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**(1991) 03 CAL CK 0026**

**In the Calcutta High Court**

**Case No : Matter (Wealth-tax) No. 1338 of 1982**

Commissioner of Wealth Tax

APPELLANT

Vs

Anil Kumar Rampuria

RESPONDENT

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**Date of Decision : 11-03-1991**

**Acts Referred:**

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

**Citation :** (1992) 195 ITR 222 : (1993) 69 TAXMAN 335

**Hon'ble Judges :** Shyamal Kumar Sen, J;Ajit K. Sengupta, J

**Bench :** Division Bench

**Advocate :** Pal, for the Appellant;

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## **Judgement**

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957, the following question has been referred to this court at the instance of the Revenue for the assessment year 1975-76 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the municipal taxes "leviable" and "not actually levied" should be deducted in computing the net annual rental yield ?"

2. Shortly stated, the facts are that the assessee has interest in properties known as Bikaner Building and 38, Shakespeare Sarani. The Wealth-tax Officer valued the aforesaid properties by adopting the yield method. While working out the valuation of the aforesaid properties, he deducted municipal taxes as levied by the Corporation of Calcutta on the aforesaid properties. The gross rental incomes from the two properties as adopted by the Wealth-tax Officer were much higher than the valuations adopted by the Corporation of Calcutta for the purpose of imposition of corporation taxes. The assessee did not object to the adoption of the gross rental value by the Wealth-tax Officer at the figures adopted by him, but pleaded that municipal taxes should also be worked out by him presuming the said gross rental income to be the annual letting value for the purpose of municipal taxes also and such municipal taxes as would be leviable

with reference to the above gross rental income should be deducted from the said rental income while computing the value of the said property rather than the actual municipal taxes imposed on the assessee and paid by it. The Wealth-tax Officer did not accept the above contention. The assessee appealed against the aforesaid order of the Wealth-tax Officer to the Appellate Assistant Commissioner who accepted the above plea of the assessee. The Revenue, thereupon, appealed to the Tribunal and pleaded before it that the municipal taxes as levied could alone be deducted from the gross rental income and that the Appellate Assistant Commissioner was wrong in directing otherwise. The above plea of the Revenue was, however, not accepted by the Tribunal, who pointed out that the view adopted by the Appellate Assistant Commissioner had been approved by the Tribunal in the case of Mulchand Rampuria in WTA Nos. 742 to 746 (Cal) of 1980 and that the Tribunal was in agreement with the reasons given therein.

3. At the hearing before us, it has been contended by the learned advocate for the Revenue that the municipal taxes as levied could alone be deducted. He has submitted that Rule 1BB would be applicable in this case for valuation of the property. He has submitted that "net maintainable rent" in relation to a house means the amount of the gross maintainable rent as reduced by the amount of tax levied in the previous year by any local authority in respect of the house. It is his contention that the annual rent as used in Rule 1BB is the actual rent received or receivable by the owner ; accordingly, the Assessing Officer was entitled to take into account the actual rent received for the purpose of determining the gross maintainable rent and the municipal tax actually levied.

4. Dr. Pal, learned counsel for the assessee, has, however, contended that a prospective buyer would compute the net annual rent after deducting the tax from the annual rent that has actually been received. If the Department takes the actual amount of rent received by the assessee, it must allow also the deduction for the taxes leviable on the rent received by the assessee.

5. We have considered the rival contentions. As indicated, the Tribunal in this case followed its order in Mulchand Rampuria. The conclusion of the Tribunal that municipal taxes leviable should be deducted in computing the annual value for the purpose of determining the market value of the property on the valuation date is based on the following assumptions :

"We are of the opinion that the deduction should be granted on the basis of tax leviable according to law. It is a matter of common knowledge that sometimes the assessee shows the rent to be lower than the sum actually received by them to avoid payment of proper municipal taxes. But now that the parties are agreed on the amounts of rent, which are received by the assessee and his co-sharers, it may be open for the Municipal Corporation to reopen the tax matter of the assessee."

6. In our view, the Tribunal was not right in holding that the tax leviable on the amount of gross rent should be deducted.

7. Section 7(1) of the Wealth-tax Act provides that the value of any asset other than cash shall be estimated to be the price which, in the opinion of the Assessing Officer, it would fetch if sold in the open market on the valuation date, subject to the provisions contained in the rules made in that behalf. What the statute empowers is only to levy tax on the net wealth of the assessee to be determined in accordance with the statute. The burden is upon the taxing Department to find out its true net value assessable. Section 7 merely provides the machinery for the purpose of ascertaining the net wealth by valuing the assets composing the wealth. As Section 7(1) uses the expression "if sold in the open market", it does not contemplate any actual sale or the actual state of the market, but only enjoins that in it would 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 and the Wealth-tax Officer must assume that there is an open market in which the asset can be sold. There are several methods of valuation for valuing a house property. Admittedly, the rental basis or yield basis was adopted in finding out the value of the property. This method consists of finding out the net annual yield from the house property. This is done by taking the total annual rent received or receivable and deducting therefrom all outgoings in respect of the property in the asset to come to that rent, e.g., municipal taxes, collection charges, etc. The municipal taxes are taken at actuals. The Municipal Act provides for levy of tax on house property situated within its local limits. These rates and taxes are a fixed percentage of the annual value of the house property. When the valuation is determined with reference to the annual rental value, the rent fetched or reasonably expected as on the relevant date is the only relevant matter and not the future rent that it might fetch. The willing purchaser has to consider the actual outgoings. Whether the corporation will levy additional tax on the basis of rent receivable in future is not a relevant factor. If and when such tax is levied, it has to be taken into account in determining the market value of the property.

8. It is true that one has to find out what a willing purchaser would pay in the open market if a house with tenants is sold, but, when a particular method is adopted for valuation of such a property, such method takes care of all such eventualities or contingencies which a willing purchaser would take into account in making an offer. A purchaser will consider the rent realisable and the outgoings in respect of the property valued. Many of the deductions which are allowed under the statutory rules may not be taken into account at all in a hypothetical sale in the open market if a property is valued on the basis of a recognised method of valuation. The sale contemplated is not an actual sale but only a hypothetical sale and, accordingly, one cannot assume the taxes which may be leviable if the rent agreed to be adopted is the proper rent. An assessee who suppresses the rent and ultimately comes and accepts the rent received from such property cannot contend that the corporation may levy tax by revising the assessment on the basis of the rent disclosed. In the case of a tenanted property, one has to take the actual rent received or receivable or the annual

value determined by the local authority, whichever is higher. The assessment under the Municipal Act is not made on the basis of the actual rent. The annual value may be lower or higher than the rent received or receivable. The gross rent received, therefore, may not have any bearing on the levy of municipal taxes. In our view, therefore, when the rental method is adopted in valuing the property and the rent receivable is taken into account, the municipal taxes levied can only be deducted in arriving at the market value of the property.

9. For the reasons aforesaid, the question in this reference is answered in the negative and in favour of the Revenue.

10. There will be no order as to costs.

Shyamal Kumar Sen, J.

11. I agree.