

(1991) 01 KAR CK 0092
In the Karnataka High Court
Case No : T.R.C. No's. 11 to 13 of 1985

Commissioner of Wealth Tax

APPELLANT

Vs

S.P.C. Murthy

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 17, 17 (1) (b)

Citation : (1991) 96 CTR 194 : (1991) 191 ITR 189 : (1991) 2 KarLJ 106 :
(1991) 59 TAXMAN 526

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chandrakumar, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—Under the provisions of the Wealth-tax Act, the following question is referred for our opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the report of the Government valuer would not constitute information for section 17(1)(b) of the Wealth-tax Act even though the values shown is much higher than the value shown by the assessee's valuer ?"

2. The assessment year in question are 1973-74, 1974-75 and 1975-76. The wealth-tax assessments were completed on November 28, 1974, December 10, 1975, and December 10, 1975, respectively. However, in the course of the assessment proceedings for the year 1976-77, the matter of valuation was referred to the Government valuer. On the basis of the report obtained for the year 1976-77, the Wealth-tax Officer opined that the properties in question were undervalued during the earlier three years referred to above. Consequently, he reopened those assessments u/s 17(1)(b) of the Wealth-tax Act. The objection of the assessee was overruled by the assessing authority. The Appellate Assistant Commissioner accepted the contention of the assessee holding that the report of

the valuer for the subsequent year cannot be a valid information to reopen the assessments in respect of the earlier years. The Appellate Assistant Commissioner held that the earlier assessments were made on the basis of the report of the approved valuer and, therefore, the subsequent report was nothing but a change of opinion which cannot be treated as "information" for the purpose of section 17 of the Wealth-tax Act. The Revenue went up in appeal before the Appellate Tribunal. The Tribunal affirmed the order of the Appellate Assistant Commissioner. The reasoning of the Appellate Tribunal is very relevant and also brings about the salient facts necessary to appreciate the case. The Tribunal observed :

"The Wealth-tax Officer had completed the assessment on the basis of this valuation report. Later, the Wealth-tax Officer referred the matter of the Government valuer during the course of the assessment proceedings for the year 1976-77. The valuation report as on March 31, 1977, was made the "information" for the purpose of reopening the assessments. From the order of the Wealth-tax Officer, it is seen that he has not accepted the Government valuer's report as it related to a later valuation date. He reduced it by 20 per cent. It is after reducing such a percentage that he has come to the conclusion that there has been an escapement of income. For the year 1974-75, he has reduced it by 10 per cent. He has not made any reduction in the last year. We agree with the Appellate Assistant Commissioner that no new fact or information has come on record. valuation is not an exact science. Valuation is necessarily an estimate made by experts and two different valuers have made two different estimates. It cannot, therefore, be said that the valuation report of the Government valuer is definite information with reference to the value of the property."

3. From the above, it is clear that the assessing authority estimated the value of the properties as on the valuation dates of the previous years by tracing back from the value given by the valuer with reference to March 31, 1977. For this purpose, a certain percentage from the valuation furnished by the valuer was reduced and after this reduction, the figure arrived at is taken as the value of the properties for the purpose of reopening the assessments. For example, the return of net wealth accepted by the assessing authority for the year 1973-74 was Rs. 4,24,500. This was reassessed at Rs. 8,44,000 by resort to the above method. Similarly, for the year 1974-75 Rs. 6,24,598 was reassessed at Rs. 9,43,012 and, for the next year 1975-76, Rs. 6,51,221 was reassessed at Rs. 10,21,400. In these circumstances, the aforesaid question was raised by the Revenue for reference in respect of these three years.

4. Mr. Chandrakumar, learned counsel for the assessee, relied upon a decision of this court in *M.S. Vasudev Vs. Commissioner of Wealth Tax*, (TRC. Nos. 18 and 19 of 1983, dated June 18, 1990). In the said case, during the pendency of the assessment proceedings, the Assessing Officer called for a valuation report of the building involved therein, from the Official Valuer. But, without waiting for the

report, he completed the assessment. Subsequently, the valuation report was received and on that basis the assessment was reopened. This court held that the report of the valuer was "information" and, therefore, proceeding for reassessment could be made u/s 17(1)(b). It is to be noticed here that the report of the Official Valuer therein, valued the property in question with reference to the valuation date itself. The report was not to value the property on a subsequent date. Therefore, the Wealth-tax Officer had a definite expert opinion as to the value of the property as on the relevant valuation date. It was not a case where the valuation report of a subsequent year was relied upon as information and, while reassessing the valuation, a certain percentage from the valuer of the subsequent date was reduced. (TRC. Nos. 3 to 10 of 1985-Commissioner of Wealth Tax Vs. M. Ramachandran, was also referred to by learned counsel for the Revenue. This was decided on January 14, 1991. In the said cases, for the assessment years 1964-65 to 1971-72, assessments were made in March 1973. They were reopened u/s 17 because certain deductions were not allowable while computing the value. In the reassessment proceedings, the Wealth-tax Officer referred the matter for valuation to the valuation cell. No doubt, the valuer's report, dated January 12, 1973, in respect of the assessment year 1972-73, was also relied on therein. Question No. 2 referred to therein was not quite accurate and it was reformulated and, thereafter, the answer given was based entirely on the facts and circumstances of the said case. The assessment order therein shows that there was a detailed investigation before the reassessment was effected and there was definite material with the assessing authority regarding the valuation of the properties in question with reference to the relevant valuation dates. Therefore, the said decision cannot be applied to the facts of the present case, de hors the peculiar facts of the said case. The District Valuation Officer of the Income Tax Department had valued the properties therein with reference to the particular valuation date applicable to the relevant assessment year. Therefore, it was not a case where the assessing authority himself formed an opinion about the valuation of the property.

5. This court had an occasion to consider this question in detail in Commissioner of Wealth Tax Vs. V.N. Shankar, (TRC. Nos. 8 and 9 of 1984, dated January 4, 1991). In the said decision, this court considered a decision of the Gujarat High Court in Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala, and of the Bombay High Court reported in the same volume at p. 386 (Dr. Keki Hormusji Gharda v. B. H. Raisinghani, WTO, in addition to referring to two decisions of Puttaswamy J. in Amrut Talkies Vs. Second Income Tax Officer, (Kar and in K.G. Kemptur Vs. Second Wealth Tax Officer, . Further, this court also considered the scheme of Chapter XX of the Income Tax Act and the Statutory recognition found in section 269 of the said Act, about the possibility of variation in the valuations in respect of the same property by different valuers. The other factors referred to therein are found at paras 3 and 4 thus (at p. 733) :

"Propensity to fluctuate is inherent in the market value due to several factors. Therefore, it is not a safe rule to estimate the market value as on a particular

day with reference to the market value available on a much later date; one difficulty is the selection of the percentage, as to what is to be added or deducted.

A sudden spurt in demand for property in a particular locality due to actual developmental activities or because of rumour as to a public development of the locality cannot be ruled out. In another case the valuation done by one valuer may depend upon his subjective approach to some facts of valuation only."

6. Thereafter, at para 10, it was observed thus (at p. 735) :

"Whether a particular material could be used as information depends upon each case. Theoretically, the valuation of a particular property by the Valuation Officer cannot be brushed aside as not information at all, though the said valuation is essentially the result of the opinion of the valuer. The said opinion is yet to be used in evidence to arrive at the market value of the property. But the question posed for our answer is not dependent upon the theoretical aspect of the question. The answer to the question depends upon the facts and circumstances of the case. The purpose of the information should be such that it should reasonably persuade the assessing authority to reopen the proceedings."

7. In the said case, the difference was found to be marginal and it was held that the same cannot be treated as information for the purpose of section 17(1)(b) of the Act.

8. In the instant case, the reopening is done not just by applying the valuation of the property furnished by the valuer. The said valuation given by the valuer was with reference to a subsequent date. From this valuation the Wealth-tax Officer deducted certain percentages to estimate the value as on the earlier valuation dates. There is absolutely no material that the value of the property fluctuated only by 10 per cent. or 20 per cent. as the case may be; the percentage for deduction selected by the Wealth-tax Officer was no entirely his own estimate and inference. It was not based on any expert opinion. It cannot be said that the value of the property was just about 20 per cent. less than the subsequent year. This again depends upon the developmental activity that took place in the locality and various other unidentifiable factors. In a developed city like Bangalore, the prices of the immovable property may shoot up year to year not by a few percentage only.

9. Since it is a case of reopening the assessment, the burden is quite heavy on the Revenue to establish the factors that warrant the exercise of the power. The information that has to be the basis for action u/s 17(1)(b) should be a legally admissible material and cannot be just a subjective inferential fact. In the absence of any material to intricate the percentage of fluctuation in the prices of the immovable properties, it will be an entirely guess work to deduct a few percentage from the subsequent year's valuation to arrive at the valuation for the previous years. pH

10. In these circumstances, it is not possible for us to uphold the contention of the Revenue. In the facts and circumstances of this case, the report of the Government valuer would not constitute information u/s 17(1)(b) of the Act.

11. The answer to the question referred to us, therefore, is in the affirmative and against the Revenue.