(1996) 02 GAU CK 0019

In the Gauhati High Court

Case No : Wealth-tax Reference No. 2 of 1989

Commissioner of Wealth Tax — APPELLANT

Vs

Rabindra Prasad Dutta — RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:
Wealth Tax Act, 1957 — Section 7(1)

Citation : (1996) 219 ITR 384

Hon'ble Judges : N. Surjamani Singh, J;D.N. Baruah, J

Bench : Division Bench

Advocate : G.K. Joshi and U. Bhuyan, for the Appellant; None, for the Respondent

Judgement

1. In this wealth-tax reference u/s 27 of the Wealth-tax Act, 1957, the following question has been referred by the Tribunal :

"Whether the Tribunal was justified in sustaining the capitalising factor at ten times as directed by the Appellate Assistant Commissioner, without considering that the method of. valuation made in the assessment was different from that of the preceding year ?"

2. The facts of the case for the purpose of giving opinion on the question referred may be stated as follows :

That the assessee has a four storeyed R.C.C. building at J.C. Das Road, Panbagar, Guwahati. The said building was and has been used for commercial purpose. The Wealth-tax Officer mentioned that the value of the building as per the valuer''s report dated July 13, 1977, was Rs, 4,98,000. The Wealth-tax. Officer, however, felt that the valuation assessed by the valuer was much on the lower side inasmuch as the value of the land and the building by efflux of time had appreciated to a great extent. The. annual rent of the building was Rs. 1,20,000. The Wealth-tax Officer in order to determine the market value of the building applied the provisions of the Assam Urban Areas Rent Control Act, 1972.

As per the said valuation the total value of the property was found to be Rs. 15,09,462 and after allowing exemption u/s 5(1)(iv) of the said Act, the net value of the property came to Rs. 14,09,462 which was included in the wealth of the assessee. Being aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner of Wealth-tax, Guwahati Range, Guwahati, who directed to determine the value of the property by multiplying the annual rent ten times following the procedure adopted in the previous year. The Revenue being aggrieved took up the matter before the Appellate Tribunal contending that the Appellate Assistant Commissioner was not justified in directing that the value should be ten times the rent. The Tribunal after hearing the parties confirmed the order passed by the Appellate Assistant Commissioner. The Revenue requested the Tribunal to refer the following two questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the capitalising factor should be ten times of the net rent as directed by the learned Appellate Assistant Commissioner ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deciding the point at issue without taking into consideration that the method of valuation was different than that of the preceding year ?"

3. However, the Tribunal referred only a modified question as mentioned above.

4. We have heard Mr. G.K. Joshi, learned counsel for the Revenue assisted by Mr. U. Bhuyan, learned junior counsel. None appears for the respondent.

5. Mr. Joshi submits before us that the Tribunal without proper application of mind passed the order justifying the order passed by the Appellate Assistant Commissioner. He submits that there is no such provision for multiplication of the rental amount by ten times. In this connection, Mr. Joshi has drawn our attention to Section 7 of the Wealth-tax Act, 1957, and also Rule 1BB of the Wealth-tax Rules, 1957, as those stood at the relevant time.

6. As per Section 7(1) of the Wealth-tax Act, 1957, as it stood at the relevant time, the value of any asset, other than cash, for the purpose of this Act should be estimated to be the price which in the opinion of the Assessing Officer it would fetch if sold in the open market on the valuation date. We quote Section 7(1) of the .Act :

"7. Value of assets how to be determined.--(1) Subject to any rules made in this behalf, 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.

Explanation.--For the removal of doubts, it is hereby declared that the price or other consideration for which any property may be acquired by or transferred to any person under the terms of a deed of trust or through or under any restrictive covenant in any instrument of transfer shall be ignored for the purpose of determining the price such property would fetch if sold in the open market on the valuation date."

7. From the provisions of Section 7(1) of the Wealth-tax Act, it is clear that the valuation of the property is to be determined on the basis of the market value meaning thereby the price that would fetch if it is sold in the market. However, these provisions are subject to the Rules.

8. Mr. Joshi has drawn our attention to Rule 1BB for valuation of house which reads thus-

"1BB. Valuation of house.--(1) For the purposes of Sub-section (1) of Section 7, the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely :--

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8 ; and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction 100/9 :

Provided that in relation to a house which is built on leasehold land, this Sub-rule shall have effect as if for the fraction 100/8 in Clause (a) or as the case may be, the fraction 100/9 in Clause (b), the fractions 100/9 and 100/10, respectively, had been substituted."

9. The above rule is applicable only in respect of house which is wholly or mainly used for residential purpose and if it is for that purpose, the market value can be arrived at by multiplying as enumerated in the said rule.

10. Admittedly, the present building was not used for residential purpose mainly or wholly. It was wholly used for commercial purpose. Therefore, in our opinion, this rule is not applicable. Mr. Joshi submits that there is no other rule in this connection. As Rule 1BB is not at all applicable, the Wealth-tax Officer is to determine the value of the property only by determining the market value as mentioned in Section 7(1) of the Act.

11. In view of the above, we are of the opinion that the Appellate Assistant Commissioner was not justified to assess the value of the property by using multiplier of ten times inasmuch as it is the duty of the Wealth-tax Officer to determine the value of the building on the basis of the market value as enumerated in Section 7(1) of the Act. Therefore, we are of the opinion that the Tribunal was not justified in affirming the decision of the Appellate Assistant Commissioner who adopted the multiplier of ten times inasmuch as this mode is not prescribed by the Act as well as the Rules.

12. For the reasons stated above, the question is answered in the negative and in favour of the Revenue.