
(1996) 03 MAD CK 0083
In the Madras High Court
Case No : Tax Case No. 1367 of 1981

Commissioner of Gift Tax

APPELLANT

Vs

S.A.M.S. Hamid Hussain

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Gift Tax Act, 1958 — Section 15, 26, 6

Wealth Tax Act, 1957 — Section 16A, 16A(1), 16A(5), 16A(6), 7(3)

Citation : (1997) 225 ITR 656

Hon'ble Judges : P. Sathasivam, J; Abdul Hadi, J

Bench : Division Bench

Advocate : S.V. Subramanian, for the Appellant; K. Vaitheeswaran, for Subbaraya Aiyer, for the Respondent

Judgement

1. In this tax case preferred by the Revenue, relating to the asst. yr. 1974-75, the question referred to us, under s. 26 of the Gift-tax Act, 1958

(hereinafter referred to as "the Act") are as follows :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the value of the property should be

determined on rental basis applying r. 1BB of the WT Rules, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified, while setting aside the assessment for being redone by the

CGT, in directing him to determine the value of the property gifted, on rental basis ?

2. The short facts are as follows : One S. M. A. Syed Abdul Cader, transferred by way of gift, the house property at No. 32, Nungambakkam

High Road, Madras, to his two grand nephews on 1st Feb., 1974. The return of gift was filed, declaring the value of the gift at Rs. 1,25,000. The

GTO, however, took the value of the Assistant Valuation Officer, to whom the matter was referred, under s. 15(b) of the Act for determining the

value of the property in question. The Assistant Valuation Officer, while arriving at the value of the property at Rs. 3,25,700, took into

consideration the area of the plot on which the property is situated and also depreciated the value of the superstructure thereon. Aggrieved by the

valuation made by the GTO, the assessee went on appeal before the CGT(A) who directed the GTO to reduce the value to Rs. 2,25,000 and also

to allow the deduction towards stamp duty paid in accordance with law. Both the assessee and the Department, aggrieved by the order of the

CGT(A), preferred separate appeals to the Tribunal. The Tribunal held that in the case of the abovesaid property, which was let out, the rental

method should be adopted for valuation. It also noted the argument on behalf of the assessee before it, that pursuant to r. 1BB of the WT Rules,

1957, which (the said r. 1BB) came into force from 1st April, 1979 and was in force till 31st March, 1989 the value of the property should not be

more than Rs. 1,81,020 and concluded thus :

We are in agreement with the learned representative for the assessee that in case of let out properties the rental method should be adopted for the

valuation. We have already extracted above the valuation made by the assessee at Rs. 1,81,020 on this basis. The assessee has already taken into

consideration the area of the land appurtenant to the house, (1480.62 sq. ms. out of the total area of 1864 sq. ms.) which may have further

potential for development. In view of the above, we are of the opinion that the matter should be sent back to the CGT for determining the value on

rental basis. He will be at liberty to ascertain fresh value of the property on rental basis through the Departmental Valuer and confront the same to

the assessee before taking a decision afresh".

3. As already mentioned, the said r. 1BB of WT Rules came into force only from 1st April, 1979, that is very much after the asst. yr. in question

1974-75 and was in force till 31st March, 1989. The gift in question has no doubt to be valued as per s. 6 of the Act, as it existed in the said

assessment year. Then, the material portion ran as follows :

..... the value of any property..... be estimated to be the price which in the opinion of the AO, it would fetch if sold in the open market on the

date on which the gift was made"".

Then, the rule which prescribed the mode of valuation of properties, viz., r. 10 of GT Rules, 1958, as it existed in the said assessment year, did not

provide for properties let out and saleable in the open market (though on and after 1st April, 1989 according to the relevant portion of s. 6 of GT

Act, 1958, with reference to the property in question its value ""shall be determined in the manner laid down in Schedule II."" to the GT Act, 1957,

which (Schedule II) in turn, says that the said value ""shall be determined in accordance with the provisions of Schedule III to the WT Act....."")

In other words, prior to 1st April, 1989, there is no nexus or link between GT Act or Rules on the one hand and WT Act or Rules on the other

hand, which could be made use of in making the assessment under the GT Act.

4. Then in the GT Act, while s. 6 provides for determination of value of gift, s. 15(6) of the said Act, as it existed on and after 1st Jan., 1973 and

before 1st April, 1989 provided thus :

Notwithstanding anything contained in s. 6, for the purpose of making an assessment under this Act, the AO may refer to a Valuation Officer, the

valuation of any property transferred by way of gift.

(a) in a case where the value of the property as returned is in accordance with the estimate made by a registered valuer, if the AO is of opinion that

the value so returned is less than its fair market value;

(b) in any other case, if the AO is of opinion -

(i) that the fair market value of the property exceeds the value of the property as returned by more than such percentage of the value of the

property as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the property and other relevant circumstances, it is necessary so to do,....."".

5. So, according to learned senior counsel for the Revenue, since in the present case, pursuant to s. 15(6) reference has been made to the

Valuation Officer, the value found in the valuation report submitted by the Valuation Officer alone should be taken into account for determining the

value of the gift made and not the value as could be arrived at pursuant to the abovesaid rental method generally, or the said method as enshrined

in the abovesaid r. 1BB.

6. On the other hand, learned counsel for the respondent-assessee submits that the first of the abovesaid two questions referred to us is not happily

worded and that it would be appropriate to delete the clause "'applying r. 1BB of the WT Rules, 1957'" because the Tribunal did not actually and

expressly referred to the said r. 1BB while arriving at the above said conclusion it reached, but only referred to the pre-existing and generally

accepted "'rental method'" while valuing properties let out though learned counsel for the assessee before the Tribunal referred to the said r. 1BB

and arrived at the abovesaid figure of Rs. 1,81,020 on the basis of the said Rule.

Incidentally he also referred to the decision in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, (which affirmed the

decision of the Gujarat High Court in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, and inter alia approved the decision in Dilip Kumar

Mitra (deceased) (by legal heir Debashish Kumar Mitra) Vs. Commissioner of Wealth Tax, .

The Supreme Court, in the abovesaid decision has dealt with a case under the WT Act, 1957 and held that the abovesaid r. 1BB of WT Rules is

only a procedural Rule and is applicable to all proceedings under the WT Act, pending on 1st April, 1979, when the said r. 1BB came into force.

In this connection, learned counsel for the respondent also referred to the following provision of the WT Act. Sec. 7 provides for determination of

the value of the assets assessable to Wealth-tax. Sec. 7(3), as it existed prior to 1st April, 1989, ran as follows :

Notwithstanding anything contained in sub-s. (1), where the valuation of any asset is referred by the AO to the Valuation Officer under s. 16A,

the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on

the valuation date or,.....

Sec. 16A of the WT Act, 1957 provides for the WTO referring the valuation to the Valuation Officer. Sec. 16A is similar to the abovesaid s.

15(6) of the GT Act.

7. We have considered the rival submissions. Even in the above referred case in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, , which

was affirmed by the Supreme Court in Commissioner of Wealth Tax, Meerut Vs.

Sharvan Kumar Swarup and Sons, , we find that the abovesaid

aspect was considered in the context of the above referred to s. 7(3) and s. 16A of the WT Act. The following is the relevant observation of A. H.

Ahamadi, J., (as he then was) speaking for the Division Bench which delivered the said judgment :-

Counsel for the Revenue next contended that s. 16A empowers the WTO to make a reference to the Valuation Officer if in his opinion the

returned value is less than the market value of the asset in question. According to him, if r. 1BB were to operate retrospectively, it would render ss.

7(3) and 7(4) as well as s. 16A(6) redundant. Under s. 7(4) the assessee has the option of valuing the property on (i) the valuation date following

the date on which he became the owner : or (ii) on the valuation date relevant to the assessment year commencing on 1st April, 1971, whichever is

later. He pointed out that once a reference is made to the Valuation Officer under s. 164(1), the Valuation Officer is required to follow the

procedure set out in the subsequent sub-sections and after his order is received, the law expects the WTO to complete the assessment in

conformity with the estimate of the Valuation Officer. Mr. Shelat, therefore, urged that it would not be possible to apply r. 1BB retrospectively

having regard to the scheme of these provisions.

It is indeed true that sub-ss. (3) and (4) of s. 7 which begin with a non obstante clause have overriding effect on sub-s. (1) of s. 7 r/w r. 1BB.

Once a reference is made to the Valuation Officer, the asset has to be valued in accordance with s. 7(3) or 7(4), as the case may be. Sub-s. (3) of

s. 7, however, reiterates the principle of sub-s. (1), namely, the value of the asset shall be estimated to be the price which it would fetch if sold in

the open market on the valuation date. In the case of a house owned and exclusively used by the assessee, the assessee has been given the option

of valuing the asset on the two dates mentioned in s. 7(4) of the Act; but while valuing the asset under s. 7(3) or s. 7(4) r/w ss. 16A(1) and

16A(5), the valuation officer must have regard to the well-recognised method of valuation adverted to earlier. Rule 1BB merely introduced one

such method - the rental or yield method with suitable modification so that it can govern practically all cases of assets used wholly or mainly for

residence. It would, therefore, not be inconsistent with the scheme of the Act if

we hold that the Valuation Officer would have to estimate the value in conformity with r. 1BB in cases which are pending before him. In the case of an asset governed by s. 7(4), the choice would remain with the assessee to opt for that estimate which he considers beneficial.

So, in the above decision, the above non obstante clause appearing in s. 7(3) of the WT Act was taken note of and yet it was held that even when the value-question was referred to the Valuation Officer, the said officer has to fix up the value only in accordance with r. 1BB.

8. But, it is a moot question how far in the present case, which is not a wealth-tax case, but a gift-tax case, in the absence of the abovesaid link between GT Act or Rules on the one hand and WT Act or Rules on the other hand, at the relevant point of time (as mentioned in paragraph 3 above), the abovesaid r. 1BB of the WT Rules as such can be applied to the GT assessment in question. Only in this regard, learned counsel for the respondent submits (as also mentioned in paragraph 6 above) that the first of the abovesaid two questions referred to us is not happily worded.

According to him, the Tribunal only held that the already well recognized rental method ""should be adopted"" for the valuation of the properties let out. No doubt, this method came to be recognised by the Government incorporating it in the abovesaid r. 1BB from 1st April, 1979. That does not mean, according to him that the said method could not be adopted earlier either under the WT Act or GT assessments. Looking at from that angle, according to him, there need not be the abovesaid link. That is why, according to him the Tribunal did not specifically refer to r. 1BB when it finally concluded, as extracted above.

9. In support of this submission he also relied on the decision in Jehangir Mahomedali Chagla and another Vs. M.V. Subrahmanian, Additional First Assistant Controller of Estate Duty and others, , where Pendse, J. (as he then was) held that the rental method as laid down in the abovesaid r. 1BB of the WT Rules has to be followed even under ED Act, 1953, in respect of estate of the deceased who passed away on 9th Feb., 1981, despite the fact that there was no link between ED Act or Rules and WT Act or Rules. In the ED Act, 1953, an amendment was introduced w.e.f. 1st March, 1981, whereby ss. 36(3) of the ED Act was inserted. It was advantageous to the assessee since, inter alia, it provided the abovesaid

link with the WT Act. But, as already mentioned, the deceased in question therein died prior to 1st March, 1981, i.e., on 9th Feb., 1981. In that connection, the argument of the Revenue in that case was that the abovesaid s. 36(3) could not be invoked by the assessee and the property value of the flat in question could not be determined in accordance with r. 1BB of the WT Rules, but on the estimated price, which the flat would have fetched, if sold in the open market on the date of death of the deceased. Repelling this contention, Pandse, J., held, relying on the principles laid down in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, thus :

The legislature, therefore, to give effect to this harmonious construction inserted sub-s. (3) of s. 36 in the ED Act, and in my judgment, the method

recognised under r. 1BB for valuation is the only method available to the Controller for valuation of the flat under s. 36(1) of the ED Act.....

Mr. Seervai submitted that as there were no rules under the ED Act for determining the value of the flat on the basis of the price it would fetch if

sold in open market, the method provided by r. 1BB of the WT Rules should be applied and in support of his submission relied on the decision of

the single judge in the case of Madhusudan Dwarkadas Vora Vs. Superintendent of Stamps, (Stamp duty case).....

The learned judge held that the same method provided under r. 1BB of the WT Rules must be applied for the purpose of ascertaining the value for

payment of estate duty and drew support for the conclusion from the decision of the Mysore High Court in the case of Controller of Estate Duty,

Mysore Vs. J. Krishna Murthy, . I am in respectful agreement with the conclusion reached by the learned Judge."".

10. The following further observation of the Bombay High Court in the abovesaid decision is also significant :

By far the more prevalent, especially in urban areas, is the annual value method (another name for the abovesaid ""rental method""), where the net

notional annual rental value of the property is determined in the manner done for Income Tax purposes. The amount is then capitalised by a

multiplier, depending on the economic factors prevalent at the relevant time. Annual value method is entirely based on the rent realised from the

property and the rent is standard of fair rent when it is regulated by rent legislation. The annual value method is a statutorily recognised method for

valuation of houses for the purpose of municipal tax, Income Tax and wealth-tax and there is no rational explanation why the said method should

not be adopted for ascertaining the value of the flat for purposes of estate duty.

Therefore, according to learned counsel for the assessee in the present gift-tax case also, the abovesaid rental method has to be adopted. He also

emphasised that even Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, , which dealt with a WT case, it has been held that even when the

matter is referred to the Valuation Officer, he would have to estimate the value in conformity with r. 1BB.

11. As against the abovesaid weighty argument of learned counsel for the assessee, learned counsel for the Revenue could not seriously argue

contra excepting to contend that the abovesaid rental method cannot be adopted since the Tribunal has not given a finding that the orders of the

authorities below, following the report of the Valuation Officer are perverse. We are unable to appreciate this contention.

12. We see very great force in the argument of learned counsel for the assessee, particularly in the light of the following observation of the Supreme

Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, :-

On a consideration of the matter, we are persuaded to the view that r. 1BB is essentially a rule of evidence as to the choice of one of the well

accepted methods of valuation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate

valuations resulting from application of different methods of valuation respecting properties of a similar nature and character.

Further, the Tribunal has only remanded the matter back to the CGT(A) for determining the value on the abovesaid rental basis and directed that

the said CGT would be at liberty to ascertain fresh value of the property on the rental basis through the Departmental Valuer and confronting the

same to the assessee before taking a decision afresh.

13. One other decision was also cited by learned counsel for the assessee, viz., Commissioner of Gift Tax Vs. Madanlal Patodia and Another, ,

dealing with a GT case, but in relation to valuation of unquoted shares of a going concern. The question there was whether r. 1D of WT Rules

(which also came into force along with r. 1BB and was omitted w.e.f. 1st April,

1989 would be applicable, when the relevant gift was made in

April, 1979, and the Calcutta High Court has held that the said r. 1D is applicable in determining the market value of the said shares which had

been gifted. In that connection, the Calcutta High Court, also observed thus at the end of its Judgment.

Moreover, we also observe the fact that the subsequent amendment to the GT Act has supplanted r. 10(2) by Sch. II to the Act itself where it has

been expressly said that the same method of valuation should apply to an asset for the purposes of gift tax as prescribed by the WT Act. Schedule

III to the WT Act in turn has incorporated in the Act the same method of valuation what has been r. 1D. Rule 1D also stands supplanted. By

incorporating the rules in the enactment, the legislature has clearly shown its intention to be, from the very beginning that the break-up value method

should be followed in the valuation of unquoted shares of a private company whose articles of association contain restrictive provisions as to the

alienation of its shares.

In other words, the Calcutta High Court even goes to the extent of saying that the abovesaid Sch. II of the GT Act read with Sch. III of the WT

Act, both of which came into force only on 1st April, 1989 could be construed as retrospective. But, strictly speaking in the present case, in the

light of the view we have taken above, there is no necessity, in deciding the question in hand, to observe as the Calcutta High Court has done at the

end of its abovesaid judgment.

14. Thus, before answering the two questions referred to us, we delete the abovesaid clause appearing in the first of the two questions referred to

us, viz., applying r. 1BB of the WT Rules, 1957 and answer the said question in the affirmative and against the Revenue. We also answer the

second question referred to us in affirmative and against the Revenue. No costs.