the Assessing Officer to refer the valuation of land to the Valuation Officer. The Assessing Officer after obtaining the valuation report from the District Valuation Officer, completed fresh assessment. In the second round of appeal by the assessee, the CWT (A) allowed some relief in valuing the said property. Thereafter, penalties were levied by the Assessing officer for the assessment years 1984-85 to 1986-87. Regarding the assessment years 1987-88 and 1988-89, the assessee did not include the value of the asset in its wealth tax return as the assessee was running into losses and claimed that it was covered under Schedule I Part II of the Wealth Tax rules that in cases where there was loss assessed under the Act, no wealth tax was chargeable. As the value of the assets was included in the hands of the assessee in these assessment years, the Assessing Officer levied penalties for these years also. Aggrieved by the order, the assessee filed appeal before the CWT(A). Vide consolidated order dated 6.11.2007, the CWT(A) upheld the penalty in view of huge difference between the returned wealth and assessed wealth. On further appeal by the assessee, the Tribunal vide order dated 22.11.2013, Annexure A.3 allowed the appeals of the assessee for the assessment years 1984-85 to 1986-87 holding that valuation was a matter of estimation and estimation by registered valuer of the assessee and the estimation by the District Valuation officer being at variance did not attract the levy of penalty under Section 18 (1)(c) of the Act. With regard to assessment years 1987-88 and 1988-89, the case of the assessee fell within the purview of reasonable cause as it was under the bonafide belief that no wealth tax was payable during the said years when it had incurred losses. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the revenue.

5. It has been categorically recorded by the Tribunal in its order dated 22.11.2013, Annexure A.3 that the difference in the valuation of the property as declared by the assessee and as assessed by the Assessing Officer did not tantamount to furnishing of inaccurate particulars of the asset as it is well settled that valuation is a matter of estimation and estimation by registered valuer of the assessee and estimation by the District Valuation Officer being at variance did not attract the levy of penalty under section 18(1)(c) of the Act. Thus, the penalty was deleted in respect of the assessment years 1984-85 and 1986-87. With regard to the assessment years 1987-88 and 1988-89, it was recorded that since the assessee had incurred losses in the assessment year 1987-88, its case fell within the purview of reasonable cause as it was under bonafide belief that no wealth tax was payable under the said years when it had incurred losses. Thus, the penalty in respect of these assessment years was also deleted. The relevant findings recorded by the Tribunal read thus:-

"15. Penalty under section 18(1)(c) of the Act is leviable where the assessee has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts. In the facts of the present case, the assessee, for assessment years 1984-85 to 1986-87 had furnished the particulars of the asset in the return of wealth filed by it. However, there was difference in the value of the said asset as returned by the assessee and as assessed by the authorities below. The basis for declaring the value of the property by the assessee was the valuation report received from a registered valuer who is a person knowledgeable in the field. However, the matter of valuation of the plot of land owned by the assessee was eventually referred to a District Valuation Officer by the Assessing Officer, who in turn estimated the value of the land at a figure other than the value declared by the assessee. The difference in the valuation as declared by the assessee and as assessed by the Assessing Officer does not tantamount to furnishing of inaccurate particulars of the asset as it has been held by number of judicial pronouncements that valuation is a matter of estimation and estimation by registered valuer of the assessee and the estimation by the District Valuation Officer being at variance does not attract the levy of penalty under Section 18(1)(c) of the Act. Consequently, we find no merit in the levy of penalty under section 18(1)(c) of the Act in assessment years 1984-85 to 1986-87. The Assessing Officer is directed to delete the said penalty levied under section 18(1)(c) of the Act. The grounds of appeal raised by the assessee in assessment years 1984-85 and 1986-87 are thus allowed.

16. Now coming to the appeals in assessment year 1987-88 and 1988-89, the assessee had not declared the value of the assets as part of its net wealth under the bonafide belief that since it was covered under Schedule 1 Part II of the Wealth Tax Rules under which prior to its omission by the Finance Act, 1992 w.e.f 1.4.1993, it was provided that in a case of a company which had incurred net loss in any year and had not declared any dividend

> on its equity capital in respect of that year, the rate of tax for the relevant year shall be nil. In view of the aforesaid provisions of the Act and also because of the fact that the assessee had incurred losses in assessment year 1987-88, the case of the assessee fell within the purview of reasonable cause as the assessee was under the bonafide belief that no wealth tax was payable during the said years when it had incurred losses. In the totality of the aforesaid facts and circumstances, we find no merit in levy of penalty under section 18(1)(c) of the Act and accordingly we direct the Assessing Officer to delete the same. The grounds of appeal raised by the assessee in assessment years 1987-88 and 1988-89 are thus allowed."

6. The findings recorded by the Tribunal are based on appreciation of material on record and is a plausible view in which learned counsel for the revenue has not been able to point out any illegality or perversity warranting interference by this Court. Thus, no substantial question of law arises. The appeals stand dismissed.

(Ajay Kumar Mittal)
Judge

November 2, 2015 **(Ramendra Jain)**
'gs' **Judge**