

(1984) 03 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Income-tax Appeal No. 13 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Inderjit Singh

RESPONDENT

Date of Decision : 05-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269F(6)

Citation : (1985) 153 ITR 372

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; G.C. Sharma, Senior Advocate, Vimal Gandhi and S.S. Mahajan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This appeal has been filed by the Commissioner of Income Tax, Patiala, u/s 269H of the I.T. Act, 1961, against the order of the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, dated September 30, 1976.

2. Briefly, the facts are that bungalow No. 2148, a building constructed on a 2-Kanal plot, situated in Sector 15-C, Chandigarh, was advertised by Smt. Harji Dhaliwal of Bombay, the owner, for sale in the Daily Tribune dated March 19, 1972. In November, 1972, the bargain of sale was struck between her and Shri Inderjit Singh, respondent, for a consideration of Rs. 1,00,000. The sale deed was got executed by the respondent from her on December 4, 1972.

3. After the sale, the Competent Authority asked the Inspector of Income Tax to evaluate the property. He put its value at Rs. 1,53,800. The Competent Authority finding the assessed value 15% more, than the apparent consideration, initiated proceedings against the respondent u/s 269C of the Act. Thereafter, it asked Shri R. L. Grover, Executive Engineer (Valuation), to assess the value of the property. He, on the basis of land and building method, assessed its value at Rs. 1,68,500, vide report dated January 9, 10, 1975. While making that assessment, he erroneously took into consideration that the sale deed had been executed on

December 4, 1974, and not on December 4, 1972. Therefore, the Competent Authority passed an order of acquisition of the property u/s 269F(6) on the ground that its fair market value exceeded the apparent consideration therefore by more than 15%.

4. The transferee went up in appeal before the Tribunal which held that the transaction of purchase of property in the case was genuine and the valuation of the property assessed by the Departmental Valuation Officer at Rs. 1,68,500 was totally wrong. Consequently, it accepted the appeal. The Commissioner has come up in further appeal to this court against the order of the Tribunal.

5. The learned counsel for the appellant has argued that the valuation of the property worked out by the Departmental Valuation Officer on the basis of land and building method was a correct valuation and the Tribunal erroneously held that it was totally wrong. On the other hand, Mr. Sharma has urged that the fair way of evaluating property which is on rent, should be on the basis of the rental value and not on the basis of land and building method. He further urges that the Tribunal came to the conclusion that the value of the property is less than the consideration mentioned in the sale deed. According to him, that finding being a finding of fact, cannot be upset in appeal by this court.

6. We have duly considered the argument of the learned counsel. However, we agree with the submission of Mr. Sharma. It is well settled that rental method for evaluating the properties which are on rent at the time of sale is a well-recognised method for determining the fair market price of such buildings. The method has been given recognition by the Legislature even under the W.T. Rules. According to Rule 1BB of the said Rules, the valuation of the residential buildings can be determined by multiplying the net maintainable rent by 100/8. The method is also approved by judicial precedents.

7. The Supreme Court in *State of Kerala v. Hassan Koya*, AIR 1968 SC 1201, observed that when the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification u/s 4. Therefore, the method which is generally resorted to in determining the value of the land with buildings especially those used for business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land and the buildings. No doubt that case related to the acquisition under the Land Acquisition Act, but the principles can be applied in other cases too. The aforesaid case was followed by this court in *Commissioner of Income Tax Vs. Prem Nath Anand*, . There, the Tribunal had fixed the fair market value on the basis of multiplying the annual return by 12. It was held by the learned Division Bench that the method adopted by the Tribunal was not open to challenge in view of the observations in *Hassan Koya's* case, AIR 1968 SC 1201 . Similar view was expressed in *WENGER AND CO. AND OTHERS Vs. DISTRICT VALUATION OFFICER, NEW DELHI AND OTHERS.*, , *Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel*, , *Prodyut Kumar*

Dutta and Others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range-I and Others, and Commissioner of Income Tax Vs. Prem Narain Tandon, .

8. Now, we advert to the facts of this case. The property was sold on December 4, 1972. At the time of sale, it was on lease and the tenant was paying rent at the rate of Rs. 500 per mensem. Three days thereafter, the property was given on lease by the respondent at the rate of Rs. 780 per mensem. The provisions of the East Punjab Urban Rent Restriction Act, had been made applicable to Chandigarh before the date of sale. While determining the annual rent, the amounts spent on repairs and paid as taxes by the owner are to be deducted from the gross annual return. Normally two months' rent is considered reasonable for the purpose of repairs. In Chandigarh, no local tax on property had been imposed then and, therefore, in the present case, no amount is to be deducted on that score. If the rent of the building at the time of sale is taken as Rs. 780 per mensem, the annual rental value comes to Rs. 7,800. Multiplying the amount by 12 will give the fair market price of the property. According to the said principle, the price comes to Rs. 93,600.

9. The Tribunal while accepting the appeal has not given any findings as to what is the fair market value of the property. It appears from the tenor of the judgment that it accepted the valuation by the valuer of the respondent and rejected that worked out by the Executive Engineer (Valuation). However, it did not say so. Being a Court of Appeal, it was incumbent on it to record a firm finding in this regard. The valuation given by the valuer of the respondent is Rs. 80,000 which is much less than the consideration paid. The valuation determined by us on the basis of rent capitalization method is also less than the said consideration.

10. For the aforesaid reasons, we do not find any merit in the appeal and dismiss the same with costs.

Madan Mohan Punchhi, J.

I agree.