

# TAX FLASH NEWS

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## If the statute is unambiguous, it cannot be contended that the method which is favourable to the taxpayer should be adopted – Supreme Court

### Background

Recently, the Supreme Court in the case of Bimal Kishore Paliwal & Ors<sup>1</sup> (the taxpayer) dealt with the issue of adoption of valuation method to value building under the Wealth-tax Act, 1957 (the WT Act). The Supreme Court observed that the taxpayer has relied on the decision of Vegetables Products Ltd<sup>2</sup> for the proposition that if two reasonable constructions of taxing statute are possible, that construction which favours the taxpayer must be adopted. However, the Supreme Court held that the said proposition cannot be read to mean that under two methods of valuation if the value which is favourable to the taxpayer should be adopted. In the present case, the provisions of Section 7 of the WT Act are neither unambiguous nor lead to two constructions. The construction of Section 7 of the WT Act is clear as has already been elaborately discussed by the Supreme Court in the case of Juggilal Kamlapat Bankers<sup>3</sup>. Therefore, the ratio of Vegetables Products Ltd would not apply.

Accordingly, the Supreme Court held that the Assessing Officer (AO) is correct in adopting the value of land and building by making a reference to departmental valuer to value the property.

### Facts of the case

- G.D. & Sons, a firm wherein the taxpayers are partners, purchased land and building and started cinema theatre in the said premises. The cinema property was valued by assessment in the books of accounts.

- During the course of assessment proceedings of wealth tax of one of the partners, the Wealth Tax Officer (WTO) made a reference for valuation of the cinema theatre to Department Valuation Officer (DVO). The valuation officer submitted its report valuing the property as per percentage of the right of different taxpayers which they have in the firm.
- Subsequently, notices were issued to the taxpayer. The taxpayers got the property valued by an approved valuer adopting income capitalisation method which is different from the AO. Subsequently, the assessment was completed based on the valuation report submitted by the departmental valuer.
- The Appellate Authority affirmed the assessment made by the AO. However, the Tribunal accepted the case of the taxpayer to the effect that the proper basis for valuing the cinema building would be capitalisation of the income.
- The High Court held that WTO was justified in making a valuation based on the valuation report submitted by the departmental valuer. The High Court held that income capitalisation method would not be the correct method of valuation of the property.

### Supreme Court's decision

- The Supreme Court did not agree with the taxpayer's submission that the provision of Section 7(2)(a)<sup>4</sup> is a stand-alone provision and is to be applied in all cases where the

<sup>1</sup> Bimal Kishore Paliwal & Ors v. CWT (Civil Appeal No.3836 of 2011) – Taxutra.com

<sup>2</sup> CIT v. Vegetable Products Ltd [1973] 88 ITR 192 (SC)

<sup>3</sup> Juggilal Kamlapat Bankers and another v. WTO [1984] 145 ITR 485 (SC)

<sup>4</sup> Section 7(2)(a) of the WT Act prescribes the income capitalisation method for assessing the value of the assets of a running business.

taxpayer is carrying on business. Overriding power has been provided to override the normal method of valuation of property as given by Section 7(1)<sup>5</sup> to arm the WTO to adopt the method of valuation as given in Section 7(2)(a) of the WT Act. The purpose and object of giving overriding power is not to fetter the discretion. The WTO is not obliged to mandatorily adopt the method provided in Section 7(2)(a) in all cases where the taxpayer is carrying on business.

- The language of Section 7(2)(a) does not indicate that the provisions mandate the WTO to adopt the method in all cases of running a business. The Supreme Court has laid down that resort to Section 7(2)(a) is discretionary and enabling provision to WTO to adopt the method as laid down in Section 7(2)(a) for a running business but the above enabling power cannot be held as obligation or shackles on right of AO to adopt an appropriate method.
- There was a conscious decision of the AO to obtain the report from the departmental valuer. This conscious decision itself contains the decision of AO not to resort to Section 7(2)(a) of the WT Act. Once it is accepted that the property is useable only as cinema building, then its method of valuation has to be necessarily different from the one normally adopted in the case of buildings which are capable of being used for other commercial purposes. The mere fact that the building is only for the use of cinema exhibition does not in any manner diminish the marketable price. At the relevant period uses of building as running cinema were no less valuable.
- The taxpayer relied on the decision of Vegetable Products Ltd<sup>6</sup> for the proposition that if two reasonable constructions of taxing statute are possible, that construction which favours the taxpayer must be adopted. However, the said proposition cannot be read to mean that under two methods of valuation if the value which is favourable to the taxpayer should be adopted. In the present case, the provisions of Section 7 of the WT Act are neither unambiguous nor lead to two constructions. The construction of Section 7 of the WT Act is clear as has already been elaborately discussed by the Supreme Court in the case of Juggilal Kamlapat Bankers<sup>7</sup>.
- The Wealth Tax Officer having referred the departmental valuer to value the property, in consequent to which reference for valuation report having already been received. Objections to the valuation report were considered by the Appellate

Authority and having been rejected, the Supreme Court do not find any fault with the assessment made by the Wealth Tax Officer. Accordingly, the Supreme Court affirmed the decision of the High Court.

## Our comments

As per the principle of statutory interpretation<sup>8</sup>, if the language used in the statute is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences resulting from adopting the alternative construction. A construction that results in hardship, injustice, absurdity which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected, and preference should be given to that construction which avoids such results.

The Supreme Court in the case of Podar Cement (P.) Ltd.<sup>9</sup> held that where there are two possible interpretations of a particular section which is akin to a charging section, the interpretation which is favourable to the taxpayer should be preferred while construing that particular provision.

However, the Supreme Court in the instant case distinguished the decision of Vegetable Products Ltd. and observed that the proposition which was interpreted by the Supreme Court in that decision cannot be read to mean that under two methods of valuation if the value which is favourable to the taxpayer should be adopted. The Supreme Court observed that the provisions of the WT Act are neither unambiguous nor lead to two constructions. The construction of Section 7 of the WT Act is clear. Therefore, the High Court is correct in holding that valuation is to be made based on the valuation report submitted by the departmental valuer.

Even though the present decision is in the context of wealth tax and the same has been abolished, it can be useful while interpreting the provisions of the Income-tax Act, 1961.

<sup>5</sup> Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the WT Act, shall be its value as on the valuation date determined in the manner laid down in Schedule III.

<sup>6</sup> CIT v. Vegetable Products Ltd [1973] 88 ITR 192 (SC)

<sup>7</sup> Juggilal Kamlapat Bankers and another v. Wealth Tax Officer [1984] 145 ITR 485 (SC)

<sup>8</sup> Justice G.P Singh

<sup>9</sup> CIT v. Podar Cement (P.) Ltd. [1997] 226 ITR 625 (SC)

**Ahmedabad**

Commerce House V, 9th Floor,  
902 & 903, Near Vodafone House,  
Corporate Road,  
Prahlad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

**Bengaluru**

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

**Chandigarh**

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh – 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

**Chennai**

KRM Tower, Ground Floor,  
No 1, Harrington Road  
Chetpet, Chennai – 600 031  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

**Gurugram**

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurugram, Haryana – 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

**Hyderabad**

Salaruria Knowledge City,  
ORWELL, 6th Floor, Unit 3, Phase  
III, Sy No. 83/1, Plot No 2,  
Serilingampally Mandal, Raidurg  
Ranga Reddy District,  
Hyderabad, Telangana – 500081  
Tel: +91 40 6111 6000  
Fax: +91 40 6111 6799

**Jaipur**

Regus Radiant Centres Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road  
Jaipur, Rajasthan, 302018.  
Tel: +91 141 - 7103224

**Kochi**

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

**Kolkata**

Unit No. 603 – 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091  
Tel: +91 33 4403 4000  
Fax: +91 33 4403 4199

**Mumbai**

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai – 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

**Noida**

Unit No. 501, 5th Floor,  
Advant Navis Business Park  
Tower-B, Plot# 7, Sector 142,  
Expressway Noida, Gautam Budh Nagar,  
Noida – 201305  
Tel: +91 0120 386 8000  
Fax: +91 0120 386 8999

**Pune**

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex, Mundhwa Road,  
Ghorpadi, Pune – 411001  
Tel: +91 20 6747 7000  
Fax: +91 20 6747 7100

**Vadodara**

iPlex India Private Limited,  
1st floor office space, No. 1004,  
Vadodara Hyper, Dr. V S Marg  
Alkapuri, Vadodara – 390 007  
Tel: +91 0265 235 1085/232 2607/232 2672