(2005) 03 AHC CK 0063

In the Allahabad High Court

Case No : WT Ref. No. 76 of 1991

Commissioner of Wealth Tax APPELLANT

Vs

Mohan Das RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:
Wealth Tax Act, 1957 — Section 16(1), 16(4), 16A, 17, 27(1)

Citation : (2005) 196 CTR 204 : (2007) 245 ITR 580 : (2005) 149 TAXMAN 545

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : Shambhu Chopra, for the Appellant; None, for the Respondent

Judgement

1. The Tribunal, Allahabad, has referred the following two questions of law u/s 27(1) of the WT Act, 1957 (hereinafter referred to as the Act), for opinion to this Court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessments were reopened u/s 17 on the basis of change of opinion of the WTO ?

(2) Whether, on facts and in circumstances of the case, the Tribunal was correct in law in holding that assessment framed u/s 16(1) of the WT Act cannot be reopened u/s 17 of the WT Act on the ground of change of opinion on the part of the WTO ?"

2. The reference relates to the asst. yrs. 1982-83 to 1985-86.

3. Briefly, stated the facts giving rise to the present reference are as follows :

The respondent/assessee has been assessed to wealth-tax in the status of an individual. He owns property No. 89/331, Deputy Ka Padao, Kanpur, which is being used for commercial purpose having been let out to bank. For the assessment years in question, assessment orders were framed under the Act determining the value of the said building by applying the mode of valuation as land and building method. All the assessments were reopened by the AO u/s 17 of the Act on the ground that the wealth chargeable to tax had escaped assessment as according to the WTO, the property ought to have been valued by applying the rent capitalisation method. Feeling aggrieved, the respondent preferred separate appeals before Dy. CIT(A), Kanpur. The Dy. CIT(A) had partly allowed the appeals by holding that it would be reasonable and act of fairness if the value of the property is determined by taking average of rent capitalisation method and of land and building method.

4. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent/assessee.

5. Learned standing counsel submitted that as the building in question has been let out the proper method for determining its fair market value would be on the basis of rent capitalisation, thus, the assessment based on land and building method was not correct method leading to escapement/ underassessment of wealth. The submission is misconceived. u/s 7 of the Act, provisions have been made for determining the value of the assets. During the assessment years in question, Section 7 of the Act as it stood reads as under:

"7. Value of assets, how to be determined--(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the AO, it would fetch if sold in the open market on the valuation date.

Explanation.-- For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purpose of determining the price such property would fetch if sold in the open market on the valuation date.

(2) Notwithstanding anything contained in Sub-section (1),

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the AO may instead of determining separately the value of each asset of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustments therein as may be prescribed;

(b) where the assessee carrying on the business is a company not resident in India and a computation in accordance with Clause (a) cannot be made by reason of the absence of any separate balance sheet drawn up for the affairs of such business in India, the AO may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year.

(3) Notwithstanding anything contained in Sub-section (1) where the valuation of any asset is referred by the AO to the Valuation Officer u/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, in the case of an asset being a house referred to in Sub-section (4), the valuation date referred to in that sub-section.

(4) Notwithstanding anything contained in Sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date may, at the option of the assessee, be taken to be the price which, in the opinion of the AO, it would fetch if sold in the open market on the valuation date next following the date on which he became the owner of the house, or on the valuation relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later :

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this sub hall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf in the return of net wealth.

Explanation.--For the purposes of this sub-section,--

(i) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(ii) ''house'' includes a part of a house, being an independent residential unit."

6. From a reading of the aforesaid provision it would be seen that the value of any asset has to be estimated on the basis of the price, which in the opinion of the AO it would fetch if sold in the open market on the valuation date. Separate provisions have been made for the business assets and residential house exclusively used for the residential purposes. As in the present case, the building in question has been let out for commercial purpose, no specific mode of valuation for determining the market value has been prescribed under the Act. It has to be the value, which it would fetch if sold in the open market on the valuation date. There are several modes of determining the value in the open market viz., land and building method, income yield method, rent capitalisation method, cost method, etc. etc. In the present case, the AO while passing the original assessments had applied the land and building method for determining the value of the property in question, which is one of the well accepted and well recognised mode of valuation. Merely because by applying another mode of valuation, the value would be a little higher would not clothe the WTO with the jurisdiction to proceed u/s 17 of the Act, specifically when no specific mode for valuation of the assets used for commercial purpose has been prescribed by

Section 7 of the Act or the Rules framed therein. Thus, initiating the proceedings u/s 17 of the Act on the ground that the valuation ought to have been done on the basis of rent capitalisation method is a case of change of opinion and falls outside the purview of Section 17 of the Act. The reassessments have rightly been annulled by the Tribunal.

7. In view of the foregoing discussions, we answer both the questions referred to us in the affirmative i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.