

(1991) 01 KAR CK 0093

In the Karnataka High Court

Case No : Tax Referred Cases No's. 8 and 9 of 1984

Commissioner of Wealth Tax

APPELLANT

Vs

V.N. Shankar

RESPONDENT

Date of Decision : 04-01-1991

Acts Referred:

Income Tax Act, 1961 — Section 147, 269 C

Wealth Tax Act, 1957 — Section 16 A (1), 17, 17 (1) (b)

Citation : (1991) 95 CTR 113 : (1991) 189 ITR 731 : (1991) 59 TAXMAN 424

Hon'ble Judges : K.B. Navadgi, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chanderkumar and S.R. Shivaprakash, for the Appellant; G. Sarangan, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The following question of law is referred under the provisions of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified 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 value shown is much higher than the value shown by the assessee's valuer ?"

2. The assessee was assessed under the Wealth-tax Act ("the Act" for short) with reference to the valuation date March 31, 1970 and March 31, 1971. We are concerned with the property situated in Kothari Road, Madras. The said property was valued at Rs. 2,04,943. Subsequently, the property was sold by the assessee. The estate of the purchaser was the subject-matter of valuation with reference to August, 1971. The property was valued at Rs. 2,67,000. From this, the assessing authority worked backwards to arrive at the value of the property as on March 31, 1970 and March 31, 1971, respectively, and arrived at the value as Rs. 2,25,630 and Rs. 2,46,370, respectively, for the two dates. This valuation was based on the report of a government valuer obtained by the Department

while valuing the property in the hands of the purchaser. This report was treated as information and, consequently, proceedings, were taken against the present assessee u/s 17(1)(b) of the Wealth-tax Act. The assessment proceedings were reopened. Against this order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals) who allowed the appeal. The Revenue approached the Appellate Tribunal. The Tribunal found that the assessee's value earlier was based on a valuation report obtained in the year 1969-70 which was accepted by the Wealth-tax Officer. The Appellate Tribunal, therefore, dismissed the appeals by holding that valuation was not an exact science and the report of the valuer furnished in connection with the assessment proceedings of another assessee cannot be information for the purpose of reopening the assessment of the present assessee u/s 17 of the Act. The Appellate Tribunal held that it is a case of a change of opinion and not a case of "information". At the instance of the Revenue, this question has been referred. Before proceeding further, it is also necessary to note that, u/s 16A(1)(a) of the Act, it is always open to the assessing authority to call for the report of an authorised valuer, hereafter referred to as the Valuation Officer. Therefore, even while assessing initially, the assessing authority could have called for the opinion of the Valuation Officer; instead he proceeded to accept the valuation furnished by the assessee. The present revaluation of the property is again based on the opinion furnished by the Valuation Officer with reference to a different date altogether from which the Revenue sought to work backwards to estimate the value once again. It is well known that arithmetical accuracy in valuation of property is impractical. More than one view as to the value of a property would be there, always. While one valuer estimates the values at rupees one lakh, another has valued it at Rs. 90,000 or even at Rs. 1,15,000. It is said that value is generally subjective, and the "price" is objective. Therefore, an estimated price is the result of subjective evaluation of objective facts. That is why the law is cautious when it refers to the value as the "fair market value"; the value is to be "fair" to the assessee and the Revenue.

3. 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.

4. 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.

5. Basically, the estimate of market value is essentially a matter of informed opinion, and judicial opinion is unanimous in holding that market value is bound to vary from individual to individual.

6. This principle is statutorily recognised in section 269C of the Income Tax Act.

In Chapter XXA of the Act, the Income Tax Act provides for compulsory acquisition of a property, when it is sold for an apparent consideration, which is less than the fair market value of the property, provided the fair market value exceeds the apparent consideration by more than fifteen per cent. of such apparent consideration. The second proviso to section 269C can be safely accepted as a guidance in other cases involving valuation under allied tax legislations. Parliament has recognised the inevitability of differences in the estimation of the fair market value of immovable property. The question posed for the court's answer has to be considered in this background.

7. But the question is whether, in the facts and circumstances of this case, the opinion of the valuer is information so as to call for the exercise of the power as provided in section 17(1)(b); when an assessee had disclosed facts fully and furnished a value which is reasonable nearer to the fair market value, just because another valuer has opined the value slightly higher, will it be information? A few decisions cited before us will be considered in this connection.

8. Learned counsel for the Revenue referred to the decision in *Dr. Keki Hormusji Gharda Vs. B.H. Raisinghani*, Wealth-tax Officer, Companies Circle III (2), Bombay and another, wherein the Bombay High Court held that the valuation report obtained subsequently can be a valid basis for an action u/s 17 of the Act. In the said case, the initial valuation was Rs. 1,17,793 while the property was sold for Rs. 5,05,000. The difference was too glaring. It was not a case of a marginal difference in the valuation at all.

9. In another decision of the Gujarat High Court in *Commissioner of Wealth-tax, Gujarat-III Vs. Chhatrshal Sinhji D. Zala*, the valuer's report submitted by the assessee himself for the subsequent year was used as information to reopen the assessments for previous years u/s 17(1)(b). It was held by the High Court that it was a proper material having regard to the facts and circumstances of the case. Here again, we find the difference in the valuation was more than treble the original valuation. On the basis of the fresh information, the property which was valued initially for Rs. 1,00,000 was found to be of the market value of Rs. 2,25,000 for one year and Rs. 3,77,200 for another year. Further, the basis for the reopening of the assessment was the very material furnished by the assessee himself. In the decision in *Amrut Talkies Vs. Second Income Tax Officer*, this court also held that the report of the valuer could be used as information for the purpose of section 147 of the Income Tax Act. The valuation here pertains to the cost of construction of a permanent cinema theatre and not to its market value. It can be noted here itself that the margin of difference in estimating the cost of construction by two valuers cannot be of the same degree as involved in the estimate of the market value of a property. The decision arises out of a writ petition filed against the issuance of the notice itself. Therefore, there was no occasion for the authorities under the Act to finally decide the question. The cost of construction furnished by the assessee was Rs. 4,79,050 as against the valuation report of Rs. 6,12,000. Another decision of this court is reported in

K.G. Kemptur Vs. Second Wealth Tax Officer, . This again arose out of a writ petition challenging the notice issued u/s 17 of the Act. The valuation report which was the basis for the notice was in the very proceeding of the assessee therein. The report of the Valuation Officer was held to be a valid information for the purpose of determining the jurisdiction of the assessing authority to initiate the proceedings to reopen the assessment.

10. 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. Some error in the estimation which does not qualitatively affect the earlier assessment order cannot be the cause for reopening the assessment. Already a reference has been to the statutory recognition of the possibility of a difference to the extent of 15% while estimating the market value of a property. An assessee is entitled to expect finality to the assessment proceedings when he has disclosed all relevant facts on the earlier occasion. The reopening breaks open this finality. Therefore, the material for reopening of the assessment should be such that the earlier order could not have been reasonably made. In the instant case, there is not much difference between the valuation made earlier and the valuation now proposed u/s 17(1)(b). In one case, the difference is only of about 10% and for the second year, the difference will be about 20%. Again, this difference is the result of a hypothetical valuation traced back from the valuation furnished by the Government valuer for another date. In these circumstances, we are of the view that the facts and circumstances did not warrant reopening of the assessment u/s 17(1)(b) of the Act.

11. The question referred to us assumes that the value shown in the report of the Government valuer is much higher than the value shown by the assessee's valuer. This assumption itself is not correct. The question will have to be reformulated as "whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is justified 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 value shown is only marginally higher than the value shown by the assessee ?" Our answer is in the affirmative and against the Revenue.