

Commissioner of Income tax, Jullundur v. Roshan Lal Seth
(S. S. Sodhi, J.)

any Court to which the matter is entrusted by him six monthly but if expenses to be incurred exceed Rs. 5,000 the Mohitmim shall bring the matter in the notice of the said Court before spending the amount. The agricultural land shall be auctioned on a licence per year or in cast he obtains the permission of the said Court earlier licence can be auctioned for a period of more than one year. However, proper record will be kept for auction including the names of the bidders and their bids showing the names of the persons present at the time of auction. The Mohitmim may take the assistance of two respectables of integrity, after having brought this fact to the notice of the said court, for conducting the auctions for licence spending the amount for the improvement of the temples and for spending the surplus income on the above said charitable purposes.

(43) The Local Commissioner already appointed will submit his report for the period from 4th November, 1985 till date giving the amounts already deposited and the amounts yet to be recovered to the District Judge, Patiala or the Court to which the matter is entrusted. The defendant-appellant will deposit all amounts received by him in a proper account with a nationalised Bank in the name of the institution in dispute. Instructions in Paras Nos. 1 to 15 contained in the impugned judgment are thus, substituted by the above directions. In case some problems rise hereinafter and the matter is not covered by the above directions the Mohitmim shall seek the directions from the District Judge or the said Court. Cross Objections No. 4 of 1986 are dismissed. Parties to bear their own costs.

P.C.G.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JULLUNDUR,—Applicant.

versus

ROSHAN LAL SETH,—Respondent

Income Tax Reference No. 149 of 1979.

November 21, 1988.

Income Tax Act (XLIII of 1963)—Ss. 147(b), 148—Wealth Tax Act (XXVII of 1957)—S. 16-A—Value of cost of construction—Investment disclosed by assessee—commensurate with estimate of approved valuer—Re-assessment based on fair market value determined by valuation officer under S. 16-A is unjustified.

Held, that when at the time of the earlier assessment the estimate of the approved valuer, regarding cost of construction of the house, had been accepted and it was at no stage doubted, no occasion was provided thereafter for this matter to have been re-opened. The Tribunal is, at any rate, correct in its view that determination of fair market value under S. 16-A of the Wealth Tax Act, 1957 cannot be appropriately used in estimating the value of the cost of construction of a house. Hence it cannot be availed of for purposes of income tax assessment proceedings.

(Para 11).

Reference under section 256(1) of the Income tax Act, 1961 arising out of the Tribunal's order dated 21st August, 1978 in I.T.A. Nos. 1 and 205(ASR)/1977-78, assessment year 1970-71 to refer the following questions of law to the Hon'ble High Court of Punjab and Haryana at Chandigarh for its considered opinion.

1. *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the I.T.O. was not justified in estimating the investment in the house at Rs. 62,000 and thereby making addition of Rs. 34,324 ?*
2. *Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting the addition of Rs. 5,000 made on account of deposit made by the assessee's wife with M/s. Hamdard Printing Press ?*

R.A. No. 126 (ASR)/1978-79.

L. K. Sood, Advocate, for the appellant.

Bhagirath Dass Seth, Sr. Advocate with Ramesh Kumar, Advocate, for the respondents.

ORDER

S. S. Sodhi, J.

(1) The assessee-Roshan Lal Seth constructed a house in Jalandhar, which was completed during the assessment year 1970-71. According to the assessee, the total investment in the construction of this house was Rs. 27,676. The value of this construction, as estimated by the approved valuer being Rs. 27,981. In explaining the sources for the funds utilized for the construction of this house, the assessee disclosed that he had taken a loan from government of Rs. 17,000 while Rs. 13,200 had been advanced to him by his sons during the period April 1, 1968, to March 31, 1970.

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2. The Income Tax Officer, while making the assessment for the assessment year 1971-72, did not doubt the investment of Rs. 17,000 in the construction of the house which the assessee had obtained as loan from the government, but he did not accept the contribution of Rs. 13,200 said to have been made by the assessee's sons. This sum was consequently treated as income of the assessee from undisclosed source for the assessment year 1971-72.

3. On appeal, the assessee challenged this addition of Rs. 13,200 on the plea that the investment in the house had been made during the assessment year 1970-71 and he could consequently be called upon to explain only that investment, that had been made in that year, that is, 1970-71 and no addition could be made on that account for the assessment year 1971-72. This was accepted by the Appellate Assistant Commissioner holding that the house had been constructed during the previous year relevant for the assessment year 1970-71 and if any part of the expenditure incurred on its construction remained un-explained, the assessee could be called upon to explain that only during the assessment year 1970-71 and not in the assessment year 1971-72 and as the amount in question did not relate to the assessment year 1971-72, the additions made by the Income Tax Officer were legally not justified and were accordingly deleted.

4. The Income Tax Officer then started re-assessment proceedings under Section 147 (b) read with Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 1970-71. In doing so, a reference was also made by him to the Valuation Officer for determining the fair market value of the house in question under Section 16-A of the Wealth Tax Act.

5. According to the Valuation Officer, the estimated market value of the house was Rs. 62,000 with reference to Wealth Tax Assessment for the year 1971-72. Accepting this report, the Income Tax Officer made an addition of Rs. 34,324 in the income of the assessee. This being the difference in valuation as estimated by the Valuation Officer and the investment as disclosed by the assessee. In addition, he also found that a sum of Rs. 13,200 had not been contributed by the two sons of the assessee.

6. On appeal, the Appellate Assistant Commissioner held that considering that some amenities are provided in the house after

its completion and the fact that distemper etc. may not have taken place, as per the plea of the assessee, a benefit of Rs. 10,000 was allowed and the cost of construction upto the year in question was thus taken to be at Rs. 52,000. As regards the item of Rs. 13,200 said to have been received by the assessee from his sons, he confirmed the addition of Rs. 10,000. In other words, he gave relief to the assessee to the extent of Rs. 3,200 on this account.

7. Besides this, there was another disputed amount of Rs. 5,000 during the assessment year 1971-72. It came to the knowledge of the Income Tax Officer that a sum of Rs. 5,000 had been deposited with Hamdard Printing Press in the name of the assessee's wife. The assessee informed the Income Tax Officer that this sum represented gifts made by his sons to his wife from time to time. The Income Tax Officer took the view that the sons were not in a position to make any such gifts and he, therefore, added on this sum of Rs. 5,000 too as being that of the assessee from an un-disclosed source.

8. When the matter went up to the Tribunal in appeal, it was held that the Income Tax Officer was not justified in assessing the investment on the house *de novo* at Rs. 62,000 and thereby making an addition of Rs. 34,324. This being the difference between Rs. 62,000 and Rs. 27,676 which was the original estimate as per the report of the approved Valuer. Further, it was held that the estimate of Rs. 62,000 was not validly taken by the Income Tax Officer as Section 16-A of the Wealth Tax Act could not be availed of for purposes of income tax assessment proceedings. It was observed in this behalf that determination of fair market value thereunder, was not determination of investment, as investment means what is actually spent by the assessee in a particular year on the construction of a house, whereas fair market value is what the house would fetch, if sold, in the open market. It was accordingly held that wholly irrelevant evidence had been considered by the Income Tax Officer for ascertaining the investment made by the assessee during the assessment year 1970-71.

9. As regards the sum of Rs. 5,000 deposited with Messrs: Hamdard Printing Press, Jalandhar, in the name of the assessee's wife, the Tribunal held that the Income Tax Officer was not justified in calling upon the assessee to explain this deposit. It was held in this behalf that either the person in whose books the deposit appears or the person in whose names the deposit stands should

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have been called upon to explain the deposit. This amount of Rs. 5,000 could not, therefore, be added on to the assessee's income and its deletion was accordingly ordered.

10. It was in this background that the following questions of law were referred to this Court for its opinion:—

“(1) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the ITO was not justified in estimating the investment in the house at Rs. 62,000 and there by making addition of Rs. 34,324 ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in deleting the addition of Rs. 5,000 made on account of deposit made by the assessee's wife with M/s. Hamdard Printing Press ?”

11. In the context of the peculiar circumstances in which these questions have come to be referred, no exception can indeed be taken to the reasoning adopted by the Tribunal in dealing with these matters. When at the time of the earlier assessment the estimate of the approved valuer, regarding cost of construction of the house, had been accepted and it was at no stage doubted, no occasion was provided thereafter for this matter to have been reopened. The Tribunal is, at any rate, correct in its view that determination of fair market value under Section 16-A of the Wealth Tax Act cannot be appropriately used in estimating the value of the cost of construction of a house. Question No. 1 has thus to be answered in the affirmative in favour of the assessee and against revenue.

12. Similarly, question No. 2 must be answered in the affirmative in favour of the assessee and against revenue as the Tribunal rightly held that the person, in whose name the deposit stands, or in whose books the deposit appears, must be called upon to explain the deposit. Admittedly, neither of them were called upon to do so. There was thus clearly no warrant for adding on this sum of Rs. 5,000 to the income of the assessee.

13. Both the questions are thus answered in favour of the assessee and against revenue. There will however, be no order as to costs.
