**(2004) 12 AHC CK 0265**

**In the Allahabad High Court**

**Case No :** W.T. Reference No. 199 of 1988

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| Commissioner of Wealth Tax, Agra | APPELLANT |
| Vs | |
| R.S. Mittal | RESPONDENT |

**Date of Decision :** 07-12-2004

**Acts Referred:**
Wealth Tax Act, 1957 — Section 27(1), 7(4)

**Citation :** (2007) 160 TAXMAN 242

**Hon'ble Judges :** R.K. Agrawal, J;K.N. Ojha, J

**Bench :** Division Bench

**Advocate :** A.N. Mahajan, for the Appellant;

## Judgement

1. The income tax Appellate Tribunal, New Delhi, has referred the following questions of law for opinion to this Court u/s 27(1) of the Wealth-tax Act, 1957 (''the Act'') :-

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding that AAC''s decision that the valuation of the residential property situated at Nehru Nagar, Agra should be made in accordance with section 7(4) of the Wealth-tax Act, 1957, read with rule 1BB without taking note of the fact that rule 1BB is only applicable to the residential but let out properties and is not applicable to the properties used for self-residence as it is in the case of the assessee?

2. Whether the Tribunal have failed to appreciate that rule 1BB is not applicable to the assessee''s cases as it came into operation only on 1-4-1979?"

The reference relates to the assessment years 1975-76 to 1977-78.

Briefly stated the facts giving rise to the present reference are as follows:-

The valuation date for the each year under consideration is 31st March. The respondent-assessee filed returns in the status of an individual declaring net wealth of Rs. 1,22,617, Rs. 2,19,226 and Rs. 2,54,515 respectively. One of the assets, inter alia, owned by the respondent was 1/3rd share in a factory building situated at Nunhai, Agra. He also owns a kothi in Nehru Nagar. The value of this factory building was shown at book value. The Wealth-tax Officer referred the valuation of the factory building to the Valuation Cell attached to the Department. The Valuation Officer valued this factory premises at Rs. 11,06,800. The investment made by the respondent and his two partners amounted to Rs. 2,81,752 (Sri L.N. Mittal Rs. 1,36,326, Sri R.S. Mittal Rs. 74,308 and Sri R.P. Mittal Rs. 71,118) . There was thus an appreciation of Rs. 8,25,048. The respondent''s 1/3rd share therein worked out to Rs. 2,75,016. This amount was added to the wealth declared by the respondent overruling the objection raised by the respondent that the Valuation Cell had not valued the property properly. The respondent owned a property in Nehru Nagar, Agra. For wealth-tax purposes for the assessment years under reference, the value of the land was shown at Rs. 68,500 and the value of the super-structure at Rs. 1,91,000. The Wealth-tax Officer determined the value of the land as in last year at Rs. 1,12,000 and value of the super-structure at Rs. 2,23,950. Aggrieved by this upward valuation, appeals were filed before the Appellate Assistant Commissioner, who directed the Wealth-tax Officer to value the property in accordance with section 7(4) of the Act with rule 1BB of the Wealth-tax Rules. The revenue''s appeal before the Tribunal has failed.

3. We have heard Shri A.N. Mahajan, the learned standing counsel for the revenue. Nobody has appeared for the assessee-respondent.

4. In view of the decision of the Apex Court in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, wherein it has been held that a building which is used mainly or wholly for residential purposes is to be valued in accordance with rule 1BB. There is no infirmity in the order of the Tribunal. We, accordingly, answer the first question in the affirmative and second question in the negative, i.e., both in favour of the assessee and against the revenue.