
(1993) 01 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No's. 6 and 7 of 1978

Commissioner of Wealth-tax

APPELLANT

Vs

S. Baldev Inder Singh

RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 5(1)

Citation : (1993) 203 ITR 837

Hon'ble Judges : N.K. Sodhi, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; M.L. Puri and Rajesh Khurana, for the Respondent

Judgement

A.P. Chowdhri, J.—The Amritsar Bench of the Income Tax Appellate Tribunal made Wealth-tax References Nos. 6 and 7 of 1978 raising the following questions for decision of this court u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") :

"1. Whether, on the facts and in the circumstances of the case, land measuring 542 kanals 19 marlas having been received by the petitioner for act of gallantry by his ancestors was not exempt under the provisions of Section 5(1)(xviii) of the Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the entire amount of Rs. 37,000 in respect of Daryapur land was liable to be included in the net wealth of the petitioner ?

(both at the instance of the assessee)

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the value of 3,851 fruit-bearing trees on the land as determined by the authorities was excessive and that they should be valued afresh as fuel wood and not as fruit-bearing trees?"

(at the instance of the Revenue)

2. The same Bench referred an additional question (Wealth-tax Reference No. 109 of 1989) in pursuance of an order of the High Court dated May 26, 1988, u/s 27(3) of the Act, in the following terms :

"4. Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal regarding valuation of land is based on irrelevant considerations after rejection of relevant and admissible material on the record and is arbitrary and perverse ?"

(at the instance of the Revenue)

3. All the questions have arisen out of the decision of the Appellate Tribunal dated March 14, 1977.

4. S. Baldev Inder Singh filed a return of his wealth under the Act as an individual on July 28, 1973, for the assessment year 1970-71. The valuation date was March 31, 1970. The assets included in the return, inter alia, comprised land measuring 542 kanals 19 marlas. The assessee claimed exemption of the said land u/s 5(1)(xviii) of the Act. The case of the assessee was that the said land had been given to his ancestors in 1857 as a gallantry award and he was, therefore, entitled to the said exemption.

5. The claim of the assessee was rejected by the Wealth-tax Officer on the ground that the assessee was not the recipient of the award but got the jagir land by inheritance. It was also held that the jagir was given to the awardee on account of loyalty to the British Government and not on account of gallantry or merit. It was also held that the exemption was available to the awardee and not to his descendants. The Appellate Assistant Commissioner affirmed the above finding of the Wealth-tax Officer. The Appellate Tribunal affirmed the view of the Wealth-tax Officer as well as that of the Appellate Assistant Commissioner and held that the assessee was not entitled to claim the exemption envisaged u/s 5(1)(xviii) of the Act.

6. Another asset included in the return was land measuring 2,738 bighas at village Daryapur in the then Tehsil Panipat, District Karnal. The said land had been declared surplus and allotted to the tenants under the provisions of the Punjab Security of Land Tenures Act. The total compensation which the assessee was held entitled to receive was Rs. 37,000 in 10 annual instalments of Rs. 3,700 each. Up to the valuation date, i.e., March 31, 1970, the assessee had received Rs. 4,312 on this account, the remaining amount being payable by instalments at the rate of Rs. 3,700 per year. The Wealth-tax Officer included the amount of Rs. 37,000 by taking the view that the amount related to a realisable claim and, therefore, the same was assessable in the hands of the assessee. The Appellate Assistant Commissioner affirmed the above finding for the reason that the amount represented a debt due to the assessee. It was further held that what was important was that the assessee was entitled to get the same in full

either at once or in instalments and that it was not relevant whether he actually recovered it or not. The above finding was affirmed by the Appellate Tribunal and it was held that the amount of Rs. 37,000 created a vested right in favour of the assessee and thus became a debt due to the assessee and the date of actual payment or receipt was irrelevant.

7. The return also included land of the assessee in which 3,851 fruit-bearing trees were standing. The Wealth-tax Officer took the fuel value of the said trees as well as its yearly fruit-bearing capacity into consideration for estimating the value of those trees. The Appellate Assistant Commissioner affirmed the finding of the Wealth-tax Officer. The Appellate Tribunal reversed the finding of the authorities below and held that the value of the trees to be taken into consideration was only as fuel wood and, in order to determine the value, directed the matter to be remitted to the Wealth-tax Officer.

8. Another asset included in the return was land described as urban and suburban in the revenue estate of Gumtala situated on the outskirts of the city of Amritsar. The Wealth-tax Officer took into consideration the situation of the land, its proximity to developed and fashionable localities of Amritsar, some instances of other sales in nearby localities and the amount paid as compensation by the Improvement Trust for acquisition of land situated nearby and came to the conclusion that the value of the land should be estimated at the rate of Rs. 9 per square yard. The Appellate Assistant Commissioner affirmed this finding. The Appellate Tribunal, however, modified the finding. It was held that the land in question was ultimately acquired by the Amritsar Improvement Trust by award dated October 3, 1973, according to which the assessee was held entitled to compensation at the rate of Rs. 5 and Rs. 4 per square yard for urban and suburban land, respectively, on the relevant date which, in this case was January 21, 1972. The Appellate Tribunal, therefore, held that the value of the land should be worked out at the rate of Rs. 5 per square yard for both urban and suburban land and that the assessee was entitled to a relief to the extent of Rs. 4 per square yard in the valuation of the land.

9. We have heard learned counsel for both the sides.

10. Question No. 1 :

The material part of Section 5(1)(xviii) of the Act reads as under:

"5. Exemption in respect of certain assets.--(1) Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee. . . .

(xviii) the property received by an assessee from Government in pursuance of any gallantry or merit award instituted or approved by the Central Government ;"

11. The plain language of the above provision, in our view, leaves no room for doubt that, in order to qualify for exemption, the property must have been

received by the assessee. The expression "received by the assessee from the Government" is altogether different from saying "property held by the assessee in pursuance of... ." We may also add that we have not been referred to any material on the record or otherwise to show whether the so-called gallantry or merit award whereby the jagir was granted to the ancestor of the assessee, was approved by the Central Government in terms of the above provision. We, therefore, hold that the assessee was not entitled to exemption u/s 5(1)(xviii) of the Act in respect of 542 kanals 19 marlas.

12. Question No. 2 :

Though at one point of time there was certain controversy as to whether the right to receive compensation on the vesting of the estate of the assessee in the Government was an asset and as such its value had to be taken into consideration in computing the net value of the assets or not, there is no doubt that it is such an asset. The question remains--how should it be valued ? In substantially similar circumstances as in the present case, the wealth-tax authorities took a certain percentage of the face value of the compensation receivable by the assessee on account of compulsory acquisition of his land. This was approved by a Full Bench of the Patna High Court in the decision reported as *Maharaj Kumar Kamal Singh Vs. Commissioner of Wealth Tax*, . The above decision was approved by the Supreme Court in *Commissioner of Wealth Tax, Bihar, Patna Vs. Maharaja Kumar Kamal Singh*, . Section 7 of the Act provides that the value 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. The crucial test is the price which a willing purchaser would pay for buying the said asset in the open market. The fact that the amount of compensation is not payable at once but is deferred over a number of years would affect the value of the asset on the valuation date. To what extent that would affect the value of the asset is a matter of quantification. We are not concerned with that question. It will be for the authorities under the Act concerned to go into and determine that question. The face value of the claim is required to be appropriately brought down by giving a discount on account of the payment being a deferred one. Our attention was drawn to Circular No. 1146 dated May 15, 1964, from the Central Board of Direct Taxes in the context of valuation of the right to receive compensation on abolition of zamindari estates. A certain formula has been given therein for calculating the present value by making a deduction in the face value of the bond according to the number of years in which the payment is spread. We do not think that the said formula is unreasonable. We, therefore, hold that the value of compensation receivable by the assessee has to be suitably discounted from the face value of Rs. 37,000 for deciding the net value on the valuation date.

13. Question No. 3 :

Admittedly, the land in question was the subject-matter of acquisition proceedings at the instance of the Improvement Trust since 1964-65. Acquisition

proceedings were thus pending on the valuation date, namely, March 31, 1970. Evidently, the land was being acquired for urbanisation and not for being kept as an orchard as such. It is in this context that the question must be appreciated as to what price would a willing purchaser pay for the fruit-bearing trees in this background. In the facts and circumstances, we have no doubt that the value of the trees which could be anticipated was only as fuel wood and not as fruit-bearing trees. We, therefore, find ourselves in agreement with the conclusion reached by the Appellate Tribunal that the trees in question should be valued afresh as fuel wood and not as fruit-bearing trees.

14. Question No. 4 :

In order to deal with this question, it will be convenient to notice the factors which were taken into consideration by the Wealth-tax Officer and the Appellate Assistant Commissioner in valuing the land at the rate of Rs. 9 per square yard. These are as follows :

(1) The rate of Rs. 3 per square yard for the land under the garden and Rs. 2.50 for the canal irrigated portion estimated by the approved valuer was ridiculously low. This was so because the land in question was situated at the end of the Mall Road. It was situated opposite the District Courts on one side and the Green Avenue, which was a newly developed and fashionable locality of the town, on the other side.

(2) The land had been the subject-matter of acquisition by the Improvement Trust and the assessee had made representations dated March 19, 1973, and June 7, 1973. In the former representation, he had concluded by saying that he was ready to accept compensation at the rate of Rs. 16 per square yard for the whole of the acquired land and, in the latter representation, he had claimed compensation at a rate more than Rs. 15 per square yard, which had been awarded by the Land Acquisition Tribunal, Amritsar, in respect of land which, according to the assessee, was inferior in nature. The said compensation awarded by the Tribunal was besides an additional 15 per cent. solatium.

(3) The Improvement Trust auctioned land at rates varying from Rs. 150 to Rs. 170 per square yard in the months of February and January, 1973, respectively. On the basis of this material, the Wealth-tax Officer came to a tentative conclusion that the rate for the land for the assessment year 1970-71 should be Rs. 9 per square yard. It was put to the assessee in writing and the assessee was heard on this aspect of the matter.

(4) The Improvement Trust, vide its majority resolution No. 465 dated September 15, 1973, decided to recommend to the Land Acquisition Officer rates varying from Rs. 12 to Rs. 7 per square yard in respect of various parcels of land on or near Circular Road.

(5) The President of the Land Acquisition Tribunal in his award announced in November, 1972, valued the land in Basant Avenue at the rate of Rs. 15 per

square yard for the land situated in the front and at Rs. 12.50 per square yard for the land situated on the back side.

The other instances relied on by the Wealth-tax Officer were as under :

(1) The sale of 226 square yards bearing plot No. 546 in Basant Avenue by Shri Sarup Singh in favour of Shri Gurcharan Singh Lal on March 27, 1971, for Rs. 7,910 at Rs. 35 per square yard.

(2) Land measuring 103 square yards bearing khasra No. 333 in village Gumtala Urban, Abadi Faizpura, sold by Shri Sudershan Singh to Kahan Chand on July 3, 1969, for Rs. 2,832.50 at an average of Rs. 27.50 per square yard.

(3) Land measuring 100 square yards bearing khasra No. 335 in Revenue Estate, Gumtala Urban, Abadi Faizpura, sold on January 6, 1969, by Shri Brahm Dass to Vidya Sagar for Rs. 3,000, i.e., Rs. 30 per square yard.

(4) Land measuring 600 square feet bearing khasra Nos. 14 and 15 in village Gumtala Urban sold on March 2, 1973, by S. Gurdial Singh Uppal to Shri Paramjit Singh for Rs. 3,000 at Rs. 45 per square yard.

(5) Land measuring 900 square feet bearing khasra Nos. 806 and 808 in village Gumtala sold on March 22, 1973, by S. Gurdial Singh Uppal to Surjit Kaur for Rs. 4,000 at Rs. 40 per square yard.

Enquiries were made through the Inspector about the valuation of land in the area just opposite the assessee's land and the result was the following two instances :

(1) Plot No. 366 in Green Avenue, Amritsar, was allotted to V.K.Bedi in 1965 at the reserve price of Rs. 20.

(2) Plot No. 377 measuring 1,009 square yards in Green Avenue was allotted to Shri Harbans Singh at the reserve price of Rs. 18 per square yard in 1965.

It was on the basis of this material that it was concluded that the tentative rate of Rs. 9 per square yard was reasonable.

The Appellate Assistant Commissioner also rejected the valuation given by the approved valuer at the rate of Rs. 3 and Rs. 2.50 per square yard by relying on two more instances, namely :

(a) Acquisition made by the Improvement Trust in the year 1964-65 at the rate of Rs. 7 per square yard, and

(b) Acquisition made by the Improvement Trust at the rate of Rs. 8 and Rs. 5 per square yard on October 3, 1973.

15. As against the above material, the Appellate Tribunal pointed out that the Amritsar Improvement Trust had acquired almost the entire land in dispute, vide award dated October 3, 1973, and the Trust had determined the value of the

assessee's land with reference to the relevant date, namely, January 21, 1972, at the rate of Rs. 5 per square yard for urban area and Rs. 4 per square yard for suburban area. It was rightly pointed out by the Appellate Tribunal that the Wealth-tax Officer as also the Appellate Assistant Commissioner had relied on various awards of the Land Acquisition Collector with regard to other parcels of land acquired by the Improvement Trust in the vicinity of the land in dispute. The Appellate Tribunal appears to have taken the view that the award dated October 3, 1973, related to the land in dispute itself and had been given after the valuation date, i.e., March 31, 1970. It also took notice of the fact that there had been an upward rise in the prices of land with the passage of time. In this view of the matter, the Appellate Tribunal took the rate of Rs. 5 per square yard on the valuation date even though that was the rate given in the award dated October 3, 1973, i.e., much after the valuation date in this case. It was further rightly pointed out by the Appellate Tribunal that no cogent reasons had been given by the authorities under the Act to ignore the rates determined by the award dated October 3, 1973, in respect of the very same land. We regret to point out that the question as framed is not happily worded. It is a loaded question. It is assumed that there is a fundamental contradiction between the factors taken into account by the Appellate Tribunal on the one hand and the Wealth-tax Officer and the Appellate Assistant Commissioner on the other, in determining the value of the land. The correct position is that the factors taken into consideration by the two sets of authorities are relevant and admissible and the question would turn on the relative persuasive value to be attached to those factors. For the foregoing reasons, we are of the view that the factors taken into consideration by the Appellate Tribunal were relevant and had great persuasive value, compared to the instances relied on by the Wealth-tax Officer and the Appellate Assistant Commissioner. The factors relied on by the Appellate Tribunal were more cogent and reliable as they related to the very same land and the value determined related to a period after the valuation date. It is not disputed even before us that the prices of land have shown an upward trend during the relevant years. In our considered view, the Appellate Tribunal had based its finding on relevant material and while the factors taken into consideration by the Wealth-tax Officer and the Appellate Assistant Commissioner may not be irrelevant or inadmissible, the same must give way in favour of better instances relied upon by the Appellate Tribunal. It is, thus, not a case in which the Appellate Tribunal may have ignored factors which were relevant and admissible and may have based its finding on irrelevant considerations. The question of value of the land has to be determined on the basis of an instance which is nearest in point of time to the valuation date and relates to a nearly similarly situated land. Fortunately, in this case, the instance which became available was of the very land in respect of which the valuation was to be made. On a consideration of the entire material on record, therefore, the Appellate Tribunal was justified in placing reliance on the award dated October 3, 1973, in respect of the land in question. The said instance had much greater persuasive value compared to instances relating to other parcels of land in other localities, though statedly situated near the land in question. This

does not amount to rejection of the relevant and admissible material on record by any arbitrary or perverse order. The finding of the Appellate Tribunal is based on an evaluation of the various factors which were relevant for determining the value of the land in terms of Section 7 of the Act.

16. We decide the questions referred to this court accordingly.