

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

W. T. A. No. 42 of 2002

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of case

02.06.2022

Mr. Imran Ali Mithani, advocate for appellant
None present for the respondent

This Wealth Tax Appeal (WTA) has been filed on behalf of the department and the following question of law was admitted for regular hearing vide order dated 28.02.2003:-

“Whether under the facts and circumstances of the case the learned Income Tax Appellate Tribunal was justified to hold that the Property No.7-8, Block-V, Nazimabad, Karachi, cannot be assessed in the hands of M/s. B.K Associates as no conveyance deed has been effected whereas in Wealth Tax Act, 1963 the word “held” has been used instead of word “owned” as per Section (2)(e)(ii) of the Wealth Tax Act, 1963.”

Briefly, the facts of the case are that the Assessing Officer (A.O) while passing order under Section 16(3) of Wealth Tax Act 1963, (hereinafter referred to as repealed Act, 1963), found that the respondent was required under the law to declare the property bearing No.7-8, Block-V, Nazimabad, Karachi, measuring 1133 Sq. Yd., owned by it as its taxable wealth and since the same was not declared as a part of its wealth; therefore, he assessed the said property as taxable wealth of the respondent, vide order dated 22.02.2000.

Being aggrieved with the said order, an appeal was preferred by the respondent before the Commissioner (Appeals), bearing Appeal No.102/A-VI. The Commissioner (Appeals), then vide order dated 11.04.2000, deemed it appropriate to set aside the impugned order for a de novo assessment and directed the department to reframe the assessment afresh. Against this order, the department preferred an

appeal bearing No.013/KB of 2000-2001 before the Income Tax Appellate Tribunal (ITAT), who vide order dated 20.06.2001 affirmed the order of the Commissioner (Appeals) and directed the department to reframe the assessment for de novo consideration. Thereafter, the instant WTA has been preferred by the department.

The counsel appearing for the department has stated that the Commissioner (Appeals) as well as the ITAT were not justified in directing de novo assessment and to reframe the assessment as according to him, the A.O has already thrashed out the matter in detail while passing the assessment order. He, therefore, stated that the answer to the question may be given in Negative i.e., in favour of the department and against the respondent.

Nobody has appeared on behalf of the respondent in spite of the service of notice.

Heard the learned counsel at some length and perused the record.

In our view, no question of law is arising out of the order of the Commissioner (Appeals) as well as the Tribunal as both these authorities have simply directed the department for a de novo assessment and hence it cannot be inferred that any decision touching merits of the case had been given by the said authorities but have simply directed the department that since the department has failed to consider the very aspect of the taxability or otherwise of the plot owned by the respondent, the matter requires reassessment or de novo assessment on the part of the department.

It is a settled proposition of law that the reference is only maintainable where some question of law is set to be arising out of the order of the Tribunal whereas in the instant matter, it is evident that the

matter was remanded by the Commissioner (Appeals) for reassessment of de novo consideration which order was affirmed by the Tribunal hence infact there was no assessment in the field. Under somewhat similar circumstances, this High Court in the case of *Commissioner of Income Tax Central Zone-B Karachi versus M/s. Electronic Industries Ltd., Karachi, (1988 PTD 111)*, has observed that when there is no assessment order in the field and the question in issue was to be decided by the Assessing Officer in terms of order of the Appellate authority the reference is misconceived.

If the facts of the present case are examined, it could be seen that in the instant matter at present, there is no assessment order in the field as the Commissioner (Appeals) and the Tribunal have directed the A.O to make the reassessment / fresh assessment on de novo consideration meaning thereby that until and unless reassessment / fresh assessment on de novo consideration is made by the department, there infact is no assessment in the field. We, therefore, are of the view that no question of law is arising out for the instant WTA as the department was under legal obligation to make a fresh assessment / reassessment on de novo consideration, as directed by the Commissioner (Appeals) and/or the Tribunal, in accordance with law and at present as there is no assessment in the field so as to justify any reference by the department.

We, therefore, dismiss this WTA filed by the department by observing that no question of law is arising out of the order of the Tribunal.

JUDGE

JUDGE