
(1991) 04 CAL CK 0030
In the Calcutta High Court
Case No : Matter No. 5681 of 1988

Commissioner of Wealth Tax	Vs	APPELLANT
Niranjan Kumar Hirjee		RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1BB

Citation : (1993) 112 CTR 154 : (1993) 201 ITR 183 : (1993) 68 TAXMAN 284

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

Bench : Division Bench

Advocate : Bagchi, for the Appellant; Sanjay Bhattacharjee, for the Respondent

Judgement

Ajit K. Sengupta, J.—This reference at the instance of the Commissioner of Wealth-tax u/s 27(3) of the Wealth-tax Act, 1957, relates to the assessment years 1977-78 and 1979-80.

2. Shortly stated, the facts are that the assessee was having one-fifth share in a two-storeyed building at 9, Wood Street, Calcutta. The market value for the purpose of wealth-tax was determined by capitalising the annual value at 15 times and, accordingly, one-fifth share was disclosed by the assessee being the market value of his share in 9, Wood Street, Calcutta. The value was roughly shown at Rs. 60,000 in each year though the same had wrongly been mentioned by the Commissioner at Rs. 56,575. This property was sold to M/s. Amar Jyoti Investment Ltd. of P-34, India Exchange Place, Calcutta, on October 31, 1982, for Rs. 45 lakhs. The property represented an area of land measuring 1 bigha 13 chhatak 22 sft. and there was a super-structure on the above land. The assessee was granted a tax clearance certificate for the proposed sale of the property. On the basis of this fact, the Commissioner of Wealth-tax found that the assessments completed by the Wealth-tax Officer for the assessment years 1977-78 to 1980-81 were erroneous as these were prejudicial to the interests of the Revenue, and, consequently, he issued show cause notices to the assessee. The contention of the assessee, inter alia, before the Commissioner of Wealth-

tax was that on the basis of the subsequent facts, the Commissioner of Wealth-tax could not come to the conclusion that the assessments made by the Wealth-tax Officer were erroneous. It was also indicated that the property no doubt was sold for Rs. 45 lakhs, but the same was under the Acquisition Scheme of CMDA for long for the purpose of the widening of Wood Street. It was also indicated that there was another restriction on the property. This property could not be sold to anyone other than any institution. The Commissioner of Wealth-tax, after considering the contentions of the assessee, found that the orders passed by the Wealth-tax Officer were erroneous and prejudicial to the interests of the Revenue and, accordingly, he did not accept the argument of the assessee and he directed the Wealth-tax Officer to revise the wealth-tax assessment relating to the assessment years 1977-78 to 1980-81 after taking into consideration the enhanced value of the assessee's share in the immovable property being one-fifth share of the sale proceeds.

3. Counsel for the assessee made four submissions. The first submission was that the Commissioner did not find any material on perusal of the records for the assessment years 1977-78 to 1980-81 that the assessments made by the Wealth-tax Officer were erroneous. It was indicated by the assessee's counsel that the Commissioner could not look into the future record of the assessee but he must look into the record at the time of assessment. The second argument of counsel was that the Commissioner was required to pass a quasi-judicial order u/s 25(2) of the Wealth-tax Act. The Commissioner had not indicated any material to show that the orders passed by the Wealth-tax Officer were erroneous. Therefore, the order of the Commissioner should be set aside. The third argument of the assessee was that the market value of the property was to be determined u/s 7(1) of the Wealth-tax Act read with Rule 1BB. If the value of the property was determined under Rule 1BB, the value would be much lower than that shown by the assessee. The assessee in this connection filed the computation of market value under Rule 1BB. The fourth argument of the assessee was that the property was let out for the assessment year 1982-83. The assessee was getting a rent of Rs. 3,000 per month. The assessee's share in the annual value of 9, Wood Street, was determined at Rs. 4,980 net. If the same was capitalised at twelve and half times, the value shown by the assessee was more and, therefore, it could not be said that the orders passed by the Wealth-tax Officer were erroneous. Accordingly, the assessee urged that, even on this ground, the order of the Commissioner could be set aside. The assessee further filed a copy of the letter dated June 9, 1983, from CMDA to show that there was a restriction on sale of the property at 9, Wood Street, Calcutta.

4. The Departmental representative very strongly supported the order of the Commissioner and urged that the Commissioner rightly assumed jurisdiction u/s 25(2) of the Wealth-tax Act. It was stated that the property was sold for Rs. 45 lakhs. The value of the property had been shown at about Rs. 60,000 in each year. The property had open land of more than 1 bigha and there was a super-structure on it. The Wealth-tax Officer did not apply his mind and made the

assessments as submitted by the assessee. Under the above circumstances, when the Wealth-tax Officer had not applied his mind, the orders passed by the Wealth-tax Officer were erroneous. The Departmental representative supported his argument. He also objected to all other arguments of the assessee and urged that once the Wealth-tax Officer did not apply his mind to the facts of the case, all other arguments of the assessee were not tenable. Accordingly, he urged that the order of the Commissioner should be maintained.

5. The Tribunal on the first and second contentions of the assessee came to the conclusion that the Commissioner did not indicate any material to show that the orders passed by the Wealth-tax Officer were erroneous.

6. The third objection of the assessee that, for the purpose of determining the market value, the provisions of Section 7(1) of the Act read with Rule 1BB were to be considered. It was a residential building during the years under consideration and, therefore, the value was to be determined by applying Rule 1BB and if this rule was applied, the value would not exceed the value which had already been disclosed by the assessee. This contention was accepted by the Tribunal. The last argument of the assessee was considered on merits by the Tribunal. The Tribunal held that there was no material before the Commissioner to invoke Section 25(2) of the Act.

7. On the aforesaid facts the following question of law has been referred to this court ;

"Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the valuation disclosed by the assessee for the assessment years 1977-78, 1978-79, 1979-80 and 1980-81 are acceptable and in that view in cancelling the order u/s 25 of the Wealth-tax Act? "

8. At the very outset, we may point out that the question is thoroughly misconceived. The finding of the Tribunal can be assailed as being perverse or based on no material or being contrary to the evidence on record. The finding of the Tribunal is otherwise binding on us in its advisory jurisdiction. The question of not accepting the finding which is not challenged as perverse does not and cannot arise. This question does not bring out the controversy which was sought to be raised. We could have declined to answer the question on that ground alone, but since arguments have been advanced on merits, we have proposed to deal with the arguments.

9. At the hearing, Mr. Bagchi appearing for the Revenue, contended that the Commissioner of Wealth-tax has plenary power to revise the assessment. It is his contention that if the Wealth-tax Officer could have proceeded on the basis of the subsequent valuation available to him for reopening the assessment, the Commissioner could similarly exercise revisional jurisdiction even if the materials came into the possession of the Commissioner subsequent to the assessment. He can, on the basis of such materials, form an opinion that the assessments were erroneous in so far as they were prejudicial to the interests of the Revenue. In

such a case, the Commissioner can exercise the jurisdiction. He has contended that, in view of the fact that in 1983, the property was sold at a sum of Rs. 45 lakhs and the assessee was having one-fifth share, the valuation which was adopted by the Wealth-tax Officer for the assessment years in question is erroneous and, accordingly, the Commissioner was justified in revising the assessments in terms of Section 25(2) of the Act. He has relied on several decisions in support of his contentions, namely, Avtar Singh Sandhu Vs. Wealth Tax Officer and another, , Dr. Keki Hormusji Gharda Vs. B.H. Raisinghani, Wealth-tax Officer, Companies Circle III (2), Bombay and another, , Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, and Additional Commissioner of Income Tax, Gujarat Vs. Mukur Corporation, .

10. Mr. Sanjay Bhattacharjee, learned counsel appearing for the assessee, has contended firstly that the Commissioner could not have taken into account the sale of the property at Rs. 45 lakhs which is a subsequent event inasmuch as this fact was not and could not have been before the Wealth-tax Officer at the time of the original assessment ; in other words, it did not form part of the records. Accordingly, the Commissioner did not have any jurisdiction to look into the subsequent materials. He has relied on a decision of the Allahabad High Court in Commissioner of Wealth-tax Vs. Raj Narain Pratap Narain (HUF), . On merits, he contended that, even if it was sold at a higher price, since it was a tenanted property, the only method of valuation which could be resorted to is the rental method as has been laid down by this court and, if such valuation was made on the basis of the recognised method of valuation, then it cannot be said that the valuation made by the Wealth-tax Officer was erroneous. He has relied on a decision in the case of Debi Prosad Poddar Vs. Commissioner of Wealth Tax, . In that case, this court had held that the rental method should be the appropriate method in determining the valuation of a property which is let out. In that case, although the rental method gave the result of having a value less than the price paid prior to the date of valuation, even then it was held that the rental method should be adopted.

11. We have considered the rival contentions. It is not necessary for us to consider whether the Commissioner could have looked into the subsequent event, that is to say, the sale of the property at a much higher figure, although we are of the view that the Commissioner of Wealth-tax, in exercising his jurisdiction u/s 25(2) of the Act, is not to confine himself only to the record of assessment for the year in question. He may take into account all relevant facts which may come into his possession and which may have a relevant and material bearing on the question whether the assessments made by the Wealth-tax Officer are erroneous or improper.

12. During the relevant years, the property was in the occupation of the assessee. The property was thereafter let out during the assessment year 1982-83 on a monthly rent of Rs. 3,000.

13. The Tribunal came to a finding that the Commissioner of Wealth-tax has not

indicated that the orders passed by the Wealth-tax Officer were erroneous. The assessee was required to show the market value of the property at No. 9, Wood Street property. Market value is the price which the property would fetch if sold in the open market. Where the property is let out, the market value may be taken either by capitalising the net rent or the municipal value. The Tribunal found that the assessee has capitalised the municipal value by adopting the multiplier of 16 and, accordingly, he disclosed the value of the property. Once this fact was on the record, the Wealth-tax Officer has correctly accepted the value and, if the Wealth-tax Officer had accepted the value, it could not be said that the assessments made by him were erroneous so as to give power to the Commissioner u/s 25(2) of the Wealth-tax Act. Hence the assessee succeeds on this ground. This view of the Tribunal, in our opinion, cannot be said to be erroneous on the facts of this case.

14. The Tribunal also took into account the fact that rule 1BB of the Wealth-tax Rules, despite having come into force in 1979-80, was applicable to any pending assessments. If the value of the property is determined with reference to rule 1BB, then the value would not exceed the value which had already been declared by the assessee. The Tribunal accepted this position and there was no dispute that 9, Wood Street property, was a residential building during the years under consideration and, therefore, the value was to be determined by applying rule 1BB of the Wealth-tax Rules. The Tribunal found that "if the municipal rent on the basis of the annual value is determined and the same was capitalised at twelve and a half times the value would not exceed the amount which had already been shown by the assessee". This finding has not been challenged.

15. The Tribunal took another fact into account, viz., that the property was let out during the assessment year 1982-83 on a monthly rent of Rs. 3,000. The assessee's share which is verified from the assessment order passed by the Wealth-tax Officer on November 30, 1984, for the assessment year 1982-83 is at Rs. 4,980. If the net rent receivable by the assessee in 1982-83 is capitalised by adopting a fair multiplier, the value taken, more or less, would come to the same which had been declared by the assessee. Under the above circumstances, even after considering the capitalisation of net rent, it could not be said that the value declared by the assessee was incorrect. Further, the assessee had indicated before the Commissioner of Wealth-tax that though the property was sold for Rs. 45 lakhs, the property was having two incumbrances. Firstly, the property was under acquisition by CMDA for widening the road. Secondly, the property could not be sold to any person other than any institution. These factors are also very important in determining the market value prior to its sale. After considering the totality of the circumstances, the Tribunal found that there was no material before the Commissioner of Wealth-tax to come to this conclusion that the orders passed by the Wealth-tax Officer for these years were erroneous so as to be prejudicial to the interests of the Revenue. Consequently, we do not find any reason to interfere with the decision of the Tribunal on the facts found by the Tribunal.

16. Having regard to the facts and circumstances of the case, we are of the view that, even if the subsequent fact, the sale of the property could be taken into account, the facts as were relevant at the material time show that the valuation was made correctly by taking the recognised method of valuation in determining the market value of a property occupied by the assessee. The Tribunal has taken into account the rent when the property was let out and if such letting out value was also considered, even then, it could not be said that the value which was adopted to determine the valuation of the property at the material time was not correct or proper. It is not the case of the Commissioner of Wealth-tax that the method which was adopted by the Wealth-tax Officer at the material time in determining the value of the property was not the appropriate method or the correct method.

17. For the reasons aforesaid, we answer the question in this reference in the affirmative and in favour of the assessee.

18. There will be no order as to costs.

Shyamal Kumar Sen, J.

19. I agree.