
(2011) 08 GUJ CK 0071
In the Gujarat High Court
Case No : Wealth Tax Reference No. 2 of 1998

Aims Oxygen Pvt. Ltd.

APPELLANT

Vs

Commissioner of Wealth-Tax

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10[1], 10[3], 20, 7, 7(1)
Wealth Tax Act, 1957 — Section 16A, 27[1]

Citation : (2012) 251 CTR 19 : (2012) 209 TAXMAN 49

Hon'ble Judges : S.J. Mukhopadhaya, J; Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Full Bench

Advocate : Manish J Shah, for the Appellant; Manish R Bhatt for Respondent(s) : 1 and M/S. Vyas Associates for Respondent(s) : 1, for the Respondent

Judgement

Honourable The Chief Justice Mr. S.J. Mukhopadhaya

1. In a Reference under Sec. 27[1] of the Wealth Tax Act, 1957, Income Tax Appellate Tribunal made a reference on the following question, said to be a question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in rejecting the valuation based on compensation receivable under the Urban Land [Ceiling & Regulation] Act, 1976

A Division Bench of this Court, when took up the matter, it doubted the decision of the earlier Division Bench of this Court in the case of Commissioner of Income Tax Vs. G.S. Krishnavati Vahuji Maharaj Kalyanraji Temple, , in view of the decision of the Supreme Court in the case of Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta, , and referred the matter for hearing by a Larger Bench.

2. The Assessee, Aims Oxygen Pvt. Ltd., Vadodara, which is engaged in the

business of manufacturing industrial gases at its factory, filed return of net wealth on 28 th September, 1984, wherein, value of the open land situated at Old Padra Road, was shown at Rs. 62,538/-. As the Assessing Officer was of the opinion that the valuation given by the Assessee Company was shown at the same price at which the said land was acquired pursuant to land acquisition proceedings as early as in 1960, he referred the matter to the Departmental Valuation Officer under Sec. 16A of the Wealth Tax Act, 1957 ["Wealth Tax" for short] for assessing the fair market value of the said open land along with other properties of the Assessee Company. The Departmental Valuation Officer submitted his report on 10th March, 1989 which was served on the Assessee. In the meantime, the Assessee got another Govt. Regd. Valuer's report on 16th March, 1989 and on that basis, it filed revised return of wealth showing value of the open land in question at Rs. 1,44,146/-. The Assessing Officer considered the reports of both the Valuers. Contention of the Assessee was that the land in question was subject matter of Urban Land [Ceiling & Regulation] Act, 1976 ["ULC Act" for short] and its value should be at the rate of compensation to be awarded to the company by the Government under the provisions of the ULC Act and the valuation as worked out by the Govt. Regd. Valuer should be believed. The said stand taken by the Assessee was rejected by the Assessing Officer who relied upon the report of the Departmental Valuation Officer who had considered the impact of the ULC Act also while arriving at the valuation of the open land in question at Rs. 51,18,400/-.

3. The Assessee preferred an appeal before the Commissioner of Wealth Tax [Appeals]-II, Baroda before whom, it was contended by the Assessee that the Assessing Officer was not justified in rejecting the contention of the Assessee Company that, once the land in question comes under the ULC Act, then, it was not marketable and its value has to be determined as per the compensation payable by the government under the ULC Act. Request was made by the Assessee to accept the report submitted by the Govt. Regd. Valuer. It was accepted that the Assessee Company had sought for exemption under Sec. 20 of the ULC Act, but it was contended that such fact alone was not sufficient to bring that land within the purview of the provisions of the ULC Act. Reliance was also placed on certain decisions of the Madras High Court. The Commissioner of Wealth Tax [Appeals], on hearing the parties and having noticed some other decisions, did not find force in the contention of the Assessee and confirmed the order of the Assessing Officer.

4. Being still aggrieved, the Assessee preferred an appeal before the Income Tax Appellate Tribunal ["Tribunal" for short], wherein the same plea was taken and number of decisions of different Courts were referred to and relied upon by both the parties. The Tribunal, having noticed that the land in question was the subject matter of ULC Act, after provisional declaration that seemed to have reached finality, distinguished the decision rendered by the Madras High Court on the ground that in those cases, land had already been acquired and thereby confirmed the order passed by the Commissioner of Wealth [Appeals] as well as

the order passed by the Assessing Officer.

5. According to the learned counsel for the Assessee, the land in question having been declared surplus, as the value of the property would be normally reduced, the Assessing Officer should have accepted reduced market value of the land, as prepared by Govt. Regd. Valuer and submitted by the Assessee, particularly, when the market value of the very property had reduced at market rate than accepted by the Revenue for the other financial years. Per contra, according to the learned counsel for the Revenue, in view of the words "if sold in open market", it is to be presumed that there is open market and the property can be sold in such market and on that basis, the valuation has to be made, and the question of reducing the value of the land on the ground of restrictions and prohibitions is not justifiable.

6. To determine the issue, we will refer to the decisions referred by both the parties and also some other decisions. We have also noticed the relevant facts. In case of Commissioner of Wealth-tax, Tamil Nadu-II, Madras Vs. K.S. Ranganatha Mudaliar and Others, , when the matter fell for consideration before the Division Bench of Madras High Court, the Court observed that normally, the market value of the land is to be the value which the land if sold in the open market by a willing seller might be expected to realise, such market value being generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. If there are no sales of comparable lands, the value must be found in other ways. It was observed that one method is to take the annual income which the owner may expect to obtain from the land and capitalise it by the number of years" purchase and the capitalised value is taken as the market value which a willing seller may reasonably expect to obtain from a willing buyer. It was held that if this is also not possible, the court can adopt the method of reinstatement value. The Court further held that if the restrictions and prohibitions contained in the Ceiling Act were ignored in valuing the excess land, that would amount to valuing the asset differently in content and quality from that actually owned by the assesses. Consequently, such lands would have to be valued only after taking note of the restrictions and prohibitions, which would have the effect of depressing its value. Hence, the compensation receivable under the Ceiling Act was held to be justified.

7. In the case of Commissioner of Wealth Tax Vs. Shardlow India Ltd., , the same principle of law was followed and the Madras High Court held that land has to be valued based on the rate of compensation payable under the Land Ceiling Act and not by adopting the market rate. The Supreme Court has dismissed the SLP filed by the Revenue against the said judgment, by judgment reported in [2005] 277 ITR [SC] 1.

8. In case of Commissioner of Wealth Tax Vs. Simpson and General Finance Co. Ltd. (No. 1), , Madras High Court again followed the same principle and held that whenever there is any restriction on the transfer of any land, it is a matter of common knowledge that the value of the property or land, as the case may be,

would be normally reduced. Therefore, valuation of the property cannot be made by adopting the market rate. The decision of the Tribunal that immovable property was subject to the urban land ceiling laws and should only be valued as per the compensation payable under the Ceiling Act was upheld.

9. The same ratio was followed by Madras High Court in the case of Commissioner of Wealth Tax Vs. Simpson and General Finance Co. Ltd. (No. 2), .

10. The matter earlier fell for consideration before a Division Bench of this Court in the case of Commissioner of Income Tax Vs. G.S. Krishnavati Vahuji Maharaj Kalyanraiji Temple, , and this Court noticed the fact that whenever there is any restriction on the transfer of any land, it is a matter of common knowledge that the value of the property or land, as the case may be, would be normally reduced. Having noticed that the land owned by the Assessee was covered under the provisions of the Urban Land [Ceiling & Regulation] Act, 1976, the Court agreed with the view taken by the Tribunal and held that the value of the land cannot be assessed more than what the government was to offer under the provisions of the Ceiling Act.

11. In the case of Commissioner of Wealth Tax Vs. Srikantadatta Narasimharaja Wadiyar, , a Division Bench of the Karnataka High Court, having noticed that the competent authority had neither issued any notification u/s 10[1] nor u/s 10[3] of the Urban Land Ceiling Act, held that it was for the Wealth-tax Officer to find out what price the assets would fetch if they were sold in the open market as on the valuation date by keeping in view certain restrictions in the Urban Land Ceiling Act, which would have a depressing effect on the value of the asset. It was further held that once the competent authority issued notification u/s 10[3], the land was deemed to have been acquired by the Government and what the assessee owned was that right to compensation and that could only be the maximum compensation amount as provided under the Ceiling Act. Even before a notification was issued u/s 10[3] vesting the excess vacant land in the State Government free from all encumbrances, some deductions might have to be granted while fixing the price of the asset, but it certainly could not be what was payable under the provisions of the Urban Land Ceiling Act. Even in a case, where there is prohibition under the Act for the sale of such asset, since it is not yet deemed to have become the property of the Government, the valuation had to be made on the assumption that the purchaser would be able to enjoy the property as the holder, in spite of restrictions and prohibitions contained in the Act. The question in such cases where there is in fact a market and the property could be in fact sold is wholly immaterial. If there are restrictions, the value of the property or land would be normally be reduced, but at the same time, it cannot be said that it would fetch only the maximum compensation payable under the Urban Land Ceiling Act.

12. The Supreme Court, in the case of Calcutta Electric Supply Corporation Vs. Commissioner of Wealth Tax, West Bengal, observed that; "section 7 of the Act does not take of hypothetical possibilities in the matter of valuation of the assets.

It merely concerns itself as to what is the true market value of the assets in question on the valuation date."

13. In the case of Ahmed G.H.Ariff and others v. Commissioner of Wealth Tax, Calcutta, reported in 1969[2] Supreme Court Cases, 471, the Supreme Court held as under: It has been rightly observed by the High Court that when the statute uses the words "if sold in the open market" it does not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the Tax Officer must assume that there is an open market in which the asset can be sold.

14. In the case of Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa, , the Apex Court observed as under: "There is nothing in the language of section 7[1] of the Act which permits any deduction on account of the expenses of sale which may be born by the assessee if he were to sell the asset in question in the open market. The value according to section 7[1] has to be the price which the asset would fetch if sold in the open market. In a good many cases, the amount which the vendor would receive would be less than the price fetched by the asset. The vendor may, for example, have to pay for the brokerage commission or may have to incur other expenses for effectuating the sale. It is not, however, the amount which the vendor would receive after deduction of those expenses but the price which the asset would fetch when sold in the open market as would constitute the value of the asset for the purpose of section 7[1] of the Act. To accede to the contention advanced on behalf of the appellant would be reading in section 7[1] the words "to the assessee" after the words "it would fetch", although the legislature has not inserted those words in the statute. Such a course would not be permissible unless there is anything in the relevant provisions which may show that the intention of the legislature was that the value of an asset would be the price fetched after deducting the sale expenses. It, no doubt, appears to be somewhat harsh that in computing the value of an asset only the price it would fetch if sold in the open market has to be taken into account and the expenses which would have to be borne in making the sale have to be excluded from consideration. This, however, is a matter essentially for the legislature. No resort can be made to an equitable principle for there is no equity about a tax. So far as the construction of section 7[1] of the Act is concerned, in view of its plain language, there is no escape from the conclusion that the expenses in effecting the sale of the asset in the open market cannot be deducted."

15. In the case of Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, , the question arose as to how the assessee's leasehold interest in a plot of land is to be valued. Clause 13 of the lease deed had provided that if the lessee transfers his leasehold interest, the lessor will be entitled to claim and recover a portion of the unearned increase, that is, the difference between the premium already paid

and current market value of the land at the time of the transfer. The Supreme Court held that the said covenant ran with the land and it would bind whosoever was the holder of the leasehold interest for the time being and that the said covenant which is in the nature of a burden on the leasehold interest had the effect of depressing the value which the leasehold interest would fetch if it was free from the burden or disadvantage attached to the leasehold interest and that when the leasehold interest for the land had to be valued, the burden or disadvantage attached to the leasehold interest has to be duly discounted in determination of the price which the leasehold interest would fetch.

16. In the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, , which was a case arising under the E.D. Act, the Supreme Court held where the assessee's land has been acquired under the Land Acquisition Act, the assessing authority will have to estimate the value of the property acquired having regard to its peculiar nature, its marketability and the surrounding circumstances including the risk or hazard of litigation looming large at the relevant date.

17. From the aforesaid decisions rendered by one or the other Court, the settled law can be summarized as follows:

[i] The words "if sold in open market" do not contemplate actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market and on that basis, the value has to be found out. It is a hypothetical case which is contemplated and the Tax Officer must assume that there is an open market in which the asset can be sold.

[ii] Whenever there is any restriction on transfer of any land, value of the property or land, as the case may be, would be normally reduced and the valuation is to be ascertained taking note of the restrictions and prohibitions contained in the Ceiling Act as if the land is notified as excess land.

[iii] Once the competent authority issues any notification u/s 10[1] or Section 10[3] of the Land Ceiling Act, the land has to be deemed to have been acquired by the Government and what the assessee owned was the right to compensation and in such case, the compensation amount would only be the maximum compensation as provided under the Ceiling Act which is to be taken into consideration.

18. In the present case, it is not in dispute that the land of the assessee was acquired as early as in 1960. The Assessee Company filed return of net wealth on 28 th September, 1984 in which the value of the open land situated on Old Padra Road was shown to be Rs. 62,538/-. The Assessee got another Govt. Regd. Valuer's report on 16 th March, 1989 and on that basis, the Assessee filed revised return of wealth showing the value of the open land in question at Rs. 1,44,146/-. The land in question was the subject matter in the matter of Urban Land [Ceiling & Regulation] Act, 1976. Having noticed the same, in the case of

Assessee for the Assessment Year 1988-89 to 1990-91, when the matter moved up to Commissioner of Wealth-tax [Appeals], he directed the Wealth-tax Officer to revise the value of the open land as per the Urban Land [Ceiling & Regulation] Act, 1976 as against the value taken by the Assessing Officer on the basis of the valuation made by the Departmental Valuation Officer. The Revenue filed an appeal before the Income Tax Appellate Tribunal, Ahmedabad Bench "C" in WTA Nos. 345 to 347-A-94. The Income Tax Appellate Tribunal, after hearing both the sides, by its order dated 1 st March, 2000, upheld the decision of the Commissioner of Wealth-tax [Appeals], that the valuation of the land owned by the Assessee in excess of limit laid down under the Land Ceiling Act is to be made on the basis of the compensation which the Assessee would be entitled to receive under the said Act. For the Assessment Year 1991-92, when the matter was again taken up, the assessee Aims Oxygen Pvt. Ltd., had to move before the Income Tax Appellate Tribunal, Ahmedabad Bench "B", Ahmedabad, in WTA No. 910-Ahd-95. In the said case, in view of the decision of the Tribunal passed in the case of the Assessee for the Assessment Years 1988-89 to 1990-91, by order dated 12 th May, 2000, the Income Tax Appellate Tribunal, Ahmedabad directed to examine the issue in light of the said decision.

19. On the aforesaid facts, as it is evident that the land in question was declared surplus land under the Urban Land [Ceiling & Regulation] Act, 1976 which was having depressing effect on the value of the asset, the valuation had to be made on the basis of assumption that the purchaser would be able to enjoy the property as the holder, but with restrictions and prohibitions contained in the ULC Act and in such case value of the property or land would be reduced. Following the same principle, the Revenue, having already accepted the depressed valuation during the Assessment Years 1988-89 to 1990 and then for Assessment Year 1991-92, it was not open to the Revenue to assess the property on the basis of the market value, which normally could have fetched without any restriction or prohibition, but ought to have accepted the value of open land with such restriction and prohibition at Rs. 1,44,146/-, as assessed by the Govt. Regd. Valuer by report dated 16 th March, 1989. In view of the finding aforesaid and the settled law as discussed above, we are of the considered view that the Appellate Tribunal was incorrect in holding that immovable property should be valued as per the open market rate, without any restriction and prohibition. In the result, the question, as referred for our opinion is required to be answered in the negative, against the Revenue and in favour of the Assessee.

We order accordingly.