

**(1969) 12 KAR CK 0009**  
**In the Karnataka High Court**  
**Case No : T.R.C. No. 2 of 1968**

C. Krishna Prasad

APPELLANT

Vs

Commissioner of Wealth-tax, Bangalore

RESPONDENT

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**Date of Decision :** 03-12-1969

**Acts Referred:**

Wealth Tax Act, 1957 — Section 27 (1), 7

**Citation :** (1970) 76 ITR 115

**Hon'ble Judges :** G.K. Govind Bhat, J; B. Venkataswami, J

**Bench :** Division Bench

**Advocate :** K. Srinivasan, for the Appellant; G.R. Ethirajulu Naidu, for the Respondent

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## Judgement

Govinda Bhat, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957, hereinafter referred to as the Act. The following three questions of law have been referred by the Income Tax Appellate Tribunal, Madras Bench, for our opinion.

"(1) In the case of a lease of a vacant site with right of reversion to the lessor of the superstructure after the expiry of the lease, whether for the purpose of assessment under the Wealth-tax Act, 1957, the Tribunal is justified in law in deeming the lessor as the owner of the superstructure and the other rights even before the expiry of the lease ?

(2) On the facts and circumstances of the assessee's case, in the case of valuation of the property let out to the Indian Bank, whether the valuation adopted by the Appellate Tribunal is justified in law ?

(3) Whether, on the facts and in the circumstances of the case, the assessee was rightly assessed in the status of an "individual" for the assessment year 1963-64 ?"

2. Question No. 1 does not disclose the issues between the parties and therefore we recast question No. 1 as follows :

"On the facts and in the circumstances of the case, whether the basis adopted by the Tribunal for valuing the assessee's rights in the site leased to Jayanthilal Thakoor is justified in law ?"

3. The answer to the 3rd question is covered by our decision in I.T.R.C. No. 7 of 1968 . Following the said decision, the said question has to be answered against the assessee and in favour of the revenue. Therefore, what remains to be answered are questions Nos. 1 and 2 only. Question No. 1 as recast by us relates to the valuation of the property which has been leased to Jayanthilal Thakoor under a lease deed dated May 31, 1957. Question No. 2 relates to the valuation of the property covered by a lease to the Indian Bank under a registered deed dated September 24, 1953. The Wealth-tax Officer valued the property leased to the Indian Bank in which the assessee has a moiety of interest at Rs. 1,59,777; the Appellate Assistant Commissioner reduced that valuation to Rs. 1,50,000 and that value has been upheld by the Tribunal. The property covered by the lease to Jayanthilal Thakoor was valued by the Wealth-tax Officer at Rs. 1,49,500. The Appellate Assistant Commissioner has reduced the valuation to Rs. 1,45,500 and that value has been upheld by the Tribunal.

(1) Since reported as C. Krishna Prasad Vs. Commissioner of Income Tax, Bangalore, .

4. The property leased to Jayanthilal Thakoor was a vacant site when it was leased on May 31, 1957. Under the terms of the lease, the lessee agreed to pay rent at the rate of Rs. 250 per month for the first 10 years, Rs. 450 per month for the next 10 years and Rs. 650 per month for the remaining 10 years of the lease. The lease deed gave an option to the lessee to renew the lease after the expiry of 30 years for a further period of 10 years. Under the terms of the lease, the lessee agreed to surrender the building constructed by him on the site to the lessor without claiming any compensation. After the execution of the lease, the lessee, Jayanthilal Thakoor, constructed a theatre on the land which is now called as the "Alankar Theatre". The Wealth-tax Officer and the appellate authorities valued the building of the "Alankar Theatre" as on the date of the valuation, viz., March 31, 1963, at Rs. 4,75,000. Since the assessee and his divided brothers would get the building only on the expiry of the lease, the Tribunal valued the said right at Rs. 1,09,905 computing the same as per Parks Table by taking the interest yield at 5 per cent. In addition to the value of the said right the Tribunal valued the land on which the building is situated at Rs. 90 per square yard and on the said basis the value of the land was computed at Rs. 1,10,368. The Tribunal further added to the valuation of the land and the right to the building, the value of the right of the lessor to get rent for the remaining term of the lease and that amount was fixed at Rs. 71,475. Sri K. Srinivasan, the learned counsel for the assessee, did not dispute the correctness of the value of the site on which the "Alankar Theatre" has been built. His submission was that on the valuation date the right of the assessee to recover the building on the expiry of the term of the lease cannot be valued at Rs. 1,09,905 which was the valuation made on the

basis that the value of the building on the expiry of the term of the lease would be Rs. 4,75,000. The error into which the Wealth-tax Officer and the appellate authorities under the Act have fallen to forget that the valuation of Rs. 4,75,000 is the valuation of the building on March 31, 1963, and not the valuation on the expiry of the term of the lease. On the date of the valuation, six years of the term of the lease had expired and the remaining term was 24 years. To that has to be added another 10 years because under the terms of the lease the lessee has the option to renew the lease for a further term of 10 years. The value of the building, 34 years after the valuation date when the lessor would be entitled to its possession, has to be determined by allowing depreciation for the building. For a first class building the Income Tax authorities allow depreciation at the rate of 2 1/2 per cent per annum. The written down value of the building works out at Rs. 2,00,271 as on April 1, 1997. If the value of the building on April 1, 1997, when the assessee becomes entitled to recover possession of the building is Rs. 2,00,271, then the value of that right on March 31, 1963, would be Rs. 38,121 applying the Parks Table and taking the interest yield at 5 per cent.

5. The authorities under the Act, having valued the land at Rs. 1,10,318, they were not entitled to value the benefits of the future rents when the rent is payable for the land leased to the lessee. The value of the right to collect rent for the remaining period of the lease has to be deleted altogether.

6. The value of the property covered by the lease in favour of Jayanthilal Thakoor on a proper valuation comes to Rs. 38,123 plus Rs. 1,10,318 equal to Rs. 1,48,441. The value of the interest of the assessee in the property leased to Jayanthilal Thakoor on the valuation date comes to Rs. 74,219. Question No. 1, therefore, has to be answered in favour of the assessee and against the revenue. We hold that the said property should have been valued in the manner we have done.

7. The second question relates to the building with compound leased to the Indian Bank under the lease deed dated September 24, 1953, for a term of 10 years. Under the terms of the lease, the lessee has agreed to pay a monthly rent of Rs. 1,000 out of which the assessee is entitled to Rs. 500 which is his one-half share. In regard to the valuation of this item of property, the Wealth-tax Officer has valued the building and the land separately and further added the benefit of the future rent. That the rent provided under the lease to the Indian Bank represents real rent of the property was not disputed by the Wealth-tax Officer. Though the original term of the lease expired in 1963, the term of the lease has been extended by 5 years at the same rent. It is clear that the yield from the property during a period of 10 years prior to the date of valuation and also for the future period of 5 years from the said date was and is Rs. 1,000 per month. u/s 7, which provides for the valuation of the assets, the Wealth-tax Officer has to compute the value of the property on the basis of the value it would fetch if sold in the open market on the valuation date. What the Wealth-tax Officer is required to determine is the market value of the property on the valuation date.

The market value of immovable property has to be determined on the basis of what value a willing seller would reasonably expect from a willing purchaser. In *Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran*, this court was concerned with the valuation of house properties in Bangalore City. This court observed that in determining the market value of the assets the true test would be the price the assessee would get on the valuation date for his landlord's right in a transaction between a willing seller and a willing buyer. That was a case where the house properties of the assessee had been leased to tenants and under the provisions of the Rent Control Act the assessee had no right to terminate the lease and resume possession. This court further observed that it is a well recognised principle of valuation of building, in urban areas, to capitalise the annual rental value. This court capitalised the rental value at 20 times the annual rental value. The said decision has been followed by the Calcutta High Court in *CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN*, wherein it is observed that "in the case of buildings which are in the possession of tenants cannot either be evicted or the rent payable by them enhanced, except in accordance with the provisions of the Rent Control Acts, the only appropriate method of valuation is to capitalise the annual rent by a certain number of years" purchase and that the method of valuing the land and the building separately and adding up the values would be improper in such cases". According to the Tribunal the facts of the instant case are different from the facts in *Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran*; but on principle we do not find any difference between the two cases. In the instant case, under the terms of the lease, the assessee has no right to claim enhancement of rent or to seek eviction of the lessee before the expiry of the lease. The rental value of the building is undoubtedly one of the factors to be taken into consideration in valuing the market value. For the purpose of determination of the market value is open to the Wealth-tax Officer to take into consideration the value of buildings in similar circumstances if there are sale transactions. No such material has been relied on by the wealth-tax Officer or the appellate authorities. If there were any sale transactions of house property leased to tenants that would have given the basis for valuing the market value of the property; but in the absence of any such material the only available material is the rental value. In the matter of valuation of buildings in urban areas the buyers would be guided largely by the yield the property fetches. Such a purchaser would not value the property disregarding the rental value nor would he value the building and the land separately as has been done in the instant case. On the facts of the case, the mode of valuation by capitalisation of the annual rental value is the only proper mode of valuation which the Wealth-tax Officer and the appellate authority should have adopted. The annual value of the property in question on the basis of the rental value comes to Rs. 10,000. Capitalising the same at 20 times, the market value comes to Rs. 2,00,000. The value of the assessee's one-half share is Rs. 1,00,000. We answer question No. 2 in favour of these assessee holding that the basis of valuation followed by the

Appellate Tribunal is not justified in law and that the building should have been valued in the manner indicated by us.

8. The Wealth-tax Officer should value the two items of properties in the manner indicated above. If there is any arithmetical error, in the calculation made by us, he is at liberty to correct the same.

9. Questions Nos. 1 and 2 are answered in favour of the assessee and against the revenue and question No. 3 is answered against the assessee and in favour of the revenue. The assessee is entitled to his costs. Advocate's fee Rs. 250.