IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8275 of 2017
Date of decision: 20.09.2017

Smt. Pushpa Bhatara, D/o Trilochan Dutt, R/o 195-A, Civil Lines, Jalandhar, Punjab, through her legal representatives Sh. Rakesh Bhatara

……Petitioner

Vs.

Principal Commissioner of Wealth Tax, C.R. Building, Model Town Road, Jalandhar.

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Manpreet Singh Kanda, Advocate for the petitioner.

Mr. Vivek Sethi, Senior Standing Counsel for the respondent.

Ajay Kumar Mittal,J.

1. Prayer in this petition is for quashing the order dated 23.02.2017, Annexure P.15, for the assessment years 2004-05 to 2011-12 whereby the Principal Commissioner has declined to grant the refund of wealth tax on the ground that the prescribed fee of ₹ 25/- which was required to accompany the revision had not been paid. According to the petitioner, the impugned order is completely arbitrary and contrary to the material on record whereby the prescribed fee stood paid prior to date of hearing of the matter. Further, direction has been sought to the respondents to consider and decide the application for refund of wealth tax in accordance with the retrospective amendment whereby the term "asset" in

Section 2(ea) of the Wealth Tax Act, 1957 (in short, "the Act") has been amended to exclude Urban Land with effect from 01.04.1993 in terms of Circular No.11 of 2015.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is the legal heir of Smt. Pushpa Bhatara who filed her wealth tax return for the assessment years in question including therein the value of Urban Agricultural Land. Vide Finance Act, 2013 the definition of the term "asset" in Section 2(ea) of the Act was amended retrospectively and the Urban Agricultural Land was excluded from the said definition. The legal heir of Smt. Pushpa Bhatara i.e. Shri Rajeev Bhatara-the present petitioner filed an application for refund of the wealth tax paid for Urban Agricultural Land for the assessment years in question on 10the March, 2014. On 15th January, 2015, the petitioner made a request for rectification to the Wealth Tax Officer Range-II, Jalandhar for the assessment years 2009-10, 2010-11 and 2011-12. The petitioner filed another application for refund of wealth tax for the assessment years in question along with revised computation, original computation and proof of the agricultural nature of the land in the form of furd/girdawaris. On 18the January, 2016, a letter was received by the petitioner regarding the date of hearing in the office of Principal Commissioner on 28the January, 2016. On that date, the matter was adjourned. On 20the May, 2016, it was conveyed to the petitioner, that the matter stood transferred to the Income/Wealth Tax Officer, Ward 3(3) Jalandhar. Copy of the application, along with the entire record was sent to the concerned Officer. On 08th November, 2016, a letter was sent to the assessee directing him to file a reply on 15th November, 2016. In response thereto, the petitioner filed copies of the Income Tax Returns, Wealth Tax

Returns, jamabandis and computation of wealth tax on 14th December, 2016. The petitioner also deposited a fee of ₹ 25/- for each assessment year on 18th January, 2017 which was required under Section 25 of the Act. On 16th February, 2017, a letter was received by the petitioner stating that the prescribed fee of ₹ 25/- which was required to be paid for maintainability of the Revision under Section 25 of the Act had not been paid and, thus, he was required to attend the office of the Principal Commissioner on 23rd February, 2017. The entire position for refund of wealth tax for the assessment years in question along with the claim for refund was again summarized and sent to the respondents on 27th January, 2016. According to the petitioner, despite the payment of ₹ 25/- which was prescribed fee for entertaining the revision petition, the respondent dismissed the same merely on the ground that the prescribed payment fee of ₹ 25/- being pre requisite for filing of the application under Section 25 (1) of the Act was not deposited. Hence, the instant petition by the petitioner.

3. We have heard learned counsel for the parties.

4. Admittedly, Smt. Pushpa Bhatara filed her Wealth Tax Return for the assessment years in question including therein the value of Urban Agricultural Land. The petitioner being her legal heir filed an application for refund of wealth tax paid for Urban Agricultural Land on 10.03.2014 on the ground that vide Finance Act, 2013, definition of the term “asset” in Section 2(ea) of the Act was amended retrospectively and the Urban Agricultural Land was excluded therefrom. The petitioner even made a request for rectification to the Wealth Tax Officer. He also filed application for refund of wealth tax along with revised and original computation. The petitioner also deposited fee of ₹ 25/- for each assessment year.

5. After hearing learned counsel for the parties, perusing the averments made in the petition and also the impugned order dated 23.02.2017, Annexure P.15, passed by the Principal Commissioner of Wealth Tax, we find that requisite fee of ₹ 25/- had already been deposited by the petitioner before the hearing of the revision. Under such circumstances, rejection of revision petition by the Principal Commissioner of Wealth Tax was unjustified. Therefore, the order of the Principal Commissioner of Wealth Tax, dismissing the revision petition on the ground of non deposit of the prescribed fee of ₹ 25/- is legally unsustainable. Accordingly, the present petition is allowed and the impugned order dated 23.02.2017, Annexure P.15 is quashed. The matter is remitted to the Principal Commissioner of Wealth Tax, Jalandhar to decide the matter afresh on merits in accordance with law.

(Ajay Kumar Mittal)
Judge

September 20, 2017 **(Amit Rawal)**
‘gs’ **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**