(1990) 12 KL CK 0041

In the High Court Of Kerala

Case No : IT Reference No. 140 of 1986, Reference Appeal No. 14 (Coch.) of 1981 and WT Appeal No. 34 (Coch.) of 1979

Commissioner of Wealth-Tax APPELLANT

Vs

Mrs. Sara Varghese RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Citation : (1991) 55 TAXMAN 459

Hon'ble Judges : Varghese Kalliath, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran and Sudhir Gopi, for the Respondent

Judgement

Paripoornan, J.—At the instance of the revenue, the Tribunal has referred the following question of law for the decision of this Court:

Whether, on the facts and in the circumstances of the case, method and manner of valuation of rubber estate by the Tribunal is justified in law and facts.

The respondent was assessed to wealth-tax. We are concerned with the assessment year 1973-74. Certain common questions of law were referred at the instance of the assessee herein for the very assessment year, which were disposed of by this Court in the decision in CIT v. Sara Varghese [1987] 2 KLT 301.

The brief facts essential to understand the scope and impact of the question referred herein at the instance of the revenue are as follows: For the assessment year 1973-74, the relevant valuation date was 31-3-1973. The assessee is an individual. She owned 32 acres of land, out of which 26 acres of land were covered with rubber plantations. Six acres were covered with the trees like mango, coconut etc. There was also a building in the property used as residence and office of the assessee. the assessee valued the property as on the valuation date, viz., 31-3-1973 at Rs. 96,000. This was made on the report of the registered valuer. The said valuation was not accepted by the WTO. He found that 27.43 acres out of the total extent of 32 acres was sold to the Housing Board for Rs. 12 lakhs on 4-6-1974. That reflected the value of the land at Rs. 440 per cent. On this basis, the WTO estimated the value as on the valuation date by giving discount for the increase in valuation in the preceding years. Thus, for this particular assessment year for which the valuation date was 31-3-1973 the WTO fixed the value of the property at Rs. 350 per cent. In appeal, the AAC reduced the value to Rs. 300 per cent. In further appeal before the Tribunal, after adverting to various facts and circumstances the Tribunal held that the value of the property as on 31-3-1973 should be fixed at Rs. 250 per cent. The WTO was directed to recomplete the value. It is, thereafter at the instance of the revenue the question of law formulated herein has been referred for the decision of this Court.

2. We heard the counsel for the revenue as also the counsel for the assessee. The counsel for the revenue submitted that though the revenue prayed for referring three questions of law, this Court directed reference of only one of the questions, the question formulated herein above, holding that the above question is comprehensive enough to take in the other points covered by the two other questions. It was argued that the Tribunal totally erred in fixing the value of the property for the assessment year 1973-74 at Rs. 250 per cent. The value obtained for the same property soon after the valuation date from the Housing Board at Rs. 440 per cent is a strong item of evidence which was not given due weight by the Tribunal. What is more, the Tribunal referred to the valuation of rubber estates in the year 1969 near Thodupuzha and based on that the Tribunal arrived at the valuation of the instant property which is situate at a different place, in Ernakulam town. These two aspects have totally vitiated the conclusion of the Tribunal. So, the counsel for the revenue submitted that the manner and method of valuation of the rubber estate by the Tribunal is wholly erroneous and unjustified in law. The counsel for the respondent-assessee submitted that the question of law referred for decision of this Court at the instance of the revenue is really a question of fact and no question of law arises out of the appellate order of the Tribunal dated 28-10-1980. It was further argued that the determination of the value on the valuation date is largely one of fact, and as a final fact-finding authority it is for the Tribunal to advert to all relevant facts and circumstances and determine the value. The Tribunal has referred to the valuation of the rubber estate in Thodupuzha, though the instant property is situate at Ernakulam. By reference to the particular category of property (rubber estates) , the Tribunal fixed the value at Rs. 250 per cent for the property in question after giving due credit to the situation of the property in the instant case, namely, that it is in the neighbouring area of Kalamassery and the area has become anised by them. We are of opinion that the question regarding valuation of property is purely a question of fact and no question of law can ordinarily arise unless there is a violation or non-adherence to the principles of valuation - CWT v. Himalaya Trading Co. [1987] 168 ITR 586 (Del) . Keeping in mind the

principles laid down in the said decision, we are of the view that the question referred to this Court by the Tribunal, is not a question of law, but purely a question of fact.

3. The counsel for the revenue submitted that in Himalaya Trading Co.''s case (supra) what was involved was only the method of valuation. Here the question referred to this Court is regarding ''the method and manner of valuation'' of rubber estates. So the manner of valuation involves application of the principles of law. We are of the view that there is no substance in this plea. In Chambers Twentieth Century Dictionary, 1983, New Edition, the word ''manner'' is explained thus:

manner - the way in which anything is done; method, fashion; personal style of acting or bearing; custom; style of writing or of thought... social conduct; good behaviour... (p. 766) .

The meaning of the word ''method'' is given thus :

method - the mode or rule of accomplishing an end; orderly procedure; manner; orderly arrangement, methodicalness; classification; a system, rule; manner of performance; an instruction book systematically arranged... (p. 791)

So it is evident that the manner and method of valuation substantially involves similar concepts. In this view we hold that the question referred to this Court at the instance of the revenue is purely a question of fact and no question of law arises.

4. Even on merits, we are of the view that the decision of the Tribunal cannot be said to be legally unsustainable. Regarding valuation, what we are concerned is the market value of the property. It is the price which a willing buyer will pay to a willing seller. It will vary from case to case. Valuation is not an exact science. Mathematical calculation is not possible. Money value attributable to the asset should be decided and estimated by the concerned statutory authority in a reasonable and judicial manner on the basis of the facts and circumstances available before him. Valuation should be made objectively and should be based on some material. Even in cases where the asset to be valued has no real market, it is for the assessing authority to fix a notional market value. A hypothetical market is contemplated. Imponderables are involved in the matter of valuation. Some of the principles to be borne in mind in that direction have been stated in the Bench decision of this Court in COMMISSIONER OF Income Tax Vs. P. I. GEORGE AND OTHERS., . Decisions are legion dealing aspects regarding valuation. The qualitative and quantitative analysis in the matter of valuation will differ, from asset to asset, from place to place, and also considering the particular statute for which the valuation and price of the property has to be determined. It cannot be a wooden rule. Different methods and approaches necessary in the context of different statutes, under which the market value of an asset has got to be determined, pose difficult problems. The market value has got to be fixed with reference to the particular statute. The approach will differ,

according to the nature of the statute - fiscal statutes and non-fiscal statutes. Among the non-fiscal statutes Land Acquisition Act is an important legislation. Among the fiscal statutes, income tax Act, 1961, Wealth-tax Act, 1957, Gift-tax Act, 1958, Municipalities Act, etc., are important. In fixing the market value of a particular asset or property, the approach and analysis is likely to vary according to the subject-matter of legislation. The principles that are ordinarily applied in the case of non-fiscal statutes like Land Acquisition Act, cannot be applied mechanically in cases arising under fiscal statutes. These aspects have been dealt with in Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel, and 191 (Guj.) and in Commissioner of Succession Duties v. Executor Trustee & Agency Company of South Australia Ltd. 74 CLR 358 at p. 373 and in the Bench decision of this Court in P.I. George''s case (supra) . It will be useful to bear in mind what Dixon J., said in Executor Trustees & Agency Company of South Australia Ltd.''s case (supra) :

I should like, however, to add for myself that there is some difference of purpose in valuing property for revenue cases and in compensation cases. In the second, the purpose is to ensure that the person to be compensated is given a full money equivalent of his loss, while in the first it is to ascertain what money value is plainly contained in the asset so as to afford a proper measure of liability to tax. While this difference cannot change the test of value, it is not without effect upon a court''s attitude in the application of the test. In a case of compensation, doubts are resolved in favour of a more liberal estimate, in a revenue case, of a more conservative estimate. (p. 632)

It is not wooden or mechanical rule, that can be applied to determine the value of an asset or property as applicable in all cases, whatever be the nature of the statute under which the valuation has to be fixed.

5. In this case, the assessee was the owner of 26 acres of rubber plantation. She was residing in the building situated in the said property. There was also an office belonging to her. We are concerned with determining the value of the property for the purpose of wealth-tax. The purpose is to ascertain what money value is contained plainly in the asset, so as to afford a proper measure of liability to tax. It is levy imposed on a person, to hold the property. That makes all the difference from the prospective with which the property will have to be valued, as distinguished from a case arising under the Land Acquisition Act or fixing the value in the case of sale - whereby the property is lost for ever. And what is paid when the property is acquired is ''compensation''. In fiscal statues, the property is still retained. The levy is made to enable assessee to hold the property. The tax that is levied is a burden or impost to hold the property and that will be only minimal. The rubber estate in this case is of a sizable nature. There were earlier assessments relating to this property. The Tribunal referred to the valuation of the rubber estates near Thodupuzha, where the value per cent was fixed at Rs. 50 based upon as open sale in 1970-71. The Tribunal was invited to the fact that the rubber estate in the instant case is near Ernakulam and the value fixed for a

property at Thodupuzha may not provide a safe guide. The Tribunal held that the Thodupuzha is a plantation area and even where good yielding rubber trees existed, the value was only Rs. 50 per cent in 1970-71. The rubber estate in the instant case is near Edappilly, adjacent to metropolitan town Ernakulam - Cochin. The value of good yielding rubber estate in Thodupuzha may provide guidance for valuation of similar property and is not totally irrelevant. Even reckoning the rapid urbanisation of Ernakulam, and reckoning the fact that the valuation has to be fixed for a period of years the Tribunal held that for the year 1973-74, Rs. 250 per cent will be the proper market value, the Tribunal fixed the above valuation after adverting to relevant material. Thus, valuation of the rubber estate even in a good yielding area and bearing in mind the urbanisation of the area where the rubber estate in question is situated, the value was fixed in the instant case. We are not in a position to say that the Tribunal adverted to irrelevant material or failed to advert to relevant factors. In the matter of valuation of property, imponderables are involved. The perspective with which valuation has to be fixed in this case, is bearing in mind the purpose of the fiscal statute in question. Though the property was sold to the Housing Board on 4-6-1974 which reflects a value of Rs. 440 per cent that cannot form the basis that can be mechanically adopted for the purpose of fixing the value of the property in cases arising under the Wealth-tax Act. Different considerations apply in determining the market value of properties under the fiscal statutes. In the light of the above salient aspects and considering the factors that weighed with the Tribunal in determining the value of the property at Rs. 250 per cent for the year 1973-74, we are of the view that there has been a proper determination of the value of the property on the valuation date. Therefore, we answer the question referred to us in the affirmative, against the revenue and in favour of the assessee.