

(1991) 12 DEL CK 0010

In the Delhi High Court

Case No : Wealth Tax Reference No's. 62, 62A, 71, 73, 74, 102 and 103 of 1990

Commissioner of Wealth Tax

APPELLANT

Vs

R.S. Tandon and Others

RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 27

Citation : (1992) 46 DLT 319

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : Rajendra, B. Gupta, D.N. Malhotra, R.C. Pandey, D.C. Taneja, R.N. Verma, R.K. Chauvla and G.R. Agnihotri, for the Appellant;

Judgement

Arun Kumar, J.

(1) The Tribunal has referred the following question for opinion of this Court u/s 27 of the Wealth-tax Act (hereinafter referred to as the Act):-

"WHETHER on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the order of the Commissioner of Wealthtax (Appeals) deleting the addition of Rs. 10,51,151 on account of reversionary value of land made to the value of the property known as "Wenger"s Building"?"

(2) The facts giving rise to the above reference being made to (his Court are that the Wenger"s Building was purchased by the firm Wenger & Company from Dayal Singh Trust Society and Shri Mool Chand Kharaiti Ram Trust vide sale deeds dated 9-3-1962 and 28-9-1963 for Rs. 3,90,000.00 and Rs. 1,50,000.00 respectively. The total consideration comes to Rs. 5,40,000/-. The building was constructed some time during the year 1930 on a plot of land measuring 1051 sq. yds. having two storeys. Before the purchase M/s Wenger & Co. was occupying a part of the said building as a tenant and in fact had been running its business therein since long. The firm was paying a rent of Rs. 1195/- per month to the landlord. Besides the said firm, there were other six tenants in the

property. Thus the property before purchase was occupied by the firm and the other six tenants. After the purchase the firm became the owner in possession of the portion earlier occupied by it while the remaining portion of the property remained with the tenants.

(3) The assesstes are partners in the firm M/s Wenger & Co. On the relevant valuation dates, i.e. 31-3-1976 and 31-3-1977 the Firm, owned the aforesaid property known as "Wengeis Building" at Connaught Place, New Delhi. In the returns of the net wealth filed by the assesseds they disclosed the value of the entire property at Rs. 7,20,570.00 for each of the years. The Wealth-tax Officer, however, referred the matter to the Departmental Valuation Officer who valued the property at Rs. 44,44,000/- for the assessment year 1976-77. This amount included a sum of Rs. 10,51,151.00 on account of reversionary value of the land. For the assessment year 1977-78. the Departmental Valuation Officer acting on a reference from the Wealth-tax Officer valued the property at Rs. 47,80,000.00 which included a sum of Rs. 13,22,253.00 . The Wealth-tax Officer adopted the valuation of the Departmental Valuation Officer for both the years for purposes of completing the assessments.

(4) The Commissioner (Appeals), relying on earlier order in the case of another partner of the same firm, directed the Wealth-tax Officer to re-compute the market value of the property in question. He also directed deletion of the amount added on account of reversionary value of the property. The revenue appealed to the Tribunal saying that the inclusion of the reversionary value of the land was fully justified. The Tribunal held against the revenue which has led to the present reference being made.

(5) This is not disputed that the property in question is covered by the provisions of the Delhi Rent Control Act. It is also not disputed that there are tenants in the property, though a part thereof is in occupation of the assesseds. These factors have an important bearing on the value of the property. This Court has recognised the effect of such impediments on the valuation of a property in Commissioner of Income Tax . vs. New India Construction Company, 120 ITR 68. It was observed :-

"HOWEVER, the fair market value of the property on the basis of cost of land and building method would have been relevant if it was self-occupied by the transferor and he was in a position to hand over vacant possession thereof to the transferee. Instead there were three old tenants residing in the property, and it was also subject to the rent control restrictions against ejection. In this respect, we are in agreement with the Tribunal that the value of such properties cannot be measured by the values of those properties which are self-occupied."

(6) The existence of tenants in a property and other restrictions or limitations imposed by the local authorities regarding the nature of construction that can be raised in the event of existing property being pulled down, are all relevant factors to be taken into consideration for purposes of valuation of a property, in such

circumstances it is not possible to add reversionary value of the land as a factor in determining the fair market value of the property. It is impossible to pull down a building which is partly occupied by tenants. The applicability of Rent Control legislation makes it difficult, virtually impossible to get rid of the tenants in commercial premises.

(7) Counsel for the assesseds has brought to our notice various judgments of different High Courts wherein the question of addition of reversionary value of land for purposes of valuation of a property has been considered. First he cites a judgment of the Calcutta High Court Commissioner of Income Tax Vs. Smt. Ashima Sinha, . It has been held in the said judgment that if a statutory control is imposed on a commodity restricting the price or transfer or distribution of the same, then the commodity ceases to be a commercial commodity as understood in common parlance and becomes a controlled commodity and its effective value is its controlled value and not an imaginary commercial value. If the State chooses to impose statutory control in respect of terms and conditions of tenancies in properties and such control is statutorily enforced, then during the subsistence of such control properties would necessarily have a value which is controlled. The State cannot then turn around" and say that for other purposes the properties would have a notional commercial value. When land is fully developed by buildings erected thereon, when the property is let at rent and the rent has been proved and is likely to be maintained for years to come, then the yield or rent 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. The value of" land cannot be added again by adding the "reversionary" value of the land because the building is very old.

(8) Again, the Calcutta High Court has in Commissioner of Income Tax Vs. Anup Kumar Kapoor and Others, , while dealing with the question of valuation of property, has observed:-

"WHETHER"the transferees have purchased" the property with an idea of construction of a multi-storeyed building therein in future or for some other purpose is wholly immaterial in determining the market value of the property on the date of its purchase by the transferees. It would be proper to value such land by the yield or rental method. The value of the land cannot be taken twice, once in arriving at the figure by the yield or rental method and again in applying the value of an imaginary future reversionary value of the land."

(9) The same view has been expressed by the Allahabad High Court in Commissioner of Wealth-tax Vs. Ram Saran Kajriwal, and C.W.T. vs. Ram Narain Garg, 68 C.T.R. 75. Since the later decision merely "follows the earlier one, we would prefer to make reference to the earlier decision only. The assessed in this case owned a share in some immovable properties. The properties were fully developed and tenanted and the tenancies were regulated by the Rent Control Act. The Valuation Officer determined the value of the properties by adopting the

"rent capitalisation method" and added certain amounts to it on account of the reversionary value of the land. The Tribunal held that the reversionary value of land should not be included while computing the value based on the "rent capitalisation method". It was held that the valuation of assets had to be made in each case with due regard to the conditions of the time and factors which affected transactions between a willing seller and an intending buyer. The valuation of the properties in the instant case by adopting the "rent capitalisation method" could be regarded as the determination of the approximate market value of the properties on the valuation date. In adding the reversionary value of land, it is assumed that the rental income will come to an end after the economic life of the structure is over. There was nothing on record to show that the properties in question were very old or obsolete. In the method of valuation adopted by the Valuation Officer, the value of the land was taken twice, having been included in the amount arrived at by the "yield or rental" method and once again under the "reversionary method". This approach was erroneous.

(10) We are fully in agreement with the view expressed in the aforesaid judgments. As noticed earlier, the property in question has tenants. It is subject to Rent Control legislation. Therefore, it is incorrect to add reversionary value of land while valuing the said property. The reversionary value is an imaginary value which is related to the potential of the land as if it is an open and vacant piece of land. When there is a property standing on the piece of land which has tenants occupying it and which is subject to rent control legislation, there is no scope for including an imaginary reversionary value.

(11) Counsel for the revenue has referred to H.H. Maharaja Martand Singh Ju Deo Vs. Commissioner of Wealth-tax, . In this case the Madhya Pradesh High Court has held that the development potentialities of the budding could not be ignored in determining its market value. This judgment cannot be an authority to support the contention advanced on behalf of the revenue that the reversionary value of the land ought to be included in computing its value for purposes of wealth-tax. Unlike the case before us. in this case the property was being developed into a multi-storeyed building. There was no question of its being in existence and occupied by tenants; nor was there any question of applicability of rent control legislation. The Court did not consider the effect of such factors. The facts in this case were totally different and it does not serve as any guide for the problem in hand before us.

(12) We are of the view that the Tribunal was correct in upholding the order of the Commissioner of Wealth-tax (Appeals) deleting the addition of the amount on account of reversionary value of land. We answer the reference accordingly.

THERE will be no orders as to costs.