

(1988) 05 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 4586 of 1987

Aditya Narain Roy and Another

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 20-05-1988

Acts Referred:

Transfer of Property Act, 1882 — Section 6
Wealth Tax Act, 1957 — Section 16A

Citation : (1990) 183 ITR 175

Hon'ble Judges : Ajit K. Sengupta, J

Bench : Single Bench

Advocate : Bajoria, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this application under Article 226 of the Constitution, the petitioners have challenged the valuation of the Valuation Officer, Unit III, made u/s 16A(5) of the Wealth-tax Act, 1957, in respect of the immovable property being premises No. 129, Park Street, Calcutta, for the assessment years 1977-78 to 1984-85.

2. Shortly stated, the facts are that, in the year 1955, the premises at No. 129, Park Street, Calcutta (hereinafter referred to as the "said premises"), was let out on lease for a period of 25 years to one Mr. P. A. Basil, since deceased, at a rent of Rs. 100 per month. The said Mr. Basil, since deceased, and/or his legal heirs did not vacate the said premises on the expiry of the lease. The petitioners filed a suit in the year 1980 in the City Civil Court at Calcutta for recovery of possession of the said premises. During the pendency of the said suit, Messrs. Susam Properties Pvt. Ltd. agreed to take the said premises on lease for a period of 75 years. By a deed of lease dated August 31, 1981, the petitioners granted lease of the said premises to Messrs. Susam Properties Pvt. Ltd. for a period of 75 years with an option for the lessee to renew the said lease for a period of another 20 years. The said deed of lease provides for rent of Rs. 2,000 per month during the period from May 1, 1981, to April 30, 1984, and Rs. 6,000 per

month from May 1, 1984, to April 30, 2056. The said lease deed further provides that the lessee shall construct a building on the premises and thereafter allot vacant possession of a flat to the petitioners on the first floor of the said premises proposed to be constructed covering an area of 2,000 square feet.

3. In accordance with the terms and conditions of the said deed of lease, the said Susam Properties Pvt. Ltd. demolished the existing structure and has started construction of a new building thereat. According to the petitioner, superstructure of the said building has not been completed even in 1987 when the application was made or thereafter.

4. The petitioners disclosed the value of the said premises in its return of wealth. The Wealth-tax Officer made the assessment of the said premises up to the assessment year 1984-85. The Commissioner of Wealth-tax issued a notice u/s 25(2) of the Wealth-tax Act, 1957, directing the petitioners to show cause as to why the assessment made by the Wealth-tax Officer for the assessment year 1984-85 should not be set aside. The petitioners duly filed their reply to the said purported notice. By an order dated February 17, 1989, the Commissioner set aside the said assessment made by the Wealth-tax Officer for the assessment year 1984-85 and directed him to make a fresh assessment in accordance with law. The Wealth-tax Officer referred the matter to the Valuation Officer for determining the fair market value of the said premises. By an order dated September 3, 1987, the Valuation Officer determined the market value of the said premises as on March 31, 1977, to March 31, 1984. The Valuation of the said premises was determined by the Valuation Officer at Rs. 17,81,700 as on March 31, 1984.

5. In this application, the petitioner has challenged the method of valuation adopted by the Valuation Officer in determining the fair market value of the said premises for the assessment years 1977-78 to 1984-85.

6. Before dealing with the contentions of learned counsel, it is necessary to set out the valuation made, the details of the method of valuation adopted and the reasoning of the Valuation Officer in respect of the estimate of the fair market value of the said premises. The final valuation made by the Valuation Officer from March 31, 1977, to March 31, 1984, is set out herein below :

Valuation date Final value in Rs.

31-3-1977 9,46,400

31-3-1978 11,33,500

31-3-1979 14,87,500

31-3-1980 18,71,500

31-3-1981 19,35,900

31-3-1982 14,20,100

31-3-1983 15,58,000

31-3-1984 17,04,400

7. As stated earlier, this valuation has been impugned in this proceeding. The Valuation Officer has stated, *inter alia*, as follows :

"On the above valuation dates, the assessees had the following rights or interest in the property.

(i) Right to receive rent :

(a) at the rate of Rs. 2,000 p. m. up to 30-4-1984.

(b) at the rate of Rs, 6,000 p. m. from 1-5-1984 to 30-4-2076.

(ii) Reversionary interest in property as the lease deed stipulates : The lessee shall yield and deliver up possession of the demised provision together with building and structures that will be erected thereon by the lessee at the expiration of the term hereby created ... (Clause 7, page 6, of lease deed No. 1-7388 for the year 1981).

(iii) Right to receive vacant possession of a flat on the first floor duly constructed and finished covering a covered area 2,000 sq.. ft. (Clause 3, page 5, of lease deed)

8. From the above, it is clear that fair market value of the lessor's interest on the above valuation dates comprises of the following :

(i) capitalised value of rent received and receivable for unexpired period of lease.

(ii) reversionary value.

(iii) value of right to receive vacant possession of flat on a future date which is clearly defined in the lease deed."

9. The assesses has argued that actual rental income fixed should be the basis for valuation of the property and the question of separate valuation of the land does not arise. In support, he has quoted the following judicial pronouncements :

(1) Commissioner of Income Tax Vs. Smt. Ashima Sinha, .

(2) CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., .

(3) Corporation of Calcutta Vs. East India Commercial Company Pvt. Ltd., .

10. In the case of Commissioner of Income Tax Vs. Smt. Ashima Sinha, , the Hon"ble High Court had an opportunity to examine the valuation of property which was fully let out to tenants paying monthly rents and the provisions of the West Bengal Premises Tenancy Act, 1956, were operative. In our case, the property was leased out on a long lease on two occasions by two separate lease deeds (except for the assessment year 1981-82) and, therefore, tenancies created under the said two lease deeds were not governed by the provisions of

the West Bengal Premises Tenancy Act, 1956, but were governed by the terms and conditions of lease deeds. The factual foundation on which the above court decision is rooted is totally different from the facts of our case. In view of the above, case law is not at all applicable to this case. From a reading of the above court decision, it appears that counsel for the appellant did not properly explain the concept of reversionary value in the case of old tenanted property and he also failed to cite authority approving the reversionary value. The relevant portion of the Hon''ble High Court's observation is quoted below (at page 38) ; "We invited Mr. Pal to cite any authority which has approved or even indicated this method but he was unable to do so." Though the counsel for the appellant referred extensively during the course of hearing to Parks'' Valuation, but he failed to show the Hon''ble High Court relevant portion of Parks'' Valuation where reversionary principles was discussed with respect to tenanted property. (Refer to page 51, Clause 4, of Parks'' Valuation, 4th edition.) It is apparent that, if the concept of reversionary principle was explained properly and relevant portion of Parks'' Valuation was brought to the notice of the Hon''ble High Court, the court would have accepted the reversionary value concept in the case of a tenanted property.

11. In case of leasehold property where the condition of reversion of property to the lessor on the expiration of the lease term is stipulated, the addition of reversionary value is well-established and accepted by the recognised authority on valuation, Mr. John A Parks (Refer to pages 143 and 170 of Parks'' Valuation, 4th Edition, Chapter 8).

12. In the case of CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., , the Hon''ble High Court observed (at page 770) :

"Lastly, in the case of buildings which are in the possession of tenants and the tenants cannot either be evicted or the rent payable by them enhanced except in accordance with the provisions of the Rent Control Act, the only appropriate method of valuation is to capitalise the annual rent by certain number of years'' purchase. The method of valuing the land and the building separately and adding up the values would be improper in such cases, because that would ignore the impact of the Rent Control Act on the value of the land and the building."

13. In this connection, it may be mentioned that, for all the assessment years except assessment year 1981-82, rents shown in the lease deeds are considered and capitalised for the unexpired period of lease. To those capitalised values, reversionary values are added (reasons for adding reversionary value are discussed earlier).

14. During the assessment year 1981-82, the property was not tenanted but was under illegal occupation of the former lessee for which the asses-see filed recovery suit in the city civil court. Therefore, during the assessment year 1981-82, the property was not tenanted and the illegal occupier was not under the protection of the West Bengal Premises Tenancy Act, 1956. Obviously, the

above case law cannot be applied in our case for the assessment year 1981-82.

15. For untenanted and undeveloped or underdeveloped property, "Land and building method" is the appropriate method of valuation (Ref. Parks' Valuation, at page 54, Chapter 5, 4th edition).

16. The third case is related to determination of the annual value for assessment of municipal tax. In this case, the Hon'ble High Court had held that there would be no bar on the assessing authority to assess the annual value with reference to contractual rent as paid by the tenant to the landlord without any objection. In our case, we are concerned with the determination of the fair market value of the property and, in doing so, only contractual rents are considered. It is, therefore, not clear how the court decision supports the assessee's contention. Moreover, the court decision is regarding a matter which does not have a bearing on our case.

17. The assessee has argued that the value of the flat should not have been included as the flat was not in existence on the relevant valuation dates. Even on the date of inspection, the flat was not in existence.

18. In this connection, it may be pointed out that what has been added is not the value of the non-existent flat but the right of the lessor to receive a flat from the lessee on a future date. As per the lease condition, the lessee was to construct and complete a building having minimum covered area of 20,000 sq. ft. within 3 years from March 31, 1981, or within such extended time as may be agreed but not beyond five years.

19. Therefore, as per the lease condition, the lessor was to get the flat within a specified time which in any case would not extend beyond five years, i.e., August 31, 1986.

20. On the relevant dates of valuation, the prospective buyer could not have foreseen that the possession of flat would not be made available to him by August 31, 1986, in spite of the explicit lease condition. Even on March 31, 1984, the expectation of getting the flat by August 31, 1986, was not a remote possibility even though the construction was not started as there was sufficient time left to construct and complete the flat during the remaining period, i.e., within August 31, 1986. The money equivalent of this right is the value of the flat deferred by a number of years left, counted from the date of the valuation to the date by which the building has to be completed, i.e., August 31, 1986. The right to receive a flat at a future date is an asset within the meaning of Section 2(e) of the Wealth-tax Act and has to be valued accordingly.

21. In the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , the Hon'ble Supreme Court opined that the right to receive compensation, even though the date of payment was deferred, was property and constituted an "asset" for the purpose of the Wealth-tax Act.

22. The principle enunciated in the above case is equally applicable in our case.

23. Comments on Registered Valuer's report :

The registered valuer has valued the lessor's interest in the property as on April 1, 1977, at Rs. 14,000 by capitalising the net lease rent at 8% for perpetuity. His valuation is not acceptable for the following reasons :

(i) He has failed to take into account the lease conditions. As per the lease condition, the lessee was to vacate the premises on expiration of lease term and, therefore, rent is receivable for unexpired period of lease and not in perpetuity. Capitalisation for perpetuity is, therefore, basically wrong.

(ii) He has failed to take into account reversionary value. As per the lease condition, the lessee was to give vacant possession on expiration of the lease term. As the property was to revert back to the lessor, the present worth (on the valuation date) of freehold property which the lessor was expected to obtain on expiration of lease term has to be considered. He has ignored the reversionary value on the pretext that the Hon'ble Calcutta High Court had decided otherwise in the case of Commissioner of Income Tax Vs. Smt. Ashima Sinha, , without examining in detail whether the facts and circumstances of the case as decided are applicable in the present case.

(iii) It is well recognised that the rate of return is inversely proportional to the security, i.e., if the security is more, rate of return is low and vice versa. In the present case, the lease rent was exceedingly low being fixed long ago and income was very much secured, therefore, rate of return expected should be correspondingly low. Ignoring this fact, the registered valuer has taken the rate of return at 8% which is too high. The registered valuer has valued the assessee's interest in the property as on May 1, 1980, at Rs. 2,82,000 by capitalising the net rent (gross rent is taken at Rs. 2,000 p. m.) at 8% for perpetuity.

24. In this connection, it may be mentioned that the assessee entered into a fresh lease agreement on August 31, 1981 (vide lease deed No. I-7386 for 1981) commencing from May 1, 1981. One of the conditions, inter alia, is that the lessee was to pay lease rent of Rs. 2,000 p. m. during the period May 1, 1981, to April 30, 1984, and, thereafter, at the rate of Rs. 6,000 p. m. till the expiration of the lease term. The registered valuer has considered that the property was leased out on May 1, 1980 and was fetching Rs. 2,000 p. m. as lease rent which is contrary to the fact. The fact is that on May 1, 1980, that property reverted back to the assessee on the expiration of the former lease term on April 30, 1980, and it was illegally occupied by the former lessee who was to give vacant possession of the property on April 30, 1980. On May 1, 1980, the property was not at all leased out and, therefore, the valuation on the basis of incorrect fact is prima facie wrong and cannot be accepted.

25. The registered valuer has valued the assessee's interest in the property as on May 1, 1984, at Rs. 8,46,000 by capitalising the net rent (gross rent being Rs. 6,000 p.m.) at 8% for perpetuity.

26. The registered valuer's report is not accepted for the following reasons :

(1) Value of reversionary interest in the property has not been included.

(2) Value of the right to receive a flat measuring 2,000 sq. ft. has not been added.

(3) As on May 1, 1984, the value of the property increased considerably with reference to value of the property on the date of the lease agreement (August 31, 1981) when lease rent was fixed and, therefore, lease rent was very much secured. During 1981, the average yield from the Government securities was 6.79%, and therefore, the rate of return for secured lease rent should not be more than 7%. Rate of capitalisation of 8% taken by the registered valuer is too high.

(5) There is only one lessee and he might have been paying rent by cheque and, therefore, in practice, the assessee may not be incurring any expenditure towards collection. Therefore, in that case, allowing 6% (maximum permissible) for collection charges which amounts to Rs. 4,320 p. a. is contrary to the facts and circumstances of the case and is too high. This shall not be more than 1 % of the gross rent.

(Sd.) P. K. Majumdar

Valuation Officer, Unit I. T.

income tax Department, Calcutta-16."

27. From the details of the method adopted for valuing the assessee's interest in the said property on different valuation dates as discussed by the Valuation Officer and the reasoning given in support of such valuation, it would be evident that the Valuation Officer has taken into account three factors, (i) capitalised valuation of the lease rent, (ii) reversionary value, and (iii) right to get a flat in the building proposed to be constructed at the said premises in question. In my view, however, none of those reasons is sustainable in law.

28. Mr. Bajoria, learned counsel appearing for the petitioner, has contended that the determination of the capitalised value of the lease rent by the Valuation Officer is contrary to the principles of valuation. The contention of the petitioner is that the Valuation Officer has taken the rate of capitalisation at 7%. The rate of capitalisation should be more than 12%, Even scheduled banks, Government Institutions like the Unit Trust of India would pay interest at the rate of 11% per annum on investment on the relevant date. The rate of capitalisation should be the rate at which scheduled banks or public or private industries allow interest. The traditional view of capitalisation, being linked to gilt-edged securities, has been disapproved by the Supreme Court in its recent judgment in the case of Special Land Acquisition Officer, Davangere Vs. P. Veerabhadarappa and Others, .

29. In that case, the Supreme Court was considering the general principles regarding multiple of capitalised value of profits from land and the proper

multiplier to be adopted. There, the Supreme Court held as follows (at page 197) :

"The basic factor in applying the method of capitalisation of income for ascertaining the market value of property is the rate of return that an ordinary investor would reasonably get on his investment having due regard to all the relevant circumstances.

In the classical economic sense, as adopted by the Privy Council in *Vyricherla's* case [1939] LR 66 IA 104, the meaning to be placed upon the phrase "market value" of the land u/s 23 of the Act is the price at which the land acquired could actually be sold at the relevant time, i.e., on the date, of the notification u/s 4(1) of the Act by a fictitious willing buyer in a hypothetical market, with the qualification that a forced sale is not to be assumed. The price at which the property would sell "as between a willing buyer and a willing seller" raises the problem of valuation. The value of any object of wealth is simply a capitalization of the services or income which actual or potential owners of the property expect to derive from it, i.e., earning power as a basis of valuation. The rule of number of years" purchase is not a theoretical or legal rule, but depends upon economic factors such as the prevailing rate of return which a prudent investor in the class of properties in question would expect. The most important of such economic factors is the prevailing rate of interest at the relevant time, i.e., on the date of the notification u/s 4(1) of the Act. It is first necessary to ascertain the gross income from the acquired property. The next step should be to ascertain the net income. Having ascertained the net annual income, it must be capitalized by computing the number of years" purchase.

During the Imperial days, investment in gilt-edged securities was looked, upon as the only safe form of investment. But after the attainment of independence, the country has taken long strides in the growth of commerce and trade. Due to growth of industries both in the public as well as in the private sector, investment of capital in such industries, if not any more secure, have come into the law merchant and such other alternative available securities have attracted persons who are inclined to invest, rather than in gilt-edged securities alone, apart from making fixed deposits in scheduled banks. This accounts for the variation of the proper multiplier to be adopted. The line of inquiry in such cases must, therefore, be what was the prevailing rate of interest on long-term deposits with scheduled banks or in the public or private sector ?

At the turn of the century, it was not uncommon for the courts to adopt a rule of 20 years" purchase for arriving at the capitalized value of agricultural lands. It had long been the practice in the courts of the then Madras Presidency to calculate the profits from any form of landed property as equal to the profits made by investing of money in the gilt-edged securities. Till the early 50s, the courts of the then Madras Presidency held that the capitalised value of agricultural lands should be arrived at at 20 years" purchase having regard to the rate of interest on gilt-edged securities at five per cent. per annum. It was,

however, observed that with respect to melwaram interest in a zamindari land or a vacant site, it was difficult to accept the current rate of interest on gilt-edged securities as a safe guide to the multiple to be applied to the annual profits on ryotwari land. The landlord in such cases would not only expect to get a return on the capital invested on the land but also something in addition to that as compensation for his trouble in attending to the land and for the risks involved in the cultivation of the land. It was observed that although the tenants might have agreed to pay him a fixed rent in money, yet if a full crop was not raised on the land either through failure of rain or because of pests or for any other reason, it was extremely difficult for the landlord to realize the rent. For these reasons, the landlord naturally expected an appreciably larger return than he would expect from gilt-edged securities which he left in the bank and for the realization of the interest of which he is put to no trouble whatsoever.

It would be unrealistic to adhere to the traditional View of capitalized value being linked to gilt-edged securities when investment in fixed deposits with nationalised banks, National Savings Certificates, Unit Trusts and other forms of Government securities and even in the share market in the shape of blue chips command a much greater return. More secure the capital and regular the return, the lesser the rate of interest. Most secured kinds of investments are Government securities or deposits with scheduled banks or Unit Trusts or National Savings Certificates. The rate of interest on Government of India bonds for a period of 30 years in 1972 yielded 5.75% per annum. As per the Government of Karnataka publication called "Finance Accounts of 1972-73", the rate of interest on the Mysore State Development loans issued in the years 1967, 1968, 1969, 1970, 1971 and 1972 was uniformly 5 3/4%. The rate of interest on fixed deposits with the State Bank of India for a period ranging from three years up to five years yielded 7% while the rate on fixed deposits above five years was 7.25 %. The rate of dividend payable on Unit Trusts in 1972 was 8.25% per annum. National Savings Certificates, seven years, 2nd issue yielded tax-free interest at 6% on maturity, seven years, 3rd issue 6% tax-free payable annually and seven years, 4th issue 7.5% payable annually but subject to Income Tax."

30. In my view, having regard to the principles laid down by the Supreme Court in the aforesaid decision, the contention of Mr. Bajoria has to be accepted. The Valuation Officer erroneously proceeded in fixing the capitalisation at 7%. Having regard to the facts and circumstances of this case and having regard to the principles laid down by the Supreme Court in the aforesaid decision, in my view the rate of capitalisation should be at least 12 % and the multiplying factor should not be more than 8 1/2.

31. The next contention of Mr. Bajoria is that the Valuation Officer evaluated the property in complete disregard of the principles laid down by the Division Bench of this court in including the reversionary value in the valuation. It would appear from the said valuation report, which I have already extracted hereinbefore, that the Valuation Officer in fact held that the judgement of this court and in

particular the decision in Commissioner of Income Tax Vs. Smt. Ashima Sinha, ; CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., and Corporation of Calcutta Vs. East India Commercial Company Pvt. Ltd., , are not applicable to the facts of the case as the property in the instant case was leased out on a long lease. He had also held that, if the concept of reversionary principle was explained properly and relevant portion of Parks" Valuation was brought to the notice of this court, this court would have accepted the reversionary concept in the case of tenanted property.

32. It is not disputed that the property was all along tenanted. The reversionary value sought to be taken is the value of the property which would come to the assessee after the expiry of the tenancy. No addition can be made to the value of such property in any such assumed value of hypothetical reversionary interest. The law on this point is well-settled by the decision of this court in Commissioner of Income Tax Vs. Smt. Ashima Sinha, .

33. There, this court observed as follows (at pp. 38, 39) :

"We entirely agree with the principles laid down in CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., and find that the Tribunal has correctly applied the same in the instant case. If a statutory control is imposed on a commodity restricting the price or transfer, or distribution of the same then, in our opinion the commodity ceases to be a commercial commodity as understood in common parlance and becomes a controlled commodity and its effective value is its controlled value and not an imaginary commercial value. If the State chooses to impose statutory control in respect of terms and conditions for tenancies in properties and such control is statutorily enforced, then during the subsistence of such control, such properties would necessarily have a value which is controlled. The State cannot then turn round and say that for other purposes, the properties would have a notional commercial value. To hold otherwise would be to ignore the realities.

We have failed to understand either the principles or the logic of the (reversionary) method of valuation as applied by the Valuation Officer of the Department in the instant case. After following the "yield or rental" method and having arrived at a figure, the Valuation Officer had added to it the value of an imaginary reversion in future. We invited Mr. Pal to cite any authority which has approved or even indicated this method but he was unable to do so. It is stated in Parks" : Valuation (at page 38) that when a property is valued on rental basis the result is the value of the land and building taken together which cannot afterwards be apportioned. In the method adopted by the Valuation Officer the value of the land is taken twice, being included in the amount arrived at by the "yield or rental" method and again under the "reversionary" method. This is an entirely novel approach but in our view erroneous."

34. The Valuation Officer has ignored the said decision of this court on the ground that the court did not consider all the relevant facts. The said judgment

of this court in the case of Commissioner of Income Tax Vs. Smt. Ashima Sinha, was subsequently followed in the case of Sudesh Chandra Talwar Vs. Commissioner of Wealth Tax, . In my view, therefore, the Valuation Officer misdirected himself in including the alleged reversionary value in the valuation of the property in question. The Valuation Officer could not sit in appeal over the decision of this court. The principles which have been laid down by this court in Commissioner of Income Tax Vs. Smt. Ashima Sinha, and the decisions relied on before the Valuation Officer could not be ignored by him in arriving at a novel method of valuation.

35. The next contention is with regard to the imaginary value, if any, of the right to get a flat in the building proposed to be constructed. The value of such a right cannot, by any stretch of imagination, be included in the valuation. There can be no market value of such a right. No one would purchase any such alleged right. Such right is in a nebulous state. Further, such right is not transferable u/s 6(c) of the Transfer of Property Act. The following facts would demonstrate the nature of such alleged right. The property in question was in the possession of a tenant on the relevant valuation date and its vacant possession had to be secured first. The structure existing on the premises was required to be demolished. Sanction had to be obtained from the Corporation and other authorities for construction of the building. Only thereafter, the construction could be made and the lessee can make over one flat to the lessor. If the tenant is not evicted or the existing structure cannot be demolished or the Corporation does not approve the plan or if the property is acquired by an authority or if the lessee drops the idea of construction or if the lessee plans to use the land for any other purposes or does not fulfil the contractual commitment, the question of getting any flat by the lessor does not arise. The value of such a right cannot be included in the net value. Even if such right is an asset, the value of such asset is not capable of being quantified. During the previous year for the assessment year 1984-85, the said premises was not ,in the occupation of the lessee and the same was in the occupation of the said tenant, Basil, since deceased, against whom an ejectment proceeding was pending. The value of such right to get a flat cannot be included in determining the fair market value of the said premises. The value of the flat can only be included when such flat is handed over to the lessor.

36. In the premises, the valuation as made by the Valuation Officer cannot be sustained. The order passed by the Commissioner of Wealth-tax u/s 25(2) of the Wealth-tax Act, 1957, is also erroneous in so far as he directed the Wealth-tax Officer to reconsider the question whether the assessee's right to get a flat in the property to be constructed is a valuable asset or not. As I have held, even if it is an asset for the purpose of inclusion in the wealth, its value is not capable of being quantified in terms of money unless, in fact, such flat is obtained by the assessee.

37. In the result, this application succeeds. The report of the Valuation Officer dated September 3, 1987, is set aside and quashed. The order of the

Commissioner of Income Tax, dated February 17, 1987, made u/s 25(2) of the Wealth-tax Act, 1957, will stand set aside to the extent indicated above. This order will, however, not prevent the respondents from proceeding in accordance with law in the light of the observations made in the judgment and in determining the value of the property in question.

38. All parties shall act on a signed copy of the operative part of this judgment and order.