
(1987) 04 AHC CK 0044

In the Allahabad High Court

Case No : Wealth-tax Reference No. 99 of 1986

Commissioner of Wealth-tax

APPELLANT

Vs

Ram Saran Kajriwal

RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:

Wealth Tax Act, 1957 — Section 7

Citation : (1987) 64 CTR 32 : (1987) 168 ITR 485 : (1987) 32 TAXMAN 356

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Bharatji Agarwal, for the Appellant; Prabhakar and S. Chopra, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Gulati, J.—This reference has been made under Sub-section (1) of Section 27 of the Wealth-tax Act, 1957 (hereinafter to be referred as "the Act") The question referred is :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the reversionary value of land cannot be included in the valuation of properties made on rent capitalisation method ?"

2. The facts are that Ram Saran Kajriwal is an individual subject to wealth-tax. He owns among other assets 1/6th share in each of the three properties known as :

(1) 24/73, Birhana Road, Kanpur.

(2) 73/27, Collectorganj, Kanpur.

(3) 53/2, Nayaganj, Kanpur.

3. The last mentioned two properties were fully tenanted. The major portion of

the property at Birhana Road was occupied by the assessee for self-residence. The other part of that property was also tenanted and in possession of other persons being let out to them. The Wealth-tax Officer referred the valuation of all the three properties u/s 16A of the Act to the Valuation Officer. Being bound by the valuation report, he computed the value of the assessee's share in the aforesaid properties as per the Valuation Officer's report. There is no indication in the assessment order about the method on which the valuer had worked out the valuation.

4. Against the assessment order, the assessee preferred an appeal before the Commissioner of Wealth-tax (Appeals). From the appellate order, it is clear that the valuation of these properties was determined by "rent capitalisation method" and further the valuer also added certain amounts for reversionary value of land to the rent capitalised value to arrive at a fair market value of the property as on the valuation date.

5. Before the Commissioner of Wealth-tax (Appeals), two points were taken by the assessee. The first was with regard to the residential portion in the occupation of the assessee. The contention was that the value of that portion should have been determined in terms of Section 7(4) of the Act, i.e., on the same value as it was adopted for the assessment year 1971-72. This objection was accepted in appeal and there is no further dispute before us on this point;

6. The second point taken was in connection with the tenanted premises in respect of all the three properties. The contention was that the valuer having determined the valuation by "rent capitalisation method", nothing more should have been included on account of the reversionary value of the land. This contention was not accepted by the Appellate Assistant Commissioner. He held that the multiplier applied by the valuer to capitalise the rent was on the lower side. According to him, the addition on account of the reversionary value had been made to compensate for the low multiplier. Further, if a correct multiplier was to be applied, even without any addition on account of the reversionary value, the value returned by the departmental valuer would appear to be reasonable. With these remarks, the second contention was rejected.

7. The assessee being still aggrieved, appealed to the Income Tax Appellate Tribunal, which allowed the assessee's appeal, following its own order relating to the immediately two preceding years, in the assessee's own case. It held that the reversionary value of land should not be included while computing the value based on the "rent capitalisation method". It, therefore, directed the Wealth-tax Officer to exclude the reversionary value of land from the valuation of the three properties in question and then work out the assessee's share in the remaining value which alone should be included in the assessment.

8. We do not have the benefit of the Tribunal's order which has been followed in the year before us. We were informed at the Bar that in taking the aforesaid view, the Income Tax Appellate Tribunal relied upon and followed a decision of

the Calcutta High Court in Commissioner of Income Tax Vs. Smt. Ashima Sinha, .

9. Section 7 of the Act deals with the machinery of valuation. Sub-section (1) of Section 7 says that subject to the rules framed under the Act, the value of any asset, other than cash, shall be the price which in the opinion of the Wealth-tax Officer, the assets should fetch if sold in the open market. The same criterion is provided under Sub-section (3) of Section 7, unless the case is covered by Sub-section (4) of Section 7 in respect of an asset, when the valuation is to be made by the Valuation Officer, instead of the Wealth-tax Officer himself. Thus, the provisions contained in these two Sub-sections direct the authorities concerned to imagine a hypothetical open market where there are willing purchasers and a seller and to estimate in "money's worth" the value of an asset, on a fictional sale, as if it was to be sold, in the open market, on the appointed date. Such estimate in "money's worth" shall be taken to be the value of that asset for wealth-tax purposes. The wealth-tax authorities are, therefore, entitled to adopt such method as will entitle them to determine the market value of a given asset. The estimated value, therefore, which may be determined, by whatever method employed, must be reasonably proximate to the market value. It is for these reasons that the method employed to work out the market value in a given case assumes importance in these proceedings and the valuation determined by the authority concerned has been made subject to review before the hierarchy of higher authorities named under the Act.

10. Before proceeding further, we may note that it was not disputed before us that the correct method of valuing the properties in dispute is to capitalise the annual rent received from these properties. There is also no dispute on the multiplier adopted for capitalising the rent by the tax authorities. It was also admitted that all the properties are fully developed and tenanted. The tenancy is regulated by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972), which imposes restrictions on enhancement of rent. Under the provisions of this Act, the landlord is not free to raise rent whenever he likes. There are restrictions on the rights of a landlord to evict a tenant. It may be observed that the right to realise rent and letting being controlled by the State, the value of a property is not likely to be the same as in the cases where such controls have not been imposed. This will have to be kept into account when proceeding further.

11. The only controversy mooted before us by the rival parties is whether an addition on account of reversionary value of land over and above the rent capitalised value in the present case was called for.

12. Learned standing counsel appearing for the Revenue contended that the Income Tax Appellate Tribunal erred when it directed that the reversionary value of land should be excluded in determining the valuation of the properties in dispute. Except for stating the proposition, learned counsel could not cite any authority which may have approved the contention advanced by him. However, he referred to Parks "Principles and Practice of Valuations", 4th Edn., and read

out certain passages from the Chapter "Method of Valuation" to support his case. The passages on which he laid emphasis were those which are extracted by the Calcutta High Court in its judgment in Commissioner of Income Tax Vs. Smt. Ashima Sinha, . We may for ready reference reproduce those passages, which read as follows (at page 34):

"When land is fully developed by buildings erected thereon, when the property is let at a rent from which the fair rent can be ascertained, and when the rent has been proved and is likely to be maintained for years to come, then the rental method of valuation should be applied to determine the market value of the premises..... When a property is valued on the rental basis, the result is the value of the land and buildings taken together and cannot afterwards be apportioned..... This does not mean the land and building method cannot be employed to check a valuation done by the rental method. It simply states that after capitalisation of the rent you cannot deduct the depreciated value of the buildings on the land, and say that the result is the definite value of the land."

13. Learned counsel appearing for the assessee contended that the passages relied upon on behalf of the Department have been the subject-matter of scrutiny by the Calcutta High Court in at least two decisions and the contentions based on those passages, like the one raised in the present case, have been repelled. He further argued that when the value of a given property is worked out by capitalising the rent, it is entirely wrong to think that the value so determined is the value of the superstructure only and it does not include the value of the land over which the building is standing and the land appurtenant thereto. It was argued that in permitting addition for the reversionary value of land to the rent capitalised value, it will amount to double addition for land value. For this proposition, he referred to certain judicial precedents to which we will refer later. He then submitted alternatively that assuming the reversionary value of land could in certain circumstances be added to "rent capitalised value", in the instant case, no such circumstances existed which warranted any such addition.

14. The expression "reversionary" as a legal term means that which is to be enjoyed in reversion. The expression "reversioner" has been defined in Black's Law Dictionary, 5th Edn., "as a person who is entitled to an estate in reversion ; by an extension of its meaning, one who is entitled to any further estate or a property in expectancy." The expression "the reversionary interest" has been given the meaning as "the interest which a person has in the reversion of land or other property", a right to the future enjoyment of a property in occupation of another, the property that reverts to the grantor after expiration of an intervening income interest. The reversionary value of land in the context of the expressions noted earlier, should mean the present consideration for the full value of land obtainable after the specific period is over, in other words, the discounted value of land which will revert to the owner, after the stipulated or estimated period, depending on the life of the building. This concept is based on the assumption that the rental income which is the basis of "rent capitalisation

method" cannot be expected to continue for perpetuity and it must come to an end with the life of the superstructure. In adding the reversionary value of the land, it is assumed that the rental income will come to an end after the economic life of the structure is over and the land thereafter will revert to the owner of the property as an open land together with the old material value of the structure. This value of the land when determined on its present day is called the reversionary value of land.

15. From what has been stated above, it can be stated that the factors among others which govern an addition on account of the reversionary value of the land are that the life of an existing building is of speculative nature and towards the latter part of its effective life the rent is liable to be considerably reduced and, therefore, the rent should be capitalised for the period it is expected depending upon the estimated economic life of the superstructure. The property will revert to the landlord after the economic life of the building free from all incumbrances and restrictions. In actual working out of the reversionary value of land, the other two important factors which are taken into account are the rate of land and the rate of interest which are assumed to be static. The entire concept is based on an imaginary hypothesis and mathematical calculation. It is possible that none of the assumptions on which the reversionary value of the land is added may come true. The building may be destroyed by an act of God or it may be maintained by timely repairs in good state. Likewise, it would be highly imaginary to forecast the land value and determine the reversionary value thereof, as the rate of land may vary according to inflation during the period in future. This will also be equally true as regards the rate of interest. It is not necessary for us to pursue this line of reasoning any further for we would like to restrict the scope of the question referred to us to the facts of the instant case.

16. As noted earlier, we are concerned with the valuation of properties which are governed by the Rent Control Act. So long as the properties are in possession of the tenant, there is no chance of any variation in the amount of rent in years to come, much less of its going down. Under the Rent Control Act, the tenant cannot be evicted nor can the rent be varied except in accordance with law which is the very foundation on which the "rent capitalised method" is applied. Having regard to the present day, in particular the scarcity of living accommodation, tenanted properties are normally kept in reasonably good repair and it is not uncommon to find tenanted buildings whose economic life as per judgment of the valuer might be over, yet they are found in existence having indefinite future life expectancy. The case put forward by the respective parties before us proceeded on the footing that the properties are fully developed and tenanted. There is nothing on the record nor anything was brought to our notice by learned standing counsel for the Department that the rent received from these properties in dispute was not likely to be maintained in years to come or that the properties are very old, obsolete and have practically outlived their economic life.

17. Admittedly, the valuation of the properties in dispute has been determined by

capitalising the rent. It will be beneficial at this stage to discuss what exactly is rent capitalisation method. How is it applied in actual use ? What is the sanction of law behind it ?

18. Parks in his book "Principles and Practice of Valuations" has explained this method in the following manner (p. 40):

"The rental method of valuation may be stated to be :-- from the gross rent of a property deduct all the required outgoings necessary to maintain that property in a state to command that rent and then to capitalise the net rent by a figure known as the Year's Purchase which represents the security of the rent. The result will be the Market Value of the premises in accordance with the Rental Method of Valuation."

19. In *T. Kathissabi v. RDO* AIR 1923 Mad 31, it was observed that when a property is valued on rental basis, the result is value of the land and buildings taken together, and it cannot afterwards be apportioned. This view was expressed in the following terms (at page 31):

"Apart from this we think that when a building and its appurtenant land cannot be valued separately.....the market value must be determined on the net rental value and when that is done, the building cannot be separated from the land, for it is impossible to say what proportion of the rent is fixed on the building and what on the land."

20. In *Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran*, , as per headnote of the report, the Mysore High Court observed :

"In the case of buildings with compounds in a city, which are in the possession of tenants and the tenants cannot be either evicted or the rent payable by them enhanced except in accordance with the provisions of the Rent Control Act, the only appropriate method of valuation is to capitalise the annual rent by a certain number of years" purchase. The method of valuing the site and the building separately and adding up the values would be improper in such cases."

21. The same view has been expressed by the Calcutta High Court in *CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN*, . It was a case arising under the Estate Duty Act where the property in dispute was let out on a monthly rent and was in the occupation of an old tenant. The court observed (at page 770):

"Lastly, in case of buildings which are in possession of tenants..... the only appropriate method of valuation is to capitalise the annual rent by ascertain number of years" purchase. The method of valuing the land and the building separately and adding up the values would be improper in such cases....."

22. There are numerous other judicial precedents expressing similar views. The principles that emerge from those decisions is that in the case of premises which are fully developed and are in the occupation of the tenants whose tenancy is

regulated by the Rent Control Act, the proper method to value the property is to ascertain the annual rent, after providing for all the outgoings, and then to capitalise the net rent by appropriate multiplier, to achieve the market value of such a property. Once this is achieved under this method, no further addition or deduction is permissible from the value so determined.

23. On the facts of the present case and the admitted position on which the case proceeded before us, we find no justification to interfere with the view of the Tribunal when it directed the Wealth-tax Officer to exclude the reversionary value of the land in determining the valuation of the properties by "rent capitalisation method". If the method adopted by the Wealth-tax Officer is accepted, it may lead to undue hardship. In that event, the tax levied in respect of properties in dispute would have no just relationship with its value to the owner. Moreover, the value as noted earlier has to be ascertained by the court in each case with due regard to the condition of the time and factors which affect transactions between a willing seller and an intending buyer. The decision of the Tribunal to estimate the valuation of properties in question which are in the possession of the tenants, yielding fair market rent, which is likely to be maintained in perpetuity can at best be regarded as approximate market value as on the valuation date and adding the reversionary value of land to the capitalised value of rent would not furnish a reliable estimate of the properties. If the Tribunal in its discretion has come to the same conclusion, then on the facts of this case, we see nothing illegal about it.

24. Now coming to the passages from Parks" book "Principles and Practice of Valuations" relied upon by learned standing counsel in support of his argument, as observed earlier, these passages have been the subject-matter of scrutiny by the Calcutta High Court. Their Lordships, after narrating the principle of rent capitalisation method and advertng, to the contention like the one raised before us on behalf of the Department based on the passages extracted above, have observed at page 38 of 116 ITR :

"We have failed to understand either the principle or the logic of the "reversionary" method of valuation as applied by the Valuation (Officer of the Department in the instant case. After following the "yield or rental" method and having arrived at a figure, the Valuation Officer has added to it the value of an imaginary reversion in future. We invited Mr. Pal to "cite any authority which has approved or even indicated this method but he was unable to do so. It is stated in Parks" Valuation (at page 38) that when a property is valued on rental basis, the result is the value of the land and building taken together which cannot afterwards be apportioned,, In the method adopted by the Valuation Officer, the value of the land is taken twice, once being included in the amount arrived at by the "yield or rental" method and again under the "reversionary" method. This is an entirely novel approach but in our view erroneous."

25. We respectfully agree with the aforesaid view expressed by the Calcutta High Court.

26. In the result, we answer the question referred to us in the affirmative, in favour of the assessee and against the Department.