

(1966) 01 KAR CK 0014
In the Karnataka High Court
Case No : T.R.C. No. 7 of 1964

Commissioner of Wealth Tax, Mysore

APPELLANT

Vs

V.C. Ramachandran

RESPONDENT

Date of Decision : 27-01-1966

Acts Referred:

Wealth Tax Act, 1957 — Section 27 (3), 7 (1)

Citation : (1966) ILR (Kar) 270 : (1966) 60 ITR 103 : (1966) 1 MysLJ 455

Hon'ble Judges : K.S. Hegde, J;K. Bhimiah, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; Swaminathan, for the Respondent

Judgement

Hegde, J.—This is a reference u/s 27(3) of the Wealth-tax Act, 1957, to be hereinafter referred to as the "Act". Two questions referred to this court for its opinion are : (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the value of the land surrounding the buildings in valuing the properties Nos. 1 and 2 ?; I and (2) Whether an asset such as land acquires value only when there is an intention to sell ? The facts of the case are fully set out in the statement of the case submitted. Hence, we shall quote the same.

[The learned judge set out the statement of case which ran as follows :

The High Court of Mysore at Bangalore by their order dated 1st October, 1963, in Civil Petition No. 87 of 1963 have directed the Tribunal to submit the following two questions of law along with a statement of the case to the High Court. In compliance with the said order of the High Court, we submit the following two questions of law u/s 27(3) of the Wealth-tax Act along with the agreed statement of the case :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the value of the land surrounding the buildings in valuing the

properties Nos. 1 and 2 ?; and

(ii) Whether an asset such as land acquires value only when there is an intention to sell ?"

2. For the assessment year 1959-60, the assessee, V. C. Ramachandran, sent his wealth-tax return on March 31, 1959, showing a total wealth of Rs. 3,41,106 comprised of immovable property of the value of Rs. 2,57,777 and movable property worth Rs. 83,329. The immovable properties consisted of four items, viz., :

(i) the house bearing door No. 6, Richmond Road, Bangalore;

(ii) house bearing door No. 3, Cunningham Road, Bangalore;

(iii) house bearing door No. 31, Chinnaswamy Mudaliar Road, Bangalore; and

(iv) house bearing door No. 33, Chinnaswamy Mudaliar Road, Bangalore.

The annual letting value of the first item was shown as Rs. 3,840, of the second item as Rs. 6,900, of the third item, as Rs. 1,080 and of the fourth item as Rs. 960. For the preceding year, i.e., 1958-59, item No. (i) had been valued at Rs. 1,50,000 and the other three properties had been valued at twenty times their annual letting value. For the year in question, the Wealth-tax Officer obtained details regarding the site area, the plinth area, etc., in respect of the properties and from an examination of these particulars, the wealth-tax Officer was of the opinion that items Nos. (i) and (ii) had not been properly valued and that their value had to be considerably enhanced. With regard to item No. (i), viz., house bearing door No. 6, Richmond Road, the Wealth-tax Officer found that the area of the existing site was 65,615 sq. ft. and calculating the value of this site at Rs. 2.25 nP. Per sq. ft., he valued the site at Rs. 1,48,500. He valued the building at Rs. 50,000 and valued the total property at Rs. 1,98,000. With regard to item No. (ii), house bearing door No. 3, Cunningham Road, he found that the area of the site was 1,56,565 sq. ft., and that this property consisted of a large number of stables and other buildings apart from the main building. In the circumstances, he adopted a reduced rate of Rs. 1.50 per sq. ft. and valued the site of Rs. 2,34,500. He put the value of the building at Rs. 65,000. He, therefore, valued the entire property comprising this item at Rs. 3,00,000. With regard to items Nos. (iii) and (iv), he valued them together at Rs. 38,350. The value of the total immovable properties of the assessee was thus fixed at Rs. 5,36,850, and tax was levied on that basis. Copy of the Wealth-tax Officer's order is annexure "A" and forms part of the case.

3. The assessee went up on appeal before the Appellate Assistant Commissioner of Wealth-tax, B-Range, Bangalore. The following contentions on behalf of the assessee were urged before the Appellate Assistant Commissioner; viz. :

(i) there were no justification for valuing items (i) and (ii) on the basis of the value of the site and the construction cost of the building whereas the other two

items, viz., items (iii) and (iv) were valued on the basis of twenty times the net annual letting value;

(ii) the proper method of valuing the properties is that based on twenty times the net annual letting value; and (iii) even though the properties may have laege compounds, they could not be converted into house sites without damaging the main building.

4. The Appellate Assistant Commissioner held that item No. (ii), viz., No. 3 Cunningham Road Property, should be valued on the basis of twenty times the net annual letting value and that item No. (i), viz., No. 6 Richmond Road, should be valued on the basis of twenty times the net annual letting value plus the appurtenant site at the rate of Rs. 3 per sq. ft. copy of the Appellate Assistant Commissioner's order is annexure "B" and forms part of the case.

5. Against this order of the Appellate Assistant Commissioner, the department preferred an appeal before the Tribunal. The department's contentions before the Tribunal were :

(i) that the "return" from any asset was not a safe guide to determine the value of the asset; and

(ii) that the potential value of the building should also be taken into account in arriving at the value of the building.

On the other hand, it was contended on behalf of the assessee that in view of the fact that in the locality in which these properties were situated, plots could not be easily sold; the potential value could not be taken as the basis of evaluation. It was further contended that the value of Rs. 3 per sq. ft. fixed by the Appellate Assistant Commissioner for the vacant space included in the Richmond Road property was not justified because the value of Rs. 3 per sq. ft. was special in the circumstances of the case as the Maharani of Travancore who had a bungalow in front of this plot wanted to buy it at a fancy price.

6. The Tribunal held that it is only when there is an intention to sell that the property acquires a potential value, but till then, everything was only static and that, therefore, the only basis for ascertaining the value of the property was the rent recoverable and that the land surrounding the bungalow, which was not productive, could not be nationally valued just for the sake of wealth-tax. The Tribunal further held that even the value of Rs. 3 per sq. ft. fixed by the Appellate Assistant Commissioner was "special". The Tribunal, therefore, dismissed the appeal preferred by the department. The order of the Tribunal is annexed herewith as annexure "C" and forms part of the case.

[After setting out the statement of case, the learned judge proceeded.]

The valuation of all assets other than cash for the purpose of determining wealth-tax has to be made on the basis of section 7(1) of the "Act", which says :

"The value of any asset, other than cash, for the purposes of this Act, shall be

estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

7. In other words, the value of those assets has to be determined on the basis of their market value. There is not support for the view taken by the Income Tax Appellate Tribunal in R.A. No 622/62-63, from out of which this reference has arisen, that in determining the value of an immovable property, the intention of the owner of that property to sell the same has any relevance. Our attention has not been invited by the learned counsel for the assessee to any decision which has taken that view. Such a view is unsupported by any principle. If the view that an item of property will have market value only when its owner intends to sell it is correct, then all assets, other than cash, will not be eligible to tax until they are put on the market for sale. This view, by and large, will defeat the provisions of the "Act". It is strange that the Tribunal thought that an asset has no market value until it is put up for sale. Very properly, the learned counsel for the assessee did not support that view. It is an obviously wrong view. Hence, no further discussion on that point is called for. Hence, we answer the second question in the negative, i.e., an asset such as land does not acquire value, only when there is an intention to sell it.

8. This leaves us with the first question referred to. Parties are agreed that the proper basis for determining the value of an asset other than cash is to find out its market value. But the real difficulty arises in determining the basis for ascertaining the market value. On behalf of the revenue, it is contended that the only reasonable basis is the prices obtained by the sales of other similar lands near about the land in question. On the other hand, it is contended, on behalf of the assessee, that in a case like the one before us, where we are concerned with buildings with compounds in a city, which buildings are in the possession of tenants and the tenants cannot be either evicted or the rent payable by them enhanced except in accordance with the provisions of the Rent Control Act, the only appropriate basis is to capitalise the annual rent by certain number of years purchase.

9. Before dealing with this question, it is necessary to refer to one other aspect. Section 7 of the "Act" says that the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date. What exactly is the import of the expression "which in the opinion of the Wealth-tax Officer it would fetch?" Does it mean that the Wealth-tax Officer can determine the value arbitrarily or should he exercise his discretion in a judicial manner? For pronouncing on these questions, it is necessary to remember that we are dealing with a provision relating to taxation. If the valuation of an asset depends upon the sweet will and pleasure of the Wealth-tax Officer concerned, then the power to tax can become an instrument of oppression. It might lead to astonishing results. Such a construction should not be ordinarily adopted. A provision similar to section 7 came up for consideration before the Supreme

Court in Commissioner of Income Tax v. McMillan & Company. Therein, interpreting section 13 of the Indian Income Tax Act, 1922, the Supreme Court held that the words "in the opinion of the Income Tax Officer" in the proviso to section 13 of the Indian Income Tax Act, 1922, do not confer a mere discretionary power, but in their context impose a statutory duty on the Income Tax Officer to examine in every case the method of accounting employed by an assessee and (i) to see whether or not it is regularly employed, and (ii) to determine whether the income, profits and gains of the assessee can properly be deduced therefrom. The decision as to the method of accounting is to be arrived at first by the Income Tax Officer; after a careful scrutiny of the accounts whether they be simple or complicated, and the power is to be reasonably and judicially exercised, which excludes any subjective or arbitrary decision by Income Tax Officer; the power so exercised is not clothed with finality and is not excluded from review by the Appellate Assistant Commissioner and in reviewing the order the appellate authority can exercise the same powers which the Income Tax Officer could exercise. We have no doubt that similar is the position u/s 7 of the "Act". We have no hesitation in holding that the power conferred on the Wealth-tax Officer u/s 7 of the "Act" is a judicial power. The same has to be exercised in a judicial manner. The exercise of that power is open to review in appeal by the Appellate Assistant Commissioner and thereafter by the Tribunal. In fairness to the learned counsel for the revenue, it must be said that he did not contend otherwise.

10. Now coming back to the question of valuation of the assets, with which we are concerned in this case, the mode adopted by the Tribunal is in our opinion in accordance with law. The properties, with which we are concerned in this case, are admittedly in the possession of tenants. It is not the case of the revenue that it is within the power of the assessee to resume possession of those lands except under circumstances mentioned in the Rent Control Act. Further, it is not disputed that the assessee is not competent to enhance the rent payable by his tenants except in accordance with the Rent Control Act. It does not appear to have been contended before the Tribunal that there is either a case for taking possession of any of the items of properties or even a case to enhance the rent in respect of all or any of those items. That being so, if the method adopted by the Wealth-tax Officer is accepted, it may lead to under hardship. In that event, the tax levied in respect of an asset would have no just relationship with its value to its owner. In such cases, occasions may arise that it would be more profitable for the owner to give up his ownership of that asset rather than pay the tax.

11. It has been held by the Supreme Court in Corporation of Calcutta v. Smt. Padma Debi that, in determining the value of a property, regard must be had to provisions of law which control the fixation of rent as well as those regulating the power of the landlord to take possession of his own property. We respectfully reiterate that view.

12. From what has been said above, it follows that, in determining the market value of the assets concerned in this case, the true test would be the price the assessee would get on the valuation date for his landlord's right in a transaction between a willing seller and a willing buyer.

13. The question of valuation of buildings with compounds had come up for consideration before several High Courts while dealing with the land acquisition cases. In *T. Radhakrishna Chettiar v. Province of Madras* a Division Bench of the Madras High Court laid down that the proper method of valuation to be adopted in a case of compulsory acquisition relating to a house and ground situated in a municipality and fetching regular income is to assess the value on the basis of capitalisation of the net annual income. The number of years purchase to be adopted in capitalisation has to be arrived at by taking into account the interest yielded by Government securities at the time of the notification u/s 4(1) of the Land Acquisition Act. Where the gilt-edged securities were carrying interest at three per cent. at the time of notification, u/s 4(1) of the Land Acquisition Act, the annual rental value must be capitalised at 33 1/3 years' purchase.

14. A similar view was taken by the former High Court of Mysore in *Rajasekhara v. Chairmen, City Improvement Trust Board, Mysore City*. Therein, the court laid down that section 23 of the Land Acquisition Act, 1894, requires that the first thing to be taken into account in determining compensation is the market value of the property at the time of the notification. Market value has to be ascertained by the court in each case with due regard to the conditions of the time and factors which affect transactions between a willing seller and an intending buyer. In any case, the decision at best is to be regarded as approximate and not mathematically accurate estimate. A well recognised basis of valuation of buildings in urban areas is the rent normally realised by these when these are leased out to others and the rent expected to be got if these are in occupation of the owners. The valuation of a land with building thereon by valuing the land and the building separately and adding the value of the one to the other does not furnish a reliable estimate of the property.

15. In this connection, we may refer to the circular issued by the Central Board of Revenue in the matter of valuation of immovable property. It is no doubt true that the circular has no statutory force. But, then, the circular in question is binding on the officers subordinate to the Central Board of Revenue. That apart, that circular shows how the highest authority dealing with wealth-tax has understood the scope of section 7 of the "Act". This is what the circular says :

"The value of lands and buildings should be estimated with due regard to the nature, size and locality of the property, the amenities available and the price prevailing for similar assets in the same locality or in the neighbourhood of that locality. Where the value is not easily ascertainable in this manner, the Wealth-tax Officer may adopt the capital value of the property determined by the appropriate authority in the latest assessment for purposes of property taxation, under the laws and regulations relating to municipalities and municipal

corporations. However, where the municipal valuation is prima facie too low having in view the rents actually received, or where an assessment of capital value is not made by a municipality, or the property is located in an area where there is no municipality, the Wealth-tax Officer may estimate the reasonable annual value of the property and determine its capital value as a multiple, say 20 times, of such annual value."

16. The question as to the appropriate method to be adopted in valuing buildings and lands appertaining thereto was the subject-matter of an article by A. R. Ilersic in the British Tax Review, 1962, to which our attention was invited by Mr. Swaminathan, the learned counsel for the assessee. This is what the learned author says :

"The rateable value of a hereditament may be determined in a number of ways, but essentially the rateable value is estimated on the basis of the annual rental which the hereditament could attract in the open market. The best evidence of that rental is the rent which the occupier is actually paying, although it does not follow that this is invariably the market rental for valuation purposes, e.g., it may be a special rental for that particular tenant. In the absence of rental evidence, some other basis for arriving at the rateable value is required, and the two main methods employed by valuers are known as the "profits basis" and the "contractor's test". The former is usually applied to property occupied by commercial undertakings which enjoys a monopoly, in particular public utilities. The latter is normally employed to determine the rateable value of large public or semi-public buildings in which the activities are non-profit making, e.g., schools, town-halls, etc. Both of these methods are substitutes; they are merely used in the absence of more satisfactory evidence as to rental value, i.e., they are methods of "last resort". Both methods involve a considerable subjective element and the final value placed upon the hereditament is often a compromise between the experts representing the occupier and the valuation officer. Where a compromise cannot be reached, then it becomes a matter for the courts."

17. We are in respectful agreement with those observations.

18. The Appellate Tribunal is competent to decide both questions of law as well as fact. It is the final fact-finding body. If the Tribunal in its discretion has come to the conclusion that, on the facts of this case, the rental basis is the proper basis, we see nothing illegal about it.

19. For the reasons mentioned above, we answer the first question in favour of the assessee, i.e., that, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the value of the land surrounding the buildings in valuing the properties Nos. 1 and 2.

20. As the parties have penalty succeeded and partly failed in this reference, there will be no order as to costs.