
(1968) 03 PAT CK 0016
In the Patna High Court
Case No : Tax Case No's. 44 to 46 of 1966

Commissioner of Wealth Tax

APPELLANT

Vs

Parshva Properties Ltd.

RESPONDENT

Date of Decision : 19-03-1968

Acts Referred:

Wealth Tax Act, 1957 — Section 7(1), 7(2)

Citation : (1969) 17 BLJR 701 : (1969) 73 ITR 388 : (1968) 1 PLJR 438

Hon'ble Judges : R.L. Narasimhan, C.J.;Baidyanath Jha, J

Bench : Division Bench

Advocate : Tarkeswar Prasad and Manindranath Verma, for the Appellant;
Brajeshwar Prasad Sinha and Shambhu Sharan, for the Respondent

Judgement

B.N. Jha, J.—The Income Tax Appellate Tribunal, Patna Bench, Patna, has stated the following questions u/s 27(1) of the Wealth-tax Act) 1957, for the opinion of this court:

- "1. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in valuing the immovable properties at their market value departing from the valuation taken by the Wealth-tax Officer of the entire business assets as a whole as provided u/s 7(2) of the Act ?
2. Whether the basis of determining the market value of the immovable properties by the Appellate Tribunal was erroneous in law ?
3. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in valuing the fixed assets after allowing adjustment so as to correspond to the written down value after deduction of ordinary and extra shift allowance ?
4. Whether, on the facts and circumstances of the case, the estimated Income Tax liability was legally and validly deductible in arriving at the net wealth of the assessee ? "

2. The assessee is a limited company and carries on its business in the name of Messrs. Parshva Properties Limited. The assessee was engaged in the extraction of limestone, share dealings and held immovable properties. The assessee submitted return of its net wealth together with the balance-sheet for the purpose of assessment of wealth-tax u/s 14(2) of the Wealth-tax Act, 1957 (hereinafter referred to as the Act), for the assessment years 1957-58 (Tax Case No. 44 of 1966), 1958-59 (Tax Case No. 45 of 1966) and 1959-60 (Tax Case No. 46 of 1966) and the corresponding valuation dates were January 31, 1957, 1958 and 1959, respectively. u/s 211 of the Companies Act, every company is required to give a true and fair view of the state of affairs in the balance-sheet of the company at the end of the financial year. Rule 3(b) of the Wealth-tax Rules enjoins on the assessee which carries on business to furnish, along with the return of net wealth, a copy of the balance-sheet or a true balance as on the valuation date or on the date of closing of accounts together with a copy of the auditor's report, if any.

3. The Wealth-tax Officer adopted the valuation of the properties of the company as mentioned in its balance-sheet under the provisions of Section 7(2)(a) of the Act and rejected the contention of the assessee that the house properties should be assessed according to the annual value. In his opinion, there was no sufficient material before him to ascertain the valuation of each item of the properties. He also rejected the contention of the assessee that the Income Tax liability should also be taken into account while determining the net wealth of the company. The officer also did not accept the contention of the assessee that the depreciation value of the assets as contemplated under the Income Tax Act should be taken into account on the ground that under the Act the value of the properties on the date of assessment was to be taken into account and the depreciation as contemplated under the Income Tax Act had no connection between the depreciation value and the market value. An appeal by the assessee before the Appellate Assistant Commissioner of Income Tax failed. He also negated the contention of the assessee with regard to the aforesaid matter and affirmed the assessment as made by the Wealth-tax Officer in all the three cases.

4. The assessee moved the Income Tax Appellate Tribunal which, however, gave effect to the contentions of the assessee and decided the appeal in its favour. Hence, at the instance of the Wealth-tax Commissioner, the above-mentioned questions have been referred to this court for its opinion.

5. In order to appreciate the points raised in the case it is necessary to consider briefly the scheme of the Act. u/s 3 of the Act, every individual, Hindu undivided family or company has got to pay a tax as wealth-tax for every financial year commencing on and from the first day of April, 1957, in respect of the net wealth on the corresponding valuation date. u/s 2(m), " net wealth " means the amount by which the aggregate value computed in accordance with the provisions of the Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth, is in

excess of the aggregate value of all the debts owed by the assessee on the valuation date. u/s 2(q) valuation date, in relation to any year for which assessment is to be made under this Act, means the last day of the previous year as defined in Clause (11) of Section 2 of the Incomes-tax Act if an assessment was to be made under that Act for that year. Section 7 of the Act provides the mode of ascertaining the value of assets for the purposes of the Act. It runs as follows:

" 7. (1) 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 Wealth-tax Officer it 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 Wealth-tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets 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 the circumstances of the case may require."

6. Section 7(1) makes provisions for the ascertainment of the value of the assets of all classes of assesseees. The Wealth-tax Officer has to determine the market value of the assets on the valuation date, i.e., the price the assets would fetch if sold in the open market on that date. Ordinarily, the Wealth-tax Officer has to proceed u/s 7(1) of the Act for the purpose of ascertainment of the net wealth, but in the case of a company it is for him to proceed either under Sub-section (?!) or Sub-section (2)(a) of Section 7 of the Act, that is, he can either determine the market price which the assets would fetch if sold in the open market on the date of valuation or he may take the global value of the assets as given in the balance-sheet of the company and take the valuation of the assets as a whole and make necessary adjustments therein as the circumstances of the case may require. He cannot pick and choose and determine the value of the assets of the assessee by determining the market value of some of the assets under Sub-section (1) and take the value of some of the assets as mentioned in the balance-sheet. Ordinarily, in the case of a company valuation of the assets as given by the assessee itself in the balance-sheet will be taken to be correct unless it is shown to be incorrect. It is open to the assessee to satisfy the officer that the valuation as mentioned in the balance-sheet does not represent the true valuation and has been inflated for certain purposes. It is also open to the Wealth-tax Officer to accept the valuation as given in the balance-sheet or to substitute in its place another valuation as he thinks fit (see *Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta,*).

7. The assessee in all the three cases filed returns of the net wealth of the company along with the balance-sheet as provided in Rule 3(b) of the Wealth-tax Rules, 1957. The Wealth-tax Officer found that the assessee was possessed of

fixed assets. No evidence of the value of each item of the assets was produced before him. In these circumstances, in his opinion, it was not possible for him to proceed u/s 7(1) of the Act and hence he adopted the other alternative method of valuation by adopting the global value of the net wealth u/s 7(2)(a) of the Act. He also allowed some deductions. The assessee contended that with regard to the value of the house properties valuation should be made by taking 20 times of the annual municipal valuation which represented the rental which the properties fetched in a particular year, but the officer found it unacceptable in the circumstances of the case, because the properties in the office area might fetch more and in a residential area the rental might be low, but the value of the properties in the residential area might be very high. The house in question is situated in the best residential locality in Calcutta and is fitted with certain latest luxurious amenities which are not available in an ordinary house. In his opinion, in a previous Income Tax case of the assessee, municipal valuation in this case was considered to have no relation either to the annual costs of the house or to its value at a particular date. Hence, he thought that the value of the properties as given in the balance-sheet was an ascertained fact and, therefore, he determined the net wealth on the valuation of the properties as given in the assessee's balance-sheet. The Income Tax Appellate Tribunal, however, took a different view. In the opinion of the Tribunal under both Sub-section (1) and Sub-section (2)(a) of Section 7 the market value of the properties is to be determined. According to it, the assessee was engaged in extraction of limestone or share-dealings business and hence the house properties could not be the assets of the business and, therefore, the house properties could not be valued u/s 7(2)(a) of the Act. Hence the assets had to be valued under Sub-section (1) of Section 7 of the Act. Thereafter, it proceeded to determine valuation of the house properties as determined in the previous Income Tax case of the assessee after making adjustments in respect of the municipal tax, collection charges and other things. With regard to the lands which were not appurtenant to the house they were valued on the basis of proportionate valuation of the lands given in the balance-sheet. That is, in determining the valuation of the land, the Tribunal based its decision partly on the valuation of the house as determined previously and partly on the valuation as given in the balance-sheet. With regard to the other fixed assets the Tribunal determined the valuation on the basis of valuation as given in the balance-sheet.

8. Learned counsel for the petitioner submitted that the Tribunal was wrong in the method of determination of the net wealth of the company, partly under Sub-section (1) of Section 7 in respect of the house properties and partly u/s 7(2)(a) in respect of the rest of the assets by adopting the valuation as given in the balance-sheet. He further submitted that the Tribunal was wrong in holding that the house properties were not the assets in the business of the company and as such the valuation of these properties could only be determined u/s 7(1) of the Act. There is force in the contention of the learned counsel for the petitioner. The distinction which the Tribunal was making between the assets in the business and

the assets of the business was never put forward by the assessee before the Wealth-tax Officer and the Appellate Assistant Commissioner. True it is that the assessee is engaged in extraction of limestone and share-dealings business, but nevertheless the house properties might be required for carrying on the business. Sufficient materials were not placed on the record to justify the distinction which the Tribunal sought to make in this case. Moreover, the authorities are not authorised in the case of a company to proceed to determine the market value of some items of the assets under Sub-section (1) of Section 7 and with regard to the rest of the properties to fall back u/s 7(2)(a) by adopting the valuation as given in the balance-sheet. The Tribunal" was of the opinion that Section 7(2)(a) of the Act itself provided that in the balance-sheet valuation the Wealth-tax Officer could make necessary adjustments and, therefore, with regard to the house properties valuation could be determined u/s 7(1) of the Act. Having regard to the valuation as shown in the balance-sheet of the business and making such adjustments therein as the circumstances of the case may require does not mean that he should proceed partly u/s 7(1) and partly u/s 7(2)(a). u/s 7(2)(a) the net value of the business as a whole has got to be taken, as mentioned in the balance-sheet, whereas u/s 7(1) the market value of the assets has got to be determined. In the former case the Wealth-tax Officer is not to determine the market value, but to take the value as a whole for the purpose of the tax. Of course, some adjustments could be made if the circumstances of the case so require. In this respect the Tribunal took a wrong view of the law that under both the clauses of Section 7 the market value of the assets has got to be determined and hence he could proceed partly under Sub-section (1) and partly under Sub-section (2)(a). No contention was raised nor was any attempt made to show that the valuation as given in the balance-sheet of the house properties was not correct in fact. In these circumstances, the Tribunal was not justified in departing from the mode of determining the net value as given u/s 7(2)(a) of the Act, which is the normal rule in the case of a company. The Supreme Court in the case of Kesoram Industries and Cotton Mills Ltd. mentioned above has held that the normal procedure as laid down in Section 7(1) is to be followed in the case of a company. The Wealth-tax Officer was correct in the circumstances of the case and, in fact, adopted the correct method of valuation as contemplated u/s 7(2) (a).

9. The Wealth-tax Officer did not allow deduction in the value of the assets on account of wear and tear and extra shift allowance. The Tribunal, however, was of the opinion that the assets of the company are bound to suffer on account of wear and tear and, consequently, depreciate in value, and, as such, it held that ordinary rates of depreciation provided under the Income Tax Act should be the fair measure of normal wear and tear. Hence, it directed that the book value of fixed assets should be so adjusted as to correspond with the written down value after taking ordinary depreciation for the years of use together with extra shifts where applicable. This matter is concluded by a Bench decision of this court in COMMISSIONER OF WEALTH-TAX, BIHAR AND ORISSA Vs. ROHTAS INDUSTRIES

LTD., , wherein it was held that in computing the wealth of the company the value of the fixed assets shown in the balance-sheet after taking into account the depreciation should normally be accepted as correct, unless the figures shown as depreciation in the balance-sheet are not accepted for good reasons. Therefore, the Tribunal was justified in valuing the fixed assets after allowing adjustment so as to correspond to the written value and extra shift allowance, but the Tribunal allowed depreciation at the ordinary rates of depreciation allowable under the Income Tax Act. The Tribunal did not direct its mind as to whether the depreciation shown in the balance-sheet should be accepted as correct depreciation. It only allowed depreciation at the rate allowable under the Income Tax Act. Therefore, the matter required further consideration. However, the Tribunal was justified in allowing deduction on account of normal wear and tear and extra shift allowance, but not with a view to allowing deduction so as to correspond to the written down value.

10. Provision was made also in the balance-sheet for the payment of income tax of the years of account. The Wealth-tax Officer refused to make allowance on that account in determining the net wealth of the company. The Tribunal noticed the conflict of views of the High Courts about the deducibility of the Income Tax liability in the absence of normal assessment and notice and the legal question as to whether such liability would be " a debt " under those circumstances ; but it held that, as the market value of the assets was bound to depreciate due to anticipated income tax liability and the prospective buyer of the undertaking would pay lesser price, the assessee was justified in deducting the estimated Income Tax liability. In the recent judgment of their Lordships of the Supreme Court in *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth-tax*, it has been held by a majority that liability to pay Income Tax was a present liability, even though the tax may be quantified later on. It is, therefore, deductible as a debt, u/s 2(m) of the Act.

11. For the reasons stated above, I answer the questions as follows :

Questions Nos. 1 and 2.--They are answered in the negative.

Question No. 3.--The Appellate Tribunal was justified in valuing the fixed assets after allowing adjustments on account of depreciation of ordinary and extra shift allowance, but the Tribunal's view that depreciation should be allowed so as to bring down the market value as to correspond to the written down value is wrong. In that respect the Tribunal has to reconsider the matter in the light of the law laid down by this court in *Commissioner of Wealth-tax v. Rohtas Industries Ltd.*

Question No. 4 :--The question is answered in the affirmative, but for different reasons. "

12. In the circumstances of the case, there will be no order as to costs.

Narasimham, C.J.

13. I agree.