(1991) 07 DEL CK 0041

In the Delhi High Court

Case No : Wealth-Tax Case No''s. 96 to 102 of 1988

Commissioner of Wealth Tax APPELLANT

Vs

Prithvi Raj and Co. RESPONDENT

Date of Decision : 11-07-1991

Acts Referred:
Wealth Tax Act, 1957 — Section 25(2), 27(1)

Citation : (1992) 62 TAXMAN 289

Hon'ble Judges : D.K. Jain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : Rajendra and R.C. Pandey, for the Appellant; P.N. Monga and Gagan Naphrey, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner seeks reference of the following two questions: 1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not upholding the order of the Commissioner u/s 25(2) of the Wealth-tax Act, 1957?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the instructions of the Ministry of Works and Housing were not on record when it was a general circular published in the Official Gazette and as such did exist at the time of framing the assessment and the Assessing Officer was required to have knowledge of the same?

In the present case, the question involved is with regard to the valuation of the property situate at 39, Najafgarh Road, New Delhi. This property is industrial and before the Assessing Officer, a valuation report prepared by a registered valuer had been furnished by the assessee.

The WTO accepted the report of the registration valuer and computed the net wealth of the assessee.

The Commissioner then instituted proceedings u/s 25(2) of the Wealth- tax Act, 1957 (''the Act''). He came to the conclusion that the WTO did not take into consideration the fact that a letter dated 27-6-1979, issued by the Ministry of Works and Housing had valued the commercial property in Najafgarh area at Rs. 1,800 per sq. yd. He further held that the DDA had also fixed the land prices for industrial plots in the area which varied from Rs. 191 to Rs. 210 per sq. mt. and in respect of commercial properties, the prices had been fixed by the DDA varying from Rs. 287 to Rs. 315 per sq. mt. He also took into account that another valuer, appointed by the assessee, had valued the land at Rs. 200 per sq. mt. in respect of the area found within the limit permissible under the Urban Land (Ceiling & Regulation) Act, 1976 and he had valued the surplus land at Rs. 10 per sq. mt. The Commissioner then concluded that the department did not have a chance to look at the valuation report and to get the land valued. The order of the WTO was, accordingly, set aside.

2. The Tribunal, in an appeal filed before it, came to the conclusion that the order of the Commissioner was erroneous. It also held that the Commissioner had not given any express findings that the WTO had failed to make any inquiry or that his orders were erroneous or prejudicial to the interests of the revenue.

3. Being aggrieved, the Commissioner filed the application u/s 27(1) of the Act for referring the aforesaid two questions to this Court. The Tribunal, however, rejected the said application.

4. It is contended before us by the learned counsel for the petitioner that the Commissioner was fully justified in exercising his jurisdiction u/s 25(2) and when he came to the conclusion that the order of the WTO should be set aside, the Tribunal ought not to have quashed the order of the Commissioner.

5. It is true that ordinarily the Commissioner has been given jurisdiction to examine, u/s 25(2), whether the order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the revenue, but in the instant case, however, the Commissioner had nowhere formed an opinion that the assessment order was prejudicial to the interests of the revenue. Apart from that jurisdictional infirmity, the Commissioner overlooked the fact that the rate of Rs. 1,800 per sq. yd. was in respect of the commercial property. The Commissioner himself had referred to two different rates fixed by the DDA in respect of industrial land and commercial land. This clearly shows that the rate of the commercial land is not necessarily the same as the rate for an industrial plot of land. Furthermore, the rate of industrial plot is lower than that of the land for commercial use. What is more striking is that the two governmental authorities, viz., the Ministry of Works and Housing and the DDA, have given rates of land which are at great variance with each other. Whereas the rate of commercial land has been fixed by the Ministry of Works & Housing, the DDA, on the other hand, has fixed the value of the said land between Rs. 287 and Rs. 315 per sq. mt. This itself shows divergence in the opinion of the authorities with regard to the valuation of land. In the absence of specific instances of purchase and sale, it is obvious that certain amount of guess work is involved in determining the price of

the land.

6. In the instant case, the WTO has relied upon the valuation report which had fixed the value of the entire land at Rs. 140 per sq. yd. The Commissioner has sought to criticise this and in this behalf has placed reliance upon the valuation of another valuer who had valued the land at Rs. 200 per sq. mt. The Commissioner, however, overlooked the fact that the total valuation of land arrived at by the first valuer was far in excess of the other valuer. Though the first valuer had taken the rate of Rs. 140 per sq. yd., he had applied that rate to the entire 4,696 sq. yds. of land and determined the valuation of the land at Rs. 6,57,300. The other valuer, on whose report, reliance was sought to be placed by the Commissioner, had valued only 1,335.46 sq. mts. of land at the rate of Rs. 200 per sq. mt. whereas the remaining 2,378.52 sq. mts. of land had been valued at Rs. 10 per sq. mt. and the total valuation of the land had been determined by the second valuer at Rs. 2,90,877.20. The WTO having accepted the valuation of the first valuer, who had determined the land price at a much higher figure of Rs. 6,57,300, as compared to the valuation by the second valuer, who had determined the value of the land at Rs. 2,90,877.20, could not be said to have acted in a manner prejudicial to the interests of the revenue. In these circumstances, in our opinion, no question of law arises and the petition is dismissed.

There will be no order as to costs.

