
(2003) 08 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Income Tax C. No. 5 of 1990 and W.T.C. No's. 3 to 6 of 1990

Commissioner of Wealth-tax

APPELLANT

Vs

Sham Lal

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 27

Citation : (2004) 192 CTR 32 : (2004) 268 ITR 185

Hon'ble Judges : V.K. Bali, J; Jasbir Singh, J

Bench : Division Bench

Advocate : A.S. Tewatia, for the Appellant; Akshay Bhan, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—By this common order, we propose to dispose of five connected matters, namely, I. T. C. No. 5 of 1990 and W. T. C. Nos. 3 to 6 of 1990 as, common questions of law and fact are involved in all these matters. Learned counsel representing the parties also suggest likewise. The bare minimum facts that need a necessary mention have, however, been extracted from I. T. C. No. 5 of 1990-C/r v. Sunaina Gupta.

2. The Commissioner of Wealth-tax (hereinafter referred to as "the petitioner") made an application u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act of 1957"), to the learned Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as "the Tribunal"), requesting him to refer to this court the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in accepting the valuation of the registered valuer who valued land and building and plant and machinery of M/s. Jagat Theatre, Chandigarh, at Rs. 48,32,113 whereas the Departmental Valuation Officer after considering the various factors made the valuation of the above property at Rs. 1,06,88,000 ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing deduction at 15 per cent. out of the valuation of land and building and plant and machinery of M/s. Jagat Theatre, Chandigarh, on account of joint ownership ?"

3. The questions, as mentioned above, it is the case of the petitioner, had arisen from the order of the learned Tribunal dated September 16, 1988, passed in W. T. A. No. 319/Chandigarh of 1987 (assessment year 1983-84).

4. The learned Tribunal vide order dated September 26, 1989, passed in RA No. 446/Chandigarh of 1988 dismissed the reference application u/s 27(1) of the Act of 1957. Hence, the present petition u/s 27(3) of the Act of 1957 has been filed seeking adjudication on the questions, mentioned above.

5. The facts, on which the questions aforesaid are stated to be arising, reveal that the assessee is a co-owner of Jagat Theatre and was holding 20 per cent. share in the Jagat Theatre. While filing the wealth-tax return, the assessee declared share in Jagat Theatre at Rs. 2,36,000. Before, however, the assessment was framed, the Wealth-tax Officer (hereinafter referred to as "the WTO") referred the matter for valuation in regard to Jagat Theatre to the Departmental Valuation Officer. The said officer estimated the value of land and building of the theatre at Rs. 93,57,308 and the value of the plant and machinery at Rs. 13,30,700. The total value of land and building and plant and machinery was estimated at Rs. 1,06,88,008 whereas the assessee has shown the value of plant and machinery and land and building at Rs. 15,78,566. Thus, the Wealth-tax Officer assessed the assessee's 20 per cent. share in land and building and plant and machinery as valued by the Departmental Valuer at Rs. 21,37,600. Aggrieved, the assessee filed appeal before the learned Appellate Assistant Commissioner of Wealth-tax, Chandigarh (hereinafter referred to as "the AAC"), who upheld the order of the Wealth-tax Officer observing that valuation of plant and machinery and that of land and building, as determined by the Departmental Valuation Officer, and which since has rightly been adopted by the Wealth-tax Officer is quite reasonable. Still aggrieved, the assessee filed appeal before the learned Tribunal wherein, he also produced a report from the registered valuer, who had valued the properties at Rs. 48,32,113. The learned Tribunal, it is the case of the petitioner, accepted the value determined by the registered valuer. This order was not acceptable to the petitioner and, thus, an application for reference u/s 27(1) of the Act of 1957 was filed, which, as mentioned above, has since been dismissed by holding that no referable question of law has arisen.

6. In support of this petition, Mr. A. S. Tewatia, learned counsel for the petitioner, contends that the Departmental Valuer had relied upon the land and building method of valuation only, whereas the registered valuer had not worked out the value by land and building method but also by yield (rental/ income) method as well. It is then urged that plot of land auctioned in close vicinity to the building of the assessee itself, which had been taken into consideration by the registered valuer, was wrongly ignored by the learned Tribunal. The registered valuer

adopted the rate of Rs. 570 per sq. yard, after taking into account and reserve price of the land earmarked for different cinemas in a distant locality in Chandigarh, as the basis, which is not correct, further contends learned counsel.

7. The contentions of learned counsel, as noted above, wholly pertain to the first question of law, reference with regard to which has been sought, as extracted above. With regard to the second question of law, no arguments have been advanced by learned counsel representing the petitioner.

8. Before, we, however, might examine the contentions of learned counsel for the petitioner, as noted above, it would be appropriate to deal with as to how the learned Tribunal dealt with the issue. The learned Tribunal first noted that the assessees have themselves been showing appreciation in the value of their shares as against the book values right from the years 1973-74 to 1981-82 as under :

Assessment year	Rs.	1973-74	5,72,388	1974-75	5,72,388	1975-76	5,72,388
		1976-77	8,40,000	1977-78	8,40,000	1978-79	8,50,000
		1979-80	11,80,000	1980-81	11,80,000	1981-82	11,80,000

9. The figures, as noted above, shown by the assessees were being accepted by the Wealth-tax Officer throughout. For the assessment year in question, the value was suddenly enhanced by the Government Valuation Officer (hereinafter referred to as "the GVO") by a large amount. The assessee raised a number of objections to the report of the Government Valuation Officer, which were more or less summarily rejected by the Wealth-tax Officer by simply referring to the assessee's one argument that the value of the plot of the cinema should be adopted as per reserve price and not according to the auction price. None of the other objections raised by the assessee was even referred to by the Wealth-tax Officer. Similarly, the Appellate Assistant Commissioner has summarily disposed of the objections of the assessees by observing that the Government valuer, while valuing the plant and machinery, has taken into account the fact that values had appreciated from year to year and that plant and machinery was old. In relation to the land and building, the observation of the Appellate Assistant Commissioner was simply that the Departmental Valuation Officer had taken into consideration the auction prices of Anand and Batra Cinemas. The learned Tribunal then referred to the report of Shri R. P. Sharma, retired chief engineer, in whose opinion the total value of the machinery as on March 31, 1982, comes to Rs. 3,62,713. Mr. Sharma supported the report by detailed facts and figures. In relation to land and building also, the assessee had furnished a report from the approved valuer, Shri N. N. Bakshi, which is quite detailed and comprehensive, wherein, the value of the, same as on March 31, 1982, was shown at Rs. 44,69,400. No reasons at all were given by the authorities below in rejecting the aforesaid reports. The auction sales of cinema plots which were taken into consideration by the authorities below, it was observed, did not reflect the true market price. Reliance was placed upon a judgment of this court in Guran Dass Vs. Commissioner of Income Tax and Others, wherein, it was held

that the price fetched in an auction sale in terms of the Chandigarh (Sales of Sites and Buildings) Rules, 1960, could not be considered as reflecting the current market value of a comparable plot sold in a private sale. In view of the reliance placed by the authorities below and, in particular, the report of the Departmental Valuation Officer, auction prices of cinema plots in 1975-76 were held not justified. The two plots are Anand Theatre and Batra Theatre. Auction price in the case of Anand Theatre was Rs. 35,10,000, whereas in the case of Batra Theatre, the same was Rs. 27,00,000. The reserve price in the case of both these theatres was nearly the same, i.e., Rs. 15,00,000. There was a declining trend in the prices of cinema plots between 1975-76, whereas the Valuation Officer had further increased the price of these plots on account of general increase in the consumer price index. It was observed that the reason for declining in the prices of cinema plots was attributed to introduction of television, which had made cinema business less profitable. In so far as Anand Theatre, for which the auction price in 1975 was Rs. 35,10,000, is concerned, it was observed that it never came into existence probably because the price was too high to make investment in the cinema a profitable business. Further, whereas, Jagat Theatre had only 952 seats, in Batra Theatre there were 1,500 seats and there was a provision for 1,400 seats in Anand Theatre and 1,150 seats in Piccadilly and 1,100 in K. C. Theatre. Further, Jagat Theatre had no permission for constructing basement, which was a later development. The contention made on behalf of the Department that actual auction prices of the land had been taken into consideration, which were increased only by the accepted rise in the consumer price index, was rejected on the ground that in the cinema building, the Departmental contention stands belied by facts and there was a huge decline in the price of auction sales from 1975 to 1976 and there would be certainly further decline in the subsequent years. There are various other factors taken into consideration by the learned Tribunal in rejecting the contention of the Department and in accepting the one given by the assessee.

10. It appears to us that the whole controversy has since been decided on existing and verifiable facts. It is on variety of facts, some of which have been mentioned above, that valuation of the registered valuer, who valued the cost of land and building and plant and machinery of the assessee, has been accepted and the report of the Government Valuation Officer was rejected. The impressive array of facts given in the order of the learned Tribunal, some of which have been noted above, and, in particular, the rejection of reliance placed by the Department on the sale of two cinema sites in evaluating the land and building and plant and machinery appears to be on justifiable grounds, exclusively based upon the facts. Once, the whole controversy has been decided upon existing and verified facts in the method of evaluating land and building and plant and machinery of the assessee, and valuation based upon the GAV, has been rejected, in our considered view, no question of law arises for determination.

11. In view of the discussion made above, we hold that inasmuch as question No. 1, as extracted above, is exclusively based upon facts, which have been

correctly appreciated by the learned Tribunal, no referable question of law arises for determination. We may reiterate that no arguments on the second question framed by the petitioner, as extracted above, have been raised before us. We, thus, answer the only question, on which arguments have been raised, in favour of the assessee and against the Revenue.

12. The petition filed u/s 27(3) of the Act of 1957 is, consequently, dismissed.