

(1991) 03 DEL CK 0042

In the Delhi High Court

Case No : W.T.C. No's. 96 to 102 of 1988

Commissioner of Wealth Tax

APPELLANT

Vs

Prithvi Raj and Co.

RESPONDENT

Date of Decision : 11-03-1991

Acts Referred:

Citation : (1991) 03 DEL CK 0042

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

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 of Wealth-tax 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 ?"

2. 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 an industrial unit and, before the Assessing Officer, a valuation report prepared by a registered valuer had been furnished by the assessed.

3. The Wealth-tax Officer accepted the report of the registered valuer and computed the net wealth of the assessed.

4. The Commissioner of Wealth-tax then instituted proceedings u/s 25(2) of the Wealth-tax Act, 1957. He came to the conclusion that the Wealth-tax Officer did

not take into consideration the fact that a letter dated June 27, 1979, issued by the Ministry of Works and Housing had valued the commercial property in Najafgarh area at Rs. 1,800 per square yard. He further held that the D. D. A. had also fixed the land prices for industrial plots in the area which varied from Rs. 191 to Rs. 210 per square metre and, in respect of commercial properties, the prices had been fixed by the D. D. A. varying from Rs. 287 to Rs. 315 per square metre. He also took into account that another valuer, appointed by the assessed, had valued the land at Rs. 200 per square metre in respect of the area found within the limit permissible under Urban Land (Ceiling and Regulation) Act, 1976, and he had valued the surplus land at Rs. 10 per square metre. 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 Wealth-tax Officer was, accordingly, set aside.

5. 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 finding that the Wealth-tax Officer had failed to make any inquiry or that his orders were erroneous or prejudicial to the interests of the Revenue.

6. Being aggrieved, the Commissioner filed an application u/s 27(1) for referring the aforesaid two questions to this court. The Tribunal, however, rejected the said application.

7. It is contended before us by 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 Wealth-tax Officer should be set aside, the Tribunal ought not to have quashed the order of the Commissioner.

8. 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 in so far as it is prejudicial to the interests of the Revenue, but in the instant case, however, the Commissioner has 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 square yard was in respect of commercial property. The Commissioner himself has referred to two different rates fixed by the D. D. A. 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 for an 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 D. D. A., have given rates for land which are at great variance with each other. Whereas the rate for commercial land has been fixed at Rs. 1,800 per square yard by the Ministry of Works and Housing, the D. D. A., on the other hand, has fixed the valuer for the said land between Rs. 287 and Rs. 315 per square metre. 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.

9. In the instant case, the Wealth-tax Officer has relied upon the valuation report which had fixed the value of the entire land at Rs. 140 per square yard. 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 square metre. The Commissioner, however, overlooked the fact that the total valuation of land arrived at by the first valuer was far in excess of that of the other valuer. Though the first valuer had taken the rate to be Rs. 140 per square yard, he had applied that rate to the entire 4,696 square yards 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 square metres of land at Rs. 200 per square metre, whereas the remaining 2,378.52 square metres of land has been valued at Rs. 10 per square metre and the total valuation of the land has been determined by the second valuer at Rs. 2,90,877.20. The Wealth-tax Officer 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.

10. In these circumstances, in our opinion, no question of law arises and the petition is dismissed.

11. There will be no order as to costs.