(2008) 07 RAJ CK 0039

In the Rajasthan High Court

Commissioner of Wealth Tax APPELLANT

Vs

Gajendra Singh Jhala RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:
Wealth Tax Act, 1957 — Section 7(2)

Citation : (2008) 219 CTR 117 : (2009) 178 TAXMAN 45

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—These nine appeals arise out of the common judgment of the learned Tribunal dt. 1st Nov., 2004, they relate to the same assessee, and relate to different assessment years only, consequently they are being decided by this common order. The appeals were admitted by framing the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal is Justified in law in upholding the finding of the learned CWT(A) disturbing the valuation of the open land as determined by the DVO/AO ignoring the fact that the assessee has failed to produce any evidence and even the lease deed of the property?

2. The necessary brief facts of the case are, that the assessee was owner of the property, known as Jaswant Mahal, constructed on a freehold plot measuring 31000 sq. ft. at Sukhadia Circle, Udaipur. The land was acquired on 24th July, 1948, and building was constructed in the year 1961, it was let out in the year 1963 to the defence services on monthly rent of Rs. 425, and continued to remain in tenancy till February 1983. According to the assessee, thereafter, it was owned and possessed by the assessee, and was sold in 1990 along with land, for Rs. 39 lakhs. The assessee applied for clearance u/s 234A (sic-230A). Since it was found that assessee did not file returns of wealth-tax, notices were

issued by the AO u/s 17, for the asst. yrs. 1980-81 to 1989-90, by estimating the value of the property for respective assessment years, on the basis of sale price of Rs. 39 lakhs. The AO also referred the matter, for assessment of fair market value, to the Valuation Cell, which also assessed the property for the respective assessment years. Since the old building had been demolished by the time of undertaking valuation. valuation of the building was made on the basis of valuation done by the Land and Building Tax Department as on 1st April, 1973, with prescribed increase. The AO, accordingly, made assessment for different years, assessing the value of the total property in 1981 at Rs. 35,17,568, with gradual increase raising to Rs. 90,37,884 in the year 1989-90.

3. Against these orders, appeals were filed by the assessee, and the same were allowed by the learned CWT(A), by order dt. 19th Jan., 1994, by holding, that during the period 1980-81 to 1983-84, while the property was let out, the. valuation should be determined on the basis of rent capitalization method, taking into account monthly rent, and for the remaining assessment years it was held, that since the property was in self occupation, the value had to be assessed u/s 7(4) and Section 7(1) and (2), as applicable for the asst. yr. 1989-90, at the value on 1st April, 1973. The valuation determined by the Land and Building Tax Department, as on 1st April, 1973, was therefore, adopted for these assessment years.

4. Against this order, appeals were filed by the Revenue, which were allowed vide order dt. 19th Dec., 2001, whereby the order of learned CWT(A) was set aside, and the matter was restored to the learned CWT(A), for deciding the matter afresh in accordance with law.

5. Pursuant thereto, the learned CWT(A) decided the matters afresh, vide order dt. 17th Jan., 2003. The learned CWT(A) found, that the assessee had failed to lead any evidence, about the land having been also let out along with the building, inasmuch as lease deed was not produced, and the affidavit given by the assessee was not believed. It was found, that the rent of Rs. 425 per month pertained only to the building, constructed on 11,000 sq. ft. of land, and therefore the valuation of the house was computed for the asst. yrs. 1980-81 to 1983-84 as per r. IBB, and then, value of the land was separately assessed.

6. For assessing the value of the land, the learned CWT(A) noticed, that the DVO adopted the rate at Rs. 875 per sq. yd. for asst. yr. 1981-82 to Rs. 2,750 per sq. ft. for the asst. yr. 1991-92. and for arriving at this rate, DVO considered the rates fixed by UIT, at Rs. 350 per sq. ft. for commercial area and Rs. 150 per sq. ft. for residential area, as on 20th Aug., 1992. Since multi-storied flats were under construction for sale, and the plot being potential for commercial use, therefore, he considered it as a semi-commercial/residential, for the purposes of determining fair market value, and assessed the value at Rs. 360 per sq. ft. as on 20th Aug., 1992, and by making deduction of 10 per cent for earlier years, calculated the price. Thereafter, after considering the rival contentions of the parties, it was found, that DVO was Justified in making reference to the land

rates of the UIT as on 20th Aug., 1992, however, the learned CWT(A) did not agree with the DVO, that appropriate rate would be the average rate of commercial and residential. In the opinion of the learned CWT(A), the area being residential and not put to any commercial use, and as pointed out by the learned Counsel before the CWT(A), even on that day there was no commercial complex on the land, therefore, it was held, that only residential rates should be adopted. Likewise, increase of 60 per cent made by DVO on account of locational advantage, was also found to be excessive, and considering the location of the plot, being near main road and residential, an increase of 30 per cent was allowed. Then, a deduction of 10 per cent was made for the large size of the plot, as it is, as noticed above, 31,000 sq. ft. of the residential area. Thus, the value as on 20th Aug., 1992, was found to be Rs. 175 per sq. ft., and then by making prescribed deduction @ 10 per cent for each year, the rate was calculated for the previous years, upto the rate as on 31st March, 1980. Then, calculation of the price of the land was made for the asst. yrs. 1981-82 to 1983-84, and from out of the amount arrived, permissible deduction u/s 5(1)(iv) was directed to be allowed. Then regarding asst. yrs. 1984-85 to 1988-89, as per directions of the Tribunal, the matter was examined as to whether the assessee is entitled to freezing of the value of the property as on 1st April, 1971, or 1st April, 1973, for that matter, and after examining various case laws. Including that of Gujarat High Court, and Full Bench decision of Madras High Court, it was found, that the property was not put to any non-residential use, during the asst. yrs. 1984-85 to 1988-89, it was not let out on rent, as such, in view of the decisions noticed, the property satisfied the conditions laid down u/s 7(4), and therefore it was held, that the assessee was entitled to freezing of the value, and accordingly the value of the land, as on 1st April, 1971, was taken, as considered by the land and building tax authorities. Then, out of the amount of valuation so arrived at, assessee was allowed deduction permissible u/s 5(1)(iv) for these respective years. Thus, the appeal of the assessee was partly allowed.

7. Against this order, the Revenue again filed appeals before the Tribunal. Two contentions were raised before the learned Tribunal; first being, that the learned CWT(A) erred in disturbing the valuation of open land, as there was no specific direction of the Tribunal in this respect. The second contention raised was, that the learned CWT(A) erred in treating the open land surrounding the building, as residential, and applying the rates of residential, as against commercial one, ignoring the fact, that looking to the prime location of the property, it can very well be termed as commercial. The learned Tribunal found, that in the order dt. 19th Dec., 2001, the Tribunal had found, that for 1980-81 to 1983-84 the value was to be determined by rent capitalization method, however, no proper enquiry was made, as to whether rent was only for the building, or the land as well, and the assessee should have produced supportive evidence, and regarding use of property for self-residence. Likewise it was also noticed that the learned Tribunal in the order dt. 19th Dec., 2001, had held, that as required by Section 7(4)/7(1)/(2), for freezing value, the learned CWT(A) has not made enquiry regarding user

of the house properly by the HUF. With noticing this it was found by the learned Tribunal in the impugned order, that the learned CWT(A) has decided the issue as per the direction of the Tribunal, and found, that the ground of the Department, that valuation of the land was not subject-matter of the Tribunal''s order is not sustainable, rather it was found, that the CWT(A) has followed the directions given by the Tribunal, in the case of this assessee only. Thus, the first ground was dismissed. Regarding second ground, it was found, that the CWT(A) has decided the matter as per the directions of the Tribunal in the case of this assessee, and therefore no interference is required to be made.

8. As noticed above, the question as framed by this Court, comprehends the aspect, about the Tribunal being Justified in law in upholding the finding of the learned CWT(A) , disturbing the valuation of the open land, as determined by the DVO/AO, ignoring the fact, that the assessee has failed to produce any evidence, and even the lease deed of the property.

9. It would suffice to say, that with decision of the appeal by the CWT(A), vide order dt. 19th Jan., 1994, the order of the AO merged into that order, and it cannot be contended, that setting aside the order dt. 19th Jan., 1994, did, in any manner, have the effect of revival of whole or any part of the order of the AO, which was subject-matter of appeal, decided on 19th Jan., 1994. Then, secondly, though the earlier order of the learned Tribunal dt. 19th Dec., 2001, had not been produced along with the appeal, but at our request it was made available for our perusal by the learned Counsel for the Revenue, and a look at that order shows, that learned Tribunal in para 7 onwards had considered all the aspects of the matter, including contentions raised by the Revenue before the Tribunal, about efficacy and value of the report of the DVO. Of course, it was found, that supporting evidence was required to be led by the assessee, to show, that rent of Rs. 425 per month was rent not only for the building, but the entire land as well, and that, enquiry had not been made regarding existence of the circumstances, entitling the assessee for claiming freezing of the valuation, u/s 7(4) and/or Section 7(1) and (2). But then, it is significant to note, that the learned Tribunal nowhere held, while setting aside the order of the learned CWT(A). and restoring the appeal back to the CWT(A), that the valuation of the land is to be taken as per the DVO''s report, or that, the valuation be calculated taking the land to be commercial or residential, or some halfway house. Rather, a contention raised on behalf of the Revenue was noticed, that since assessee did not furnish any evidence before the DVO in support of the contentions/pleas of the assessee, and that the AO accepted the DVO''s valuation, so the situation of AO making enquiry did not arise, and after noticing this fact situation, the learned Tribunal had directed as under :

In that view of the matter considering all the facts and circumstances of the case and taking a circumspect view of the totality of the fact situation, we find the Impugned order of learned CWT(A) to be not tenable, and we consider it just and proper to set aside the same and restore the matter to the learned CWT(A) for deciding the matter afresh in accordance with law, and keeping in view the observations made by us above?.

(Emphasis, italicised in print, supplied)

10. In our view this direction does, and did, clearly mean, that the entire matter was thrown open to the learned CWT(A), to be examined, as if it was the appeal against the order of the AO, and the learned CWT(A) was also required to be alive to the observations made by the Tribunal, regarding the requirement of the assessee, to lead evidence about the rent of Rs. 425 to be for the building as well as the land, so also the CWT(A) was required to be satisfied about the existence of ,the circumstances contemplated by Section 7(4) and/or Section 7(2), to entitle the assessee to claim freezing of the value of the property as on 1st April, 1971, or for that matter 1st April, 1973.

11. That being the position, when the learned CWT(A) has gone into the matter threadbare, and as noticed above, since the assessee failed to produce the copy of the lease deed, and the affidavit produced by the assessee was disbelieved/ discarded, the rent of Rs. 425 was taken to be the rent for the building only, and the valuation of the land has been separately assessed, and that also by taking into account the UIT rates for residential lands, and by making addition for the locational advantage, it cannot be said, that in this respect there was any error committed by the learned CWT(A). We may observe at this place, that there is nothing on record to show, that the land was commercial, or was being put to commercial use, and as noticed by learned CWT(A), that even as on the date of passing of the order, the multi-storied had been constructed, but it was not commercial, rather a residential one. In that view of the matter, there was no occasion for even considering so-called commercial potentiality of the land.

12. We make it clear, that we are not deciding the question this way or that way, as to whether such potential can be considered for the purpose of making assessment under the WT Act, or not.

13. Then so far, the aspect about entitlement of the assessee to freezing of the prices is concerned, in that regard also, the finding has been arrived at after considering the available material on record, on the basis of the relevant legal parameters, as propounded by different High Courts, Including Full Bench of the Madras High Court, and it is not shown by the learned Counsel for the appellant, as to why, and how, the view taken by the Madras High Court or Gujarat High Court is not required to be followed, or any different view is required to be taken.

14. Then, so far as taking the valuation of the land as on 1st April, 1971, on the basis of the valuation as taken by land and building tax authorities, Is concerned, we may straightway refer to the last part of para 7 of the judgment of the learned Tribunal dt. 19th Dec., 2001, which noticed the contention of the Department, that valuation made by the Land and Building Tax Department may be one of the guiding factors, in the matter of valuation, though it cannot be decisive. In view of this stand of the Revenue, In absence of any material on

record, to show the valuation as on 1st April, 1971, having been made available by the Department, If the learned CWT(A) has taken the valuation, as determined by the land and building tax authorities, It cannot be said, the learned CWT(A) was in error.

15. Thus, the net result of the aforesaid discussion is, that in our view it was open to the learned CWT(A) to decide the entire matter afresh, in order to comply with the judgment of the learned Tribunal dt. 19th Dec., 2001, and on merits also, the findings as recorded by the learned CWT(A), and as affirmed by the learned Tribunal, do not suffer from any error, requiring interference in this appeal by this Court.

16. Consequently, the question as framed in all the appeals, is answered against the Revenue, and in favour of the assessee.

Appeals thus being devoid of merit, are dismissed.