(1987) 10 AHC CK 0001

In the Allahabad High Court

Case No : Wealth-tax Application No''s. 63 to 66, 67, 68 to 75 of 1987

Commissioner of Wealth Tax APPELLANT

Vs

Umesh Chand RESPONDENT

Date of Decision : 19-10-1987

Acts Referred:
Wealth Tax Act, 1957 — Section 27(3), 7

Citation : (1988) 67 CTR 17 : (1988) 171 ITR 673

Hon'ble Judges : R.M. Sahai, J;Om Prakash, J

Bench : Division Bench

Advocate : Bharatji Agarwal, for the Appellant; V.B. Upadya and V. Gulati, for the Respondent

Judgement

R.M. Sahai, J.—The Commissioner of Wealth-tax has filed these applications u/s 27(3) of the Wealth-tax Act for calling for a reference of the following questions of law said to arise out of the order passed by the Income Tax Appellate Tribunal, Delhi Bench B, New Delhi :

" 1. Whether the Tribunal is justified in upholding the order of the learned Appellate Assistant Commissioner in the facts and circumstances of the case, when both the appellate authorities ignored material facts and evidence regarding comparative sales ?

2. Whether the findings of the Tribunal are vitiated in law as these have been arrived at after ignoring relevant facts and material discussed in the relevant orders of the two assessment years and also on mis-statement of the facts ?

3. Whether the assessee could be allowed to claim different rates of valuation for similar property before two different Government authorities and whether the Tribunal was justified in holding the value of the land at Rs. 12,000 per bigha in such peculiar circumstances of the case ?

4. Whether the Tribunal was justified in ignoring the principle of law laid down by the Hon''ble Allahabad High Court in the case of Maharaj Kumar Urfan Rasool

Khan v. U. P. Government ILR [1960] All 71 at page 102 which provides that an award under the Land Acquisition Act which is accepted by the owner is a good piece of evidence regarding the market value of the remaining property in the immediate vicinity ?"

2. The assessees were owners of agricultural land which had come to them as a result of partition in the joint family. In the returns filed of movable and immovable properties, the agricultural land which came as a result of partition was also shown. The departmental valuer determined the value of land at Rs. 75,000 per bigha as the agricultural land measuring 1 bigha 19 biswas 17 biswansi situated on the Delhi-Meerut road was sold in part by the assessee on July 3, 1976, for Rs. 27,000 and the remaining on October, 31, 1976, for Rs. 1,30,000. Report of the registered valuer, however, fixed it at Rs. 12,000. The Wealth-tax Officer relied on the departmental valuer''s report and the claim of compensation at Rs. 35 per square yard by the assessee as against Rs. 18.70 before the Land Acquisition Officer in proceedings for acquisition of the assessee''s land for construction of Mandi Samiti. The Tribunal, while upholding the order of the Appellate Assistant Commissioner directing the Wealth-tax Officer to take the value of the agricultural land at Rs. 12,000 (per bigha), held that the land of which valuation was to be determined was agricultural land as it was being cultivated, and it was situated away from the main road near a small village. Therefore, the value for which the land situated on the Meerut-Delhi road was sold could not be taken as the basis. And the valuation could be determined treating it as agricultural land. It is thus obvious that question No. 1 does not raise a question of law as the Tribunal had considered the valuer''s report but did not agree with it as the location of the two lands was different. It further held that the Wealth-tax Officer did not bring on record any material to justify the valuation at Rs. 75,000 per bigha, obviously because the value of sale of plots on the main road could not be taken into account for the land in dispute. Then, there was no other material.

3. As regards question No. 2, learned counsel for the Department failed to point out the mis-statement of fact. There is no mention of it even in the application. The argument that an extract of the valuer''s report quoted in the order was ignored, has no merit. Once it has been found that the location of the plot was different, the sale price of plot No. 206 could not furnish material for determination of the value of the plots in dispute. The Tribunal thus did not ignore any relevant material. Similarly, question No. 3 does not raise any question of law. It purports to refer to the claims of the petitioner in land acquisition proceedings and before the Wealth-tax Officer. But the valuation u/s 7 of the Wealth-tax Act has to be determined of the price which it would fetch in the open market. Therefore, what had to be determined was the price the land would fetch if sold as agricultural land. For that the assessee claimed that it would fetch not more than Rs. 12,000 per bigha. In land acquisition proceedings, the compensation on the other hand was claimed on its potential value as a building site. Since the basis in the two proceedings was not the same, the

assessee rightly claimed different rates. Question No. 4 again does not raise any question of law for the reasons mentioned while discussing questions Nos. 2 and 3.

4. In the result, all the applications fail and are rejected.

