

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

W. T. Appeal Nos. 13 and 14/Del/2017
(Assessment Years: 2009-10 & 2013-14)

Shri Yudhishthira Kapur, B-34, Malcha Marg, Chanakya Puri, New Delhi - 110 021. PAN: AASPK5138K	Vs.	Assistant Commissioner of Wealth-Tax, Circle : 53 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Ashok Batra, C. A.;
Department by:	Shri Govind Singhal, Sr. D.R.;
Date of Hearing :	02/08/2021
Date of pronouncement :	25/08/2021

O R D E R

PER PRASHANT MAHARISHI, A.M.

1. WTA No. 13/Del/2017 is filed by the assessee assessee against the order of the Commissioner of Wealth Tax (Appeals)-18, New Delhi, for assessment year 2009-10 raising following grounds of appeal:-

- “ 1. *On the facts & circumstances of the case the Commissioner (Appeals) has erred in treating agricultural land situated at Village Daulatpur, Nasirabad, Tehsil and Distt. Gurgaon as agricultural land and is not covered under section 2(ea) of the Wealth Tax Act read with Explanation (1) (b) of the Wealth Tax Act.*
- (1.a) *The Commissioner (Appeals) is wrong in not taking into account that the definition of rural land under section 2(ea) of the wealth tax act was amended retrospectively from 1993-94 assessment and as such not applicable to the year under appeal.*
- (1.b) *The Commissioner (Appeals) has erred in not taking into account that the assessee had declared agricultural income of Rs. 10,000/- and has been assessed under the Income Tax Act.*
- (1.c) *Without prejudice to the above the agricultural land situated at village Daulatpur, Nasirabad, Tehsil and Distt. Gurgaon is under acquisition by Haryana Urban Development Authority is no longer an asset under Wealth Tax Act.*

2. *The Commissioner (Appeals) is wrong in taking into account the land situated at Plot no. 85, Village Tusiya, Tehsil Sadri, Dstt. Gautam Budh Nagar, Greater Noida and Plot No. C-28 n village Tusiya, Dadri, Gautam Budh Nagar, Greater Noida as both the lands have not been handed over to the assessee and as such this is not an asset under section 2(ea) of the wealth tax act.*
 - (2.a) *The Commissioner (Appeals) is wrong in stating that the appellant has filed an appeal before the Supreme Court as it is not the assessee who had filed the appeal but was filed by Technology Park Ltd., the sellers of the land.*
 3. *The order passed by the Commissioner (Appeals) is against the law & facts of the case.”*
2. Brief facts of the case shows that for Assessment Year 2009-10 the assessee filed his return of wealth tax on 31.03.2010 declaring net wealth of Rs. 1,66,64,461/-. The order u/s 16(3) of the Wealth Tax Act, 1957 was made by the Dy. Commissioner of Wealth Tax, Central-5, New Delhi dated 11.02.2011 at the returned Wealth of the assessee.
 3. Subsequently, Notice u/s 17 for reopening of the wealth tax assessment was issued to the assessee for the reason that the assessee has declared property at Village Daulatpur, Nisirabad, Gurgaon having 50%, plot No. 85 in Greater Noida and plot No. C-28 also at Greater Noida at valuation of these properties at Rs. Nil. The ld AO found that the assessee has claimed this properties are acquired by the Govt. of India however, as on the valuation date same were in the possession of the assessee. Therefore, the valuation of this property is required to be charged to wealth tax as it has escaped assessment. Notice u/s 17 of the Wealth Tax Act, 1957 was issued on 16.03.2016. On 13.04.2016 the assessee requested to treat the original Wealth Tax Return filed as returned filed in response t the above notice.
 4. The assessment was made u/s 16(3) read with section 17 of the Act determining total net taxable wealth of the assessee of Rs. 2,78,56,781/-. The ld AO dealt with the whole issue as under:-

“2. The assessee has .declared property at village Daulatpur, Nasirabad, Tehsil and Distt. Gurgaon (50% Share), Plot no. 85 in village Tusiya Tehsil Dadri, Dist. Gautam Budh Nagar, Greater Noida (50% share) and Plot no.'C-28 in village tusiyana, Dadri, Gautam Budh Nagar, Greater Noida (50% share) under acquisition. The value of these properties is adopted Nil in computation of Net Wealth. On perusal of record it is found that the properties are still in the possession of the assessee and not actually acquired by the Govt, till date. In this regard,

vide note sheet entry dated 10.06.2014 he is asked to submit the documents of acquisition of above mentioned properties. In response, to the notice the AR of the assessee filed his submission on 28.07.2016 stating as under:

Agricultural Land at VUloge DaulatDur, Nasirabad. Tehsil and Distt. Gurgaon

The land was acquired by Haryana Government on August 6, 1981, copy of the notification is attached. The acquisition proceedings were still continuing during Assessment Year 2013-14. Since the land is under acquisition proceedings, the assessee had disclosed the fact in his Wealth tax returns and hence taken the value as NIL

The acquisition proceedings were dropped in 2014 by Punjab and Haryana High Court owing to coming into force of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The High Court also restrained petitioners from selling or changing the nature of land.

Para 8 of the above said order reads as

"Having held that we cannot be oblivious of the fact that the land was acquired for the regulated development of Gurgaon City. As a consequence of the lapse of acquisition, if the petitioners succeed in changing the nature of land or if they create third party rights, it is likely to be detrimental to the 'public interest' as several basic amenities like roads, sewerage or park, etc would also be adversely affected. We thus, restrain the petitioners from alienating and/or changing, the nature of their released land for a period of one year from the date of receipt of certified copy of the order. No construction shall be raised by the petitioners on their respective sites and the District Administration shall ensure that nature of the land is not changed by anyone".

Para-9 of the above said order reads as "The aforesaid period of one year has been fixed so as to enable the State authorities to consider and re-acquire the subject land in accordance with the provisions of 2013 Act, if need be. If no fresh acquisition takes place during the period of one year, the petitioners shall be at liberty to utilize their land' in the manner as may be permissible under the local laws".

The certified copy of the above said order-dated 20.05.2014 in the High Court of Punjab and Haryana, Chandigarh in Civil Writ Petition had been obtained on 17.07.2014 and as per the said above order no change in the nature of the released land is, allowed for a period of one year from the date of receipt of certified copy of the order, which in this case is 16.05.2015,; Hence the value of this land has been taken at NIL in the wealth tax return.

2- Plot No. 85 and C-28, in Village Tusivana Tehsil Dadari Distt. GautamBudh Naaar; Greater Noida.

The assessee applied for the plots in year 1988. The plots were to be developed by private builder M/S Technology Parks Ltd (TPL). Land for the development of the plots by TPL were to be allotted by UP

Government and Greater Noida Industrial Development Authority (GNIDA).

The assessee does not have clear title to the said plots and neither possession of the plot so far for the reasons explained in the ensuing paragraphs. The assessee's letter of June 16, 2010 requesting for possession and the courier, receipt are attached.

TPL has been engaged in legal battle with both UP Government and GN IQ A for the allotment of land and the matter is still sub-judice. Without land allotment and requisite approvals from GNIDA, TPL is not able to move forward with handing over possession and allotment to plot holders.

The current litigation is in progress at Hon'ble Supreme Court vide SLP 21430/2010. The case status as of February 27, 2016 is attached showing the matter is Pending for decision.

The current SLP is against order of Allahabad High court of April 6, 2010 for in CWP 65654, 65656, 65658, 68436, 68439, of 2006 and CWP 4812, 14213 of 2007.

TPL Plot and Flat Allottees Association (TPLFAA) which was formed to take up the cause of plot and flat allottees has also been party the above law suits.. It has been actively involved in current as well as the law suits in Allahabad High Court by filing SLP in the current suit and CWP with Allahabad High Court. Emails received from Mr J K Shakdher, General Secretary of the Association are attached with details as follows:

Photocopy of mail dated 07.03.2014 regarding hearing on 07.03-2014 wherein UP Govt. Counsel had submitted that the land was acquired by UP Govt. On inquiry by the Presiding Judge, Justice AK Patnaik, Mr. Rohtggi (counsel-of TPL) informed that the Acquisition was quashed by Allahabad High Court and the land is under stay of the Supreme Court.

Photo Copy of mail dated 10.09.2014 informing the progress of the Court Case.

- Photocopy of mail dated 18.11:2015 forwarding the message from the Counsel of Technology Parks Ltd. informing the progress of the case.*
- Photocopy of mail dated 18.01.2016 forwarding the message from the Counsel of Technology Parks Ltd informing the date of hearing before Supreme Court of India on 28.03.2016.*

As is evident from the above submissions the above plots are still not in the possession of the assessee and litigation is going on for the past several years, hence the value of the said plots has not been taken for wealth tax purposes.

The submission of the assessee has been looked into but not found acceptable. The above mentioned properties are still in the possession of the assessee and not acquired by the Govt, till date. Therefore, the same cannot be considered "acquired" and cannot be exempted from wealth tax. The assessee is the owner of these properties and therefore the same is taxable in his hands.

3. The value of the properties is being determined as under:

i. Property at village Daulatpur, Distt and tehsil Gurgaon : The property was purchased by the assessee for Rs. 39.60Q/- on 18.03.1976. As per the circle rate available, the value of property is taken as Rs. 2 Crores. The share of the assessee in property is 50% and therefore, Rs. 1 Crore is added in the wealth, of the' assessee. Penalty proceedings u/s 18(1)(c) are being separately initiated for 1 concealing particulars of wealth/furnishing inaccurate particulars of wealth.

(Addition: Rs.1,00,00,000/-)

ii. Plot no. 85 in village Tusiyana Tehsil Dadri, Dist. Gautam Budh Nagar, Greater Noida : This property was purchased on 06.07.2006 for Rs. 11,66,400/-. On an average there is an increase of 20% in the value of properties in Noida Sector so 60% of the value is increased in the value of property upto 31.03.2009 making ; the total value of property Rs. 18,66,240/-. Being 50% share of the assessee Rs. 9,33,120/- is added in the wealth of the assessee. Penalty proceedings u/s 18(1)(c) are being separately initiated for concealing particulars of wealth/furnishing inaccurate particulars of wealth.

(Addition: Rs. 9,33,120/-)

iii. C-28 in village tusiyana, Dadri, Dist. Gautam Budh Nagaf, Greater Noida (50% share) : This property was purchased on 06.07.2006 for Rs. 3,24,000/-. On an average there is an increase of 20% in the value of properties in Noida Sector so 60% of the value is increased in the value of property upto 31.03.2009 making the total value Of property Rs. 5,18,400/-. Being 50% share of the assessee Rs. 2,59,200/- is added in the wealth of the assessee. Penalty proceedings u/s 18(1)(c) are being separately initiated for concealing particulars of wealth/furnishing inaccurate particulars of wealth.

(Addition: Rs. 2,59,200/-)

4. In view of the above, Net Wealth of the assessee is computed as under:

Net Wealth declared in return Rs. 1,66,64,461/-
Add: as discussed in para 3(i) 1,00,00,000/-
Add: as discussed in para 3(ii) 9,33,120/-
Add: as discussed in para 3(iii) 2,59,200/-
Net taxable wealth. Rs. 2,78,56,781/-“

5. The assessee preferred appeal before the Id CIT(A) who gave his finding and dismissed the appeal of the assessee:-

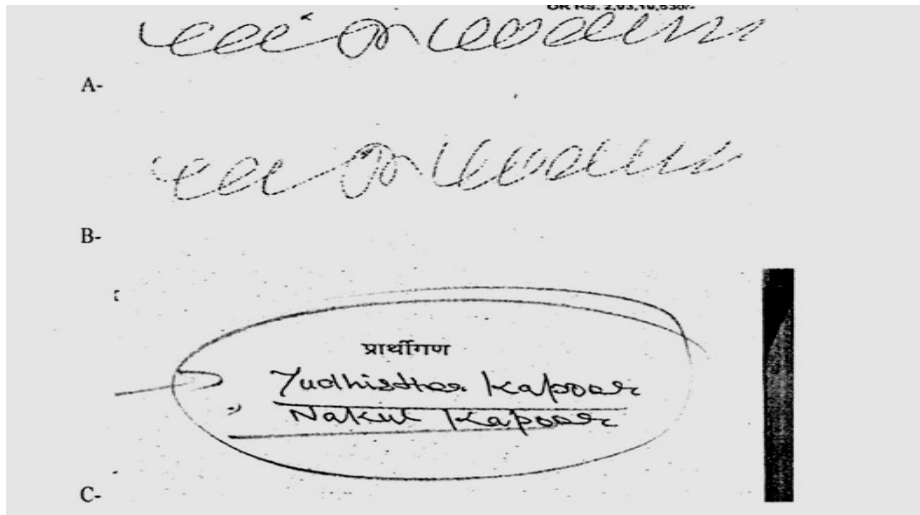
“Findings:-

The Appellant took as many as 5 grounds of objection. Ground 1 & 2 being common are disposed off together.

The pith and substance of the Appellant's submission in regard to the above grounds was that the piece of land situated at Village Daulatpur, Distt. & Tehsil Gurgaon was exempt from Wealth Tax as the same was a piece of agricultural land. It was canvassed by the Authorized Representative Sh. P.N. Mehta, FCA, that the requisite evidence were produced before the AO at the time of wealth tax proceedings which were not at all considered by the latter. In order to cross verify a reference to para 2 of the assessment order passed by the WTO was made wherein, it was noticed that the plea taken by the Appellant before the AO was that the land in question was exempt from Wealth Tax as it was facing acquisition proceedings initiated by the Haryana Govt which prevented the Appellant from assigning any value to the said piece of land. As against the above argument it was pleaded before me that the land being agricultural was out of the orbit of "Assets" as defined under the Wealth Tax 1957. The plea of the Appellant that the land being agricultural entitled it to impute nil value was taken before me for the first time. Thus there was a dichotomy in the approach of the Appellant which cannot be approved of. Therefore the claim of the appellant is taken as an afterthought.

Nonetheless, the evidence furnished by the appellant in the above regard were carefully examined. The evidence of the said land being agricultural, the documentary evidence furnished were all gone through by me. The evidence in the form of a letter dated 16.12.2015 addressed to Tehsildar, Gurgaon, allegedly by the Appellant was perused by me. The noteworthy feature of this letter was the signature of Sh. Yudhishthira Kapur. The said land allegedly bore the signature of the Appellant as well-as of some other person named Nakul Kapur. A close scrutiny of the signatures of the two signatories on this letter revealed that both the signatures were made by the same person. That it. was not Yudhishthira Kapur's signature, as claimed by the Appellant/was ascertained by me by a reference to the other pieces of evidence produced by the Appellant in the shape of ITR-IV and annexures thereto of the appellant, all of which bore the appellant's Sh. Yudhishthira Kapur's before me. 1 he signature on the ITR annexures of the Appellant were completely different from that which appeared on the letter addressed to Tehsildar, Gurgaon. The dis-similarity between signatures could not be satisfactorily explained by the Appellant's AR during the appellate proceedings. Therefore the reliance placed by the Appellant to underpin its claim that the disputed piece of land was an agricultural land on the basis of this letter is held to be misconceived.

The scanned signatures show the difference of signatures noticed in the case of the appellant:-



Signatures appearing against A above represent the signature of the appellant on the statutory papers filed before the statutory Authorities while the signature appearing against B above represents the signature of the appellant on the letter addressed to the Tehsildar, Gurgon. The signature indicated against C above was made by the same person as there is clear cut similarity in both the signs which appears to have been made by the same person. Therefore, the signature put by the appellant on statutory papers are taken to be the signatures of the appellant while the one made in the letter addressed to the Tehsildar, Gurgon, having been made behind his back is taken to be unreliable and untrustworthy.

Even otherwise the reply of the Tehsildar to the said letter concludes that the said land was registered as an Urban Land in the Revenue records. In the light of the foregoing facts, Grounds 1 & 2 are dismissed.

So far as Grounds No. 3 & 4 are concerned, the AR for Appellant leaned on the same argument that acquisition proceedings were in progress in respect of such properties. Hence the value of lands was taken as nil by it in its Wealth Tax Return. The contentions of the Appellant and the facts brought on record by the WTO in its assessment order were analyzed in juxtaposition. The plea of the AR for the Appellant that it was not in possession of land and that clear title was not there in respect of the particular properties turned out to be incorrect on an analysis of the evidence furnished by the AR before the WTO. As per the reply to RTI applications moved by the Appellant before the Greater Noida Development Authority dated 15.09.2016, Khasra No. 369, Area 0.4810 Hectare and 379.0010 Hectare Village Tusiya, the Appellant was to be restrained from retaining possession of the above said lands as per the High Court's Orders dated 8.12.2016 w.e.f. 08/12/2016 and not from the earlier period. Noteworthy fact was that the Appellant was in possession of the said lands between the A.Y.2009-10 and upto 8.12.2016 i.e. till 'he HC's order. Therefore, the plea of the Appellant that it was not in possession of the said pieces of land during the A.Y. in question was found to be contrary to the facts on record. The court's order was prospective and not retrospective. The Purchase-Deeds in respect of the above properties mentioned under grounds No. 3 & 4 submitted by the Appellant also demonstrated that the Appellant was enjoying possession of said lands from the 6th Day of July,2006 onwards. Therefore the statement of the Appellant that it did not have title to the properties was also not true and trustworthy. Another letter dated

15.9.2016 addressed to the Appellant by the Greater Noida Development Authority also proves to the hilt that the Appellant enjoyed clear title to the properties in question. The very fact that the Appellant filed writ proceedings before the Allahabad High Court against the acquisition proceedings went to prove that the Appellant not only had good title to the properties in question but had been enjoying continued possession of the properties in question otherwise it would have not any reasons to knock the doors of the HC.

In light of the above discussion, Grounds No. 3 & 4 are dismissed.”

6. Therefore, the assessee is aggrieved with the order of the Id CIT(A), has preferred this appeal before us.
7. The Id AR submitted that identical issue has been decided by the coordinate bench in case of the co-owner of the property, Mr. Nakul Kapur and therefore, the issue is squarely covered in favour of the assessee. The Id AR submitted that the addition deserves to be deleted.
8. The Id DR vehemently supported the order of the lower authorities.
9. We have carefully considered the rival contentions. The coordinate bench in case of Nakul Kapur in para 7 has dealt with this issue and held that impugned properties taken by the Id WTO is not chargeable as this was subjected to acquisition proceedings under the land Acquisition Act. The order is passed by the coordinate bench in case of the co-owner of the property considering the decision of the Hon'ble Punjab and Haryana High Court therefore, such decision binds us. The coordinate bench held as under :-

“6. We have heard the submissions of both the parties and have gone through the entire material available on record including the decisions cited by the assessee. From the facts, narrated above, we observe that what we have to decide in these appeals is

- (i) whether under the facts and circumstances of the case, the Id. Authorities below are justified in determining the valuation of such properties for the purpose of wealth tax, which were subjected to acquisition proceedings under the Land Acquisition Act (LA Act) and if the answer to this question comes in affirmation then
- (ii) whether the Wealth-tax Officer herself was competent to estimate the valuation of properties for the purpose of wealth Tax in terms of Sec. 16A of WT Act and Rule 3B of the WT Rules

7. Adverting to the first question, the contention of the Id. AR has been that that once the properties in question were notified for acquisition under the LA Act, and acquisition

proceedings were pending against them, there was no reason to declare any value of such properties in the computation of Wealth. It is not in dispute that the impugned properties were not acquired by the Govt. And mere notification u/s. 4 of the LA Act does not amount to acquisition by the Govt. or cessation of assessee's right on the impugned properties. In this context, the Id. CIT(A) has considered various provisions of the LA Act and various eventualities under which such notifications would cease to operate. It is also not the case of the assessee that the impugned properties had been acquired by Government or any compensation there for was awarded to the assessee u/s. 11 of the LA Act. The assessee has challenged by way of writ petition before the Punjab & Haryana High Court, which is placed at paper book page 24 to 29, where the Hon'ble High Court has decided as under :

[7] The concept of pendente lite having been explained by the Hon'ble Supreme Court, the acquisition of petitioners' land is declared to have lapsed. Consequently, the writ petitions are allowed; the impugned notifications dated 13.11.1981 and 15.11.1984 and the award dated 02.05.1986 qua the petitioners are set aside. The respondents, however, shall be at liberty re-acquire the subject property in accordance with law and provisions of the 2013 Act.

[8] Having held that, we cannot be oblivious of the fact that the land was acquired for the regulated development of Gurgaon City. As a consequence of the lapse of acquisition, if the petitioners succeed in changing the nature of land or if they create third party rights, it is likely to be detrimental to the 'public interest' as several basic amenities like roads, sewerage or park etc. would also be adversely affected. We, thus, restrain the petitioners from alienating and/or changing the nature of their released land for a period of one year from the date of receipt of certified copy of the order. No construction shall be raised by the petitioners on their respective sites and the District Administration shall ensure that nature of the land is not changed by anyone.

[9] The aforesaid period of one year has been fixed so as to enable the State authorities to consider and re-acquire the subject land in accordance with the provisions of 2013 Act, if need be. If no fresh acquisition takes place during the period of one year, the petitioners shall be at liberty to utilize their land in the manner as may be permissible under the local laws."

Further, the technology Parks Ltd. on 21.04.2010 had called the assessee for taking possession of the property. The letter is at page 6 of the paper book. However, the possession was not taken by the assessee and the objections had been filed with other members. In view of the above, the assessee was not enjoying the property as

on the date of valuation of net wealth. Therefore, it is outside the definition of net wealth as defined in section 2 of the WT Act, 1957 as well as various decisions by Hon'ble Courts. Hon'ble Chandigarh Highcourt has also made restriction as per para 9 of their order for one year from the date of receipt of writ petition order. Keeping in view all these things, the impugned properties taken by the WTO for the purpose of computation of net wealth is not taxable. Accordingly, the first question on the issue of determining the valuation of such properties for the purpose of wealth tax, which were subjected to acquisition proceedings under the LA Act, is decided in negative and therefore, we need not to enter into the second question regarding competency of WTO to estimate the valuation of properties for wealth tax purposes. As a result, the appeal of the assessee deserves to be allowed.

08. As already noted, the issues involved in appeal for A.Y. 2012-13 are identical to those involved in appeal for A.Y. 2010-11 and relate to the same properties, our above decision shall apply mutatis mutandis in appeal for A.Y. 2012-13 also. Accordingly, WTA No. 02/Del/2017 also deserves to be allowed on the same line. “

10. In view of this, respectfully following the coordinate bench in case of the co-owner of the properties, where the issue with respect to chargeability of above assets to wealth tax has been decided by the coordinate bench, we hold that Plot No. 85 and Plot No. C-28 which are under the acquisition cannot be considered as well as the land has also been acquired by the Govt of India could not have been included in the net wealth of the assessee. In the result the appeal filed in WTA No. 14/Del/2017 for Assessment Year 2013-14 is allowed.
11. The fact in WTA No. 13/Del/2017 are also similar therefore, the appeal of the assessee for both the years are allowed respectfully following the decision of the coordinate bench in case of Nakul Kapur Vs. ACIT in WTA No. 01/02/Del/2017 for Assessment Year 2010-11 and 2012-13 dated 01.10.2018.

Order pronounced in the open court on 25/08/2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 25/08/2021.

AK Keot

Copy forwarded to

1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.08.2021
Date on which the typed draft is placed before the dictating member	25.08.2021
Date on which the typed draft is placed before the other member	25.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	25.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	25.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	25.08.2021
Date on which the final order is uploaded on the website of ITAT	25.08.2021
date on which the file goes to the Bench Clerk	25.08.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	