

(1989) 08 RAJ CK 0029

In the Rajasthan High Court

Case No : Wealth-tax Reference Application No. 20 of 1986

Commissioner of Wealth Tax

APPELLANT

Vs

S.K. Golecha (HUF)

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Wealth Tax Act, 1957 — Section 27

Citation : (1990) 82 CTR 214 : (1990) 184 ITR 59 : (1990) 52 TAXMAN 7

Hon'ble Judges : S.C. Agrawal, J; Mohini Kapoor, J

Bench : Division Bench

Advocate : V.K. Singhal and R.B. Mathur, for the Appellant; N.M. Ranka, for the Respondent

Judgement

S.C. Agrawal, J.—This application has been moved by the Revenue u/s 27 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for referring the three questions said to be arising out of the order dated August 29, 1985, passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the Tribunal"), for the consideration of this court, It relates to the assessment year 1974-75.

2. The assessee is a partner in the firm, S. Zoraster and Co., at Jaipur and has a one-third share therein. Among the assets owned by the said firm is a cinema building known as Prem Prakash Talkies at Jaipur. The assessee, in his return, declared the value of the said cinema building as Rs. 21,16,050. The Wealth-tax Officer, while working out the value of the share of the assessee in the firm, S. Zoraster Co., has adopted the value of the cinema building at Rs. 42,92,000, on the basis of the report of the Valuation Officer. The Valuation Officer had valued the cinema building on the basis of the income capitalisation method without giving deduction for salary of the partners, interest on their capital, and the risk undertaken to run the cinema from the net profit of the firm. The Wealth-tax Officer also levied additional wealth-tax on the view that the cinema building was not used for the purpose of the assessee's own business throughout the year but

it was let out to others on rental basis and in some portion of the building, there were shops, stalls, etc., which were let out on monthly basis. According to the Wealth-tax Officer, it is not a business premises but it was an urban asset and in view of the provisions of Rule 1 (i) of the Paragraph B, Part I of the Schedule to the Act, the value of the cinema is liable to additional wealth-tax. The Commissioner of Wealth-tax (Appeals), on appeal, directed the Wealth-tax Officer to work out the assessee's share by adopting 8.33 instead of 9.6154 as the capitalisation factor and by taking the surplus area on the Babu Bazar side at 500 sq. mts. as against 1,000 sq. mts. taken by the Valuation Officer. The Commissioner of Wealth-tax (Appeals) also held that the cinema building is part of the assessee's urban assets and is eligible for exemption from levy of additional wealth-tax. Aggrieved by the order passed by the Commissioner of Wealth-tax (Appeals), the Department went in appeal to the Tribunal. The assessee also filed an appeal against the order of the Commissioner. The appeals were decided by the Tribunal by order dated August 29, 1985, whereby the Department's appeal was dismissed but the appeal of the assessee was allowed in part. The Tribunal held that while valuing the cinema building on the basis of the income capitalisation method, deduction had to be given from the net profits as shown in the profit and loss account for salary of partners, interest on their capital and the risk undertaken in running the cinema, etc., and that considering all these and also after including the reversionary value of the land on which shops have been constructed and after capitalising the net income from the cinema as, according to the profit and loss account, the profit would be in the range of Rs. 1 lakh or a little over that. According to the Tribunal, the value of the cinema building would be only Rs. 12 lakhs (even taking a multiplier of 12 times of the income of Rs. 1 lakh) and that the value of the cinema, shops, open land and reversionary value of the land would be very much below the value declared by the assessee and, therefore, the value as declared by the assessee should be accepted as correct. The Tribunal held that the value of the extra open land of 1,000 sq. mts. and the shops should be liable for additional urban property tax as the same cannot be said to be business assets.

3. Feeling aggrieved by the said order of the Tribunal, the Revenue moved an application before the Tribunal u/s 27 of the Act for referring the three questions mentioned in the said application for consideration by this court. The said application has been rejected by the Tribunal. The Tribunal has observed that the answer to questions Nos. 2 and 3 is self-evident and that they do not require reference to this court. With regard to question No. 1, the Tribunal observed that the method that has been followed in arriving at the net income is one of the standard acceptable methods and such a method is prescribed under the Payment of Bonus Act also and that the deduction in respect of the salary paid to the partners and interest on their capital only ensures that the employers are not deprived of even their capital for payment of bonus to their employees and also for the reason that any normal prudent businessman would have to incur such expenditure for earning of the income and that merely because the assessee is a

proprietor of a firm and no actual expenditure in respect of salary or interest is incurred, it does not mean that, for the purpose of arriving at the net income of the person for determination of the net value of the property, no deduction should be allowed. The Judicial Member of the Tribunal has, however, appended a separate note wherein he has observed that the method of valuation of a particular building is certainly a question of law and whether the building should be considered to be the assessee's business assets or otherwise is again a question of law and it would have been safer to submit rather than to withhold its reference. The learned Member has observed that he did not propose to make it a third-Member case inasmuch as the Department could move the High Court u/s 27 of the Act and he, therefore, concurred with the ultimate order proposed by the Accountant Member.

4. We have heard Shri V.K. Singhal, learned counsel for the Revenue, in support of the application and Shri N.M. Ranka, learned counsel for the assessee.

5. The questions sought to be referred are as under :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that while making the valuation of cinema building known as Prem Prakash Talkies on the basis of the income capitalisation method, deduction has to be given from the net profit as shown in the profit and loss account for salary of the partners, interest on their capital and risk undertaken to run the cinema, etc. ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of the Commissioner of Wealth-tax (Appeals) that the cinema building known as Prem Prakash Talkies in which the assessee had one-third share is the assessee's urban business asset and is not liable to additional wealth-tax under the Wealth-tax Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not upholding that the cinema building known as Prem Prakash Talkies in which the assessee had one-third share is not a business asset of the assessee and is liable to additional wealth-tax under the Wealth-tax Act?"

6. As regards question No. 1, Shri Singhal has urged that, in the matter of valuation of the cinema building on the basis of the income capitalisation method, the Tribunal has erred in giving deduction from, the net profit as shown in profit and loss account for salary of the partners, interest on their capital and the risk undertaken to run the cinema. The submission of Shri Singhal is that, u/s 7 of the Act, the Wealth-tax Officer is required to compute the market value of the asset. Shri Singhal has also urged that the Tribunal has erred in applying the principles relating to computation of bonus under the Payment of Bonus Act and in allowing deduction in respect of the salary paid to the partners and interest on their capital and in permitting deduction in respect of the risk undertaken by partners. Shri Ranka, learned counsel for the assessee, has, on the other hand, urged that the said question is merely of academic nature and that it does not

arise in view of the fact that, according to the valuation made by the Tribunal, the value of the cinema building comes to Rs. 12 lakhs only whereas the valuation of the said building declared by the assessee in the return is much more, namely, Rs. 21,16,050, and that even if deductions made by the Tribunal are disallowed, the value of the building would not exceed the value declared by the assessee.

7. In our opinion, the question as to whether while making the valuation of the cinema building known as Prem Prakash Talkies on the basis of the income capitalisation method, deduction has to be given from the net profit as shown in the profit and loss account for salary of the partners, interest on their capital and the risk undertaken in running the cinema, etc., is a question of law which needs consideration by this court. The Tribunal, in its order, has not given details of the deductions which are to be allowed under these heads and has merely indicated that, according to the profit and loss account, the profit would be in the range of Rs. 1 lakh or a little over than that. The Tribunal has not indicated as to how that figure was arrived at and how much would be the profit if the aforesaid deductions are not allowed. In these circumstances, it cannot be said that question No. 1 is merely of academic interest.

8. As regards questions Nos. 2 and 3, we find that both these questions cover the same field as to whether the cinema building known as Prem Prakash Talkies is a business asset and is liable to additional wealth-tax under the Act

9. Shri Singhal has urged that the Tribunal has erred in treating the cinema building as a business asset on the erroneous assumption that the entire cinema building excluding the shops constructed on the left portion is being used for the exhibition of films. Shri Singhal has pointed out that inside the cinema building also there are premises which have been let out and are not being used for the business of exhibition of films. In support of his aforesaid submission, he has referred to the report of the Valuation Officer (on which reliance was placed by the Wealth-tax Officer) wherein it is mentioned that, apart from the five shops in Babu Bazar which are given on rent, there is a canteen (restaurant), cycle stand, scooter stand, which are also given on rent to parties. It would thus appear that, in a part of the main cinema building, there are certain portions which have been let out and are not being used for the business of exhibition of films. In our view, therefore, the question as to whether the entire cinema building should be treated as a business asset and not as an urban asset for the purpose of liability for additional wealth-tax under the Act does arise for consideration.

10. For the reasons aforesaid, we are of the view that the following questions arise out the order of the Tribunal dated August 9, 1985, and these questions require consideration by this court;

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that while making the valuation of the cinema building known as Prem Prakash Talkies on the basis of income capitalisation method deduction

has to be given from the net profit as shown in the profit and loss account for salary of the partners, interest on their capital and the risk undertaken to run the cinema, etc. ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of the Commissioner of Wealth-tax (Appeals) that the cinema building known as Prem Prakash Talkies in which the assessee had one-third share is the assessee's urban business asset and is not liable to additional wealth-tax under the Wealth-tax Act ?"

11. The reference application is allowed and the Tribunal is directed to draw up the statement of case and refer the above two questions for the consideration of this court. There is no order as to costs.