(2000) 06 DEL CK 0003

In the Delhi High Court

Case No : WT Ref. No. 9 of 1983 6 July 2000 A.Y. 1968-69 and 1969-70

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

MRS. VIDYA MALHOTRA — RESPONDENT

Date of Decision : 06-06-2000

Acts Referred:

Citation : (2001) 162 CTR 438

Hon'ble Judges : Arijit Pasayat, C.J;D.K. Jain, J

Bench : Full Bench

Advocate : Alay Jha, for the Revenu None, for the Assessee, for the Appellant;

Final Decision : Disposed Off

Judgement

Arijit Pasayat, C. J.

Pursuant to directions given by this court u/s 27(3) of the Wealth Tax Act, 1957 (hereinafter referred to as ''the Act''), following questions have been referred for opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified and correct in giving a finding that the value returned by the assessed in respect of the house property No. 9, Aurangzeb Road, New Delhi, was bona fide and there is no material on the record to hold that the value was deliberately understated by the assessee? "

(2) "Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessed discharged the onus that lay on her under the Explanation to section 18(1)(c) of the Wealth Tax Act, to prove that she was not guilty of gross or willful neglect in understanding her wealth."

2. Factual position is to be noted in brief. The dispute relates to assessment years 1968-69 and 1969-70. For the assessment years 1966-67 and 1967-68, the assessed declared value of the property at 9, Aurangzeb Road, New Delhi at Rs. 12 lakhs but for the assessment years 1968-69 and 1969-70 the valuation is

shown at Rs. 7,76,800. On 18-2-1971, the property was sold for Rs. 22,60,000. It is to be noted that on 17-2-1965, the property was purchased for Rs. 17 lakhs. In 1965 assessed declared the value of the property at Rs. 17 lakhs and that she had spent Rs. 1,42,750. The Wealth Tax Officer accepted the valuation made by the District Valuation Officer at Rs. 19,21,000 and valued the property at this figure in both the years. Penalty proceedings u/s 18(1)(c) were initiated for furnishing inaccurate particulars. The matter was referred to the Inspecting Assistant Commissioner who issued notice to the assessee. On consideration of the Explanation submitted by the assessee, Inspecting Assistant Commissioner came to the conclusion that the assessed was guilty of furnishing inaccurate particulars of wealth. He noted that the Tribunal had finally held, in the appeals relating to assessment of net wealth that the value of the property in these two assessment years was Rs. 11 lakhs. The matter was carried in appeal before the Tribunal. On consideration of factual aspects pressed into service by the party, Tribunal came to hold that the figure returned by the assessed was done bona fide and there was no deliberate understatement or furnishing of inaccurate particulars. It was further held that the assessed was not guilty of any gross or willful neglect and, Therefore, penalty imposed for each year was cancelled. Application for reference made u/s 27(1) was not accepted. This court has directed reference and the questions as set out above were referred for our opinion.

3. Learned counsel for the revenue submitted that there was clear attempt to understate the value of the property. Valuation adopted at different times clearly establish that the assessed had not disclosed the correct figure. There is no appearance by assessed in spite of the service.

4. While dealing with the factual aspects and the conclusions arrived at by the Tribunal, we think it necessary to extract the relevant portion of Tribunal''s order which reads as follows ..

"We have considered the submission of the parties and gone through the record. It appears that the Inspecting Assistant Commissioner was mainly influenced in levying the penalty by the fact that this property was purchased by the assessed on 17-8-1965, for a sum of Rs. 17 lakhs. It is true that it was so but the assessed had explained the circumstances in which she had to pay this fabulous price. The assessed had sold 24, Ferozeshah Road on 20-2-1965. She was in search of a residence near about this locality and till a residence was found, she had to shift to Claridges Hotel with her husband and son. She stayed there for six months and after a search, was able to find the property at 9, Aurangzeb Road. The necessity for the immediate purchase of the property was also due to the fact that by investing the sale proceeds of 24 Ferozeshah Road, she could save the capital gains tax of the value of Rs. 11,37,000. In order to save this capital gain, it was necessary for the assessed to purchase the new property within one year of the sale of 24, Ferozeshah Road. In, the meanwhile, she was staying in Claridges Hotel and incurring high expenditure. In these circumstances the Tribunal., in the assessor?s appeal against assessment held that the price of Rs. 17 lakhs paid by the assessed was a fancy price.

7. The Tribunal then determined the fair market value of this property on the basis of the following evidence.

The value of this property was returned by Dr. Krupp at Rs. 5.25 lacs and accepted by the Wealth Tax Officer for the assessment years 1957-58 to 1963-64. In the assessment year 1965-66. Dr. Krupp returned a value of Rs. 11 lacs which was also accepted by the Wealth Tax Officer as the correct market value. In the assessment year 1965-66, Dr. Krupp no doubt returned the value of this property at Rs. 17 lakhs, but he was bound to do so, as he had sold the property for that amount and was leaving the country and did not want to be embroiled in any dispute with the Wealth Tax Authorities. The Tribunal observed that otherwise it could not be expected that its value would go up by six lacs in one year. The Tribunal then referred to the value of the District Valuation Officer in his report dated 16-8-1974 at Rs. 13,26,000. The Tribunal took into account the following three instances of sales of properties in this locality :

(1) 3-Aurangzeb Road sold on 15-1-1966, by Sardar Mokham Singh Sandhu to M/s. Gupta & Syal Pvt. Ltd. for Rs. 5 lakhs.

(2) 1-Aurangzeb Road, purchased by Shri Biju Patnaik Ex-Chief Minister of Orissa on 29-10-1963, for a total consideration of Rs. 5,69,950.

(3) 24-Ferozeshah Road was sold by the assessee, herself to Soviet embassy on 20-2-1966, for Rs. 11 lakhs.

The Tribunal then pointed out that in valuing this property the restrictions imposed in the zonal development plant have to be taken into account. According to the zonal development plant of this area, Aurangzeb Road was to be closed and two nursery schools were proposed to be constructed in the front lawn of this property. There was 120 ft. wide road which was proposed to be known as Aurangzeb Road and instead of that it was proposed to provide an alternative road of 45 ft. wide and even then the access to this property was to be from the service lane on the back side of this property. The Tribunal inspected the spot in order to understand the alternative access which was proposed in the draft plan and it was found that the access was from the service lane. Keeping in view all these facts and circumstances the Tribunal estimated the value of this property at Rs. 11 lakhs for each of the assessment years under appeal.

8. The assessed had declared the value of this property at Rs. 7,76,000 in the returns of wealth on the basis of the valuation report of an approved valuer. A specific note to this effect was appended to the return as follows :

''The value of the property known as 9, Aurangzeb Road, New Delhi, has been taken on the basis of the valuation made by approved valuers plus 2 lacs. The relevant certificate will be produced when required.''

It would not, Therefore, be correct to say that the assessed declared the value of this property at Rs. 7,76,800 without any basis. The basis was the approved valuer''s report. It may be that the approved valuer had erred in estimating the value, but it cannot be said that the declaration of the value was without any basis. As seen above, the Tribunal had estimated the value of this property at Rs. 11 lakhs taking into account various considerations. There has been difference of opinion in regard to estimate of valuation between the approved valuer of the assessed the departmental valuer and the Income Tax Authorities. Considering the totality of the facts and circumstances of this case, we are of the opinion that the value returned by the assessed on the basis of her approved valuer''s report was bona fide and there is no material on the record to hold that it was deliberately understated or that the assessed was guilty of any gross or willful neglect in returning this value. For all these reasons we cancel the impugned penalties.

5. From the portion of the Tribunal''s order extracted above, it is clear that Tribunal considered the relevant aspect and recorded following findings of fact :

(a) it would not be correct to say that assessed declared value of the property without any basis;

(b) even if the approved valuer had erred in estimating the value, it cannot be said that declaration of value was without any basis,

(c) Tribunal had estimated the value by taking into account various considerations and

(d) there was difference of opinion regarding valuation between approved valuer, departmental valuer and Income Tax Authorities.

6. Tribunal has taken into account the basic features, relevant aspects and has also indicated that the assessed made no attempt to understate the valuation. The conclusions are essentially factual giving rise to no question of law. Where the determination of an issue depends upon the appreciation of evidence or materials resulting in ascertainment of basic facts without application of any principle of law, the issue raises a mere question of fact. In such cases, Tribunal is the final fact-finding authority and upon examination of all evidence and material before it, certain findings are reached, deciding the existence or otherwise of certain facts at issue. An inference from certain facts is also a question of fact. That being the position, we decline to answer the question referred.

The reference applications are accordingly disposed of.

