

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30.01.2018

+ **WTA 5/2008**

LALIT SURI THR. LR'S JYOTSNA SURI Appellant

Versus

COMMISSIONER OF WEALTH TAX DELHI Respondents

+ **WTA 6/2008**

JYOTSNA SURI Appellant

Versus

COMMISSIONER OF WEALTH TAX DELHI I Respondent

+ **WTA 7/2008**

JYOTSNA SURI Appellant

Versus

COMMISSIONER OF WEALTH TAX DELHI I Respondent

+ **WTA 8/2008**

LALIT SURI THR. LR'S JYOTSNA SURI Appellant

Versus

COMMISSIONER OF WEALTH TAX Respondents

Through: Sh. Prakash Kumar, Advocate, for appellants.

Sh. Zoheb Hossain, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The questions of law framed in these four appeals are as follows:

IN WTA 5/2008

“(1) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the Commissioner of Wealth Tax (Appeals) “erred in giving a finding that these assets were not includable in the net

wealth of the assessee?

(2) Whether the Income Tax Appellate Tribunal was correct in law in upholding the value adopted by the Deputy Commissioner of Wealth Tax of Rs. 62,10,000/- in respect of the land situated at Jaunapur, Tehsil Mehrauli, Delhi and the value of Rs.66,35,500/- in respect of the land situation at Satbari, Tehsil Mehrauli, Delhi?”

IN WTA 6/2008

“(1) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the Commissioner of Wealth Tax (Appeals) “erred in giving a finding that these assets were not includable in the net wealth of the assessee?”

(2) Whether the Income Tax Appellate Tribunal was correct in law in upholding the value adopted by the Deputy Commissioner of Wealth Tax of Rs. 1,86,58,600/- in respect of the land situated at Satbari, Tehsil Mehrauli, Delhi?”

IN WTA 7/2008

“(1) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the Commissioner of Wealth Tax (Appeals) “erred in giving a finding that these assets were not includable in the net wealth of the assessee?”

(2) Whether the Income Tax Appellate Tribunal was correct in law in upholding the value adopted by the Deputy Commissioner of Wealth Tax of Rs. 1,48,23,000/- in respect of the land situated at Satbari, Tehsil Mehrauli, Delhi?”

IN WTA 8/2008

“(1) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the Commissioner of Wealth Tax (Appeals) “erred in

giving a finding that these assets were not includable in the net wealth of the assessee?

(2) Whether the Income Tax Appellate Tribunal was correct in law in upholding the value adopted by the Deputy Commissioner of Wealth Tax of Rs. 50,79,000/- in respect of the land situated at Jaunapur, Tehsil Mehrauli, Delhi and the value of Rs.52,71,000/- in respect of the land situated at Satbari, Tehsil Mehrauli, Delhi?”

2. The facts are that the Wealth Tax Officer (WTO) for AYs 1993-94 and 1994-95, included the value of two immovable properties which belonged to the appellants – one located at Jaunapur, Tehsil Mehrauli and the other at Satbari, Tehsil Mehrauli [hereafter referred to variously as “the two assets/the two immovable properties”].

3. The appellants/assesseees were aggrieved and appealed to the CWT. The CWT by order dated 12.11.1997 rejected the assesseees’ contentions. The Income Tax Appellate Tribunal (ITAT) accepted the assesseees’ plea with respect to the tentative nature of the valuation applied, on the basis of the DVO’s report. The ITAT remanded the matter for fresh consideration on the issue of valuation of the two assets. The CWT accepted the assesseees’ plea with respect to valuation. The ITAT to which the Revenue preferred the appeal was of the opinion that the valuation had to be made on the basis of the final report. It therefore, directed a limited remand on this aspect:

“28. On the aspect of valuation on which specific arguments have been addressed by the learned DR but the learned AR, on the other hand, has merely relied upon the CWT(A)’s order. The aspect of valuation as such has not been addressed by him. In the said facts, after deciding the issue of taxability against the assessee and in favour of the Revenue, we are of the opinion that the matter of valuation in both the years should be restored

to the file of the Assessing officer with the direction to decide the same in accordance with law taking into cognizance the report of the DVO and after giving the assessee an opportunity of being heard.”

4. The AO, after the order of the ITAT, considered the submission of the parties and valued the properties at Jaunapur at Rs.62,10,000/- [in WTA 5/2008] and Rs.50,79,000/- [in WTA 8/2008] and in respect of Satbari at Rs.66,35,500/- [in WTA 5/2008]; Rs.1,86,58,600/- [in WTA 6/2008]; Rs.1,48,23,000/- [in WTA 7/2008] and Rs.52,71,000/- [in WTA 8/2008]. This order was appealed against by the assesseees. For the first time, the assesseees urged that the two assets were not “urban land” as their characteristics were such that no construction was permissible on them. The specific ground urged by the assesseees before the CWT in this regard is as follows:

“(iii) The AO has ignored the provisions of law pertaining to the Assessability of the Agricultural Lands at Satbari and Jaunapur which according to provisions of Section 2(ea) of the Wealth Tax Act are not taxable as these come under the exception clause of Section 2(ea) which reads as under:

Section 2(ea)

Explanation (1)

(b) ‘Urban Land’ means land situate-

(i).....

(ii).....

but does not include”

land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated.”

5. CWT recorded the findings on this aspect –it was urged for the first time that the land use plan and the Master Plan issued under the DDA Act did not permit construction on the two properties and, therefore, they did not fall within the definition of “urban land”. He, therefore, granted the relief claimed. The Revenue’s appeal on the ground was entertained and accepted by the ITAT which was of the opinion that its previous remand order dated 07.01.2002 was confined only to the issue of valuation and, therefore, the issuance of taxability had attained finality.

6. Sh. Prakash Kumar, learned counsel for the assessee urges that being a question of law, CWT was under a duty to consider and return findings on the issue before him. The assessee did urge the specific issue with respect to taxability or otherwise of the subject lands and adduced material to disclose that no construction could be made. This, in effect, was the purport of Section 2(ea) of the Wealth Tax Act read with Explanation 1(b) which excluded from its purview land on which construction was not permissible.

7. It was submitted secondly that for subsequent years, the assessee’s contentions made before the Revenue, i.e. WTO and the CWT were in fact accepted and the said lands were excluded from the determination of value of assets and, therefore, not taxed. Therefore, in the larger interest of consistency, the appeals ought to succeed.

8. It is contended on behalf of the Revenue that since the assessee never urged any contentions or questioned its primary liability under the Wealth Tax Act on the ground that the lands were in any manner excluded, no findings were called for.

9. The only question it urged before the ITAT in the earlier round which led to the order of 07.01.2002 was that the valuation adopted by the AO was

incorrect. In these circumstances, the question of reopening the entire matter as it were, to re-examine whether the lands could be subjected to Wealth Tax did not arise. Learned counsel highlighted that the scope of remand to inferior authority or Court is limited or circumscribed by the issues which the superior Court requires a finding on.

10. In the present case, the only issue was with respect to valuation. It was urged that in fact the assessee had specifically urged the question of taxability in the earlier round and suffered a finding against them. In these circumstances, it could not have reagitated the matter since the subject matter of remand was limited to the issue of valuation.

11. It is evident from the above discussion that the scope of remand by the ITAT to the WTO in this case was with respect to the question of valuation. At the stage when the WTO decided on the valuation, the final report of the DVO was not available. In the circumstances, the ITAT remanded the matter only on that aspect. In the circumstances, the findings rendered by the WTO could not have been interfered with by the CWT who entertained the issue of taxability which had been earlier given-up. Para 28 of the ITAT's order clearly shows that the scope of remand was clearly in respect of valuation. In these given facts, the circumstance that for later years, the Revenue accepted the ITAT's contentions regarding non-taxability of assets, *per se* cannot afford a ground for it to insist that the remand made by the ITAT ought to and was enlarged so as to include that ground in the previous order when as a matter of fact they did not agitate it.

12. In view of the above discussion, the ITAT's impugned order on the first question did not call for interference.

13. The Court further notices that both the ITAT and the lower appellate

authority, i.e. CWT did not address themselves to the issue of valuation which primarily was the subject matter of remand in the first instance. In the circumstances, the matter is remitted for fresh consideration by the CWT. The appeals are partly allowed in the above terms, confined to the issue of valuation.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JANUARY 30, 2018/ajk



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