
(2011) 11 DEL CK 0411
In the Delhi High Court
Case No : WTA No. 5 of 1999

Commr. of Wealth Tax Delhi-II

APPELLANT

Vs

M/s MG Builders Co.

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Income Tax Act, 1961 — Section 24

Wealth Tax Act, 1957 — Section 16A, 27A, 46, 46(2), 7

Citation : (2011) 185 DLT 659

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, for the Appellant; Anoop Sharma and Mr. Manu K. Giri, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The present appeal u/s 27A of the Wealth Tax Act, 1957 (Act, for short) relating to assessment years 1985-86, 1986-87 and 1987-88 has been preferred by the Revenue in the case of MG Builders and Co. Pvt. Ltd., respondent herein.

2. By the order dated 15.5.2000 the following substantial question of law was framed :

Whether on the facts and in the circumstances of this case was the Tribunal right in coming to the conclusion that the annual letting value of the property in question should be fixed @ Rs.3.50 per sq. ft.?

3. The respondent-assessee is owner of property No. 4, Community Centre, New Friends Colony, New Delhi (property, for short), which during the relevant period was let out to M/s Godfrey Phillips Pvt. Ltd. on annual rent of Rs.4,42,260/-. The tenant had also deposited interest-free security of Rs.31.50 lakhs with the assessee.

4. In the wealth tax return, the respondent-assessee had estimated a fair market

value of the property on the basis of annual rent and had claimed deduction of Rs.31.50 lakhs against the value of the property. The Assessing Officer in the assessment year 1984-85 referred the matter to the District Valuation Officer u/s 16A of the Act to determine the fair market value of property. District Valuation Officer computed fair market value of the property on the basis of annual rent of Rs.4,42,260/- and added interest at the rate of 14% on Rs.31.50 lakhs amounting to Rs.4,41,000/- to the figure of annual rent.

5. The Assessing Officer relying upon and on the basis of the report of the District Valuation Officer, after giving certain deductions calculated the fair market value of the property at Rs.23,37,000/-. He did not allow deduction of Rs.31.50 lacs as a liability but we are not concerned with the said aspect in the present appeal.

6. In the first appeal the assessee succeeded and the Commissioner of Wealth Tax (Appeals) held that interest on Rs.31.50 lakhs cannot added to the annual rent to compute the fair market value of the property.

7. The Income Tax Appellate Tribunal (Tribunal, for short) in their impugned order dated 19.11.1998 has agreed with the findings recorded by the Commissioner of Wealth Tax (Appeals).

8. We need not examine the legal aspects and provisions of the Act as the matter is covered by the decision of the Supreme Court in Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, and decision of this Court in Brig. Gurbux Singh Vs. Commissioner of Wealth Tax, .

9. In Shravan Kumar Swarup and Sons (supra) it has been held that Rule 1BB is retrospective in nature and will apply to all pending proceedings including appeal/reference proceedings. Method of capitalization of income on number of years" purchase value was one of the recognized methods for valuing a house. The Rule was intended to impart uniformity in valuation and to avoid vagaries and disparities. The Rule 1BB stipulates and requires addition by way of notional interest on security deposit paid by a tenant to a landlord, when conditions stipulated were satisfied.

10. Rule 1BB has been replaced and valuations of immovable assets including commercial property is now mandated by Schedule III to the Act. Referring to the said Schedule, Section 7 of the Act and the ratio of the decision in the case of Shravan Kumar Swarup and Sons (supra) in Brig. Gurbux Singh. (supra), it has been held as under :

In exercise of its power u/s 46 of the Act, which as per section 46(2)(a) of the Act, extracted above, includes the power to frame rules to provide for "the manner in which the market value of any asset may be determined", the Board framed rule 1BB, now omitted by the Wealth-tax (Second Amendment) Rules, 1989, with effect from April 1, 1989, to make room for insertion of Schedule III to the Act itself. The said rule as also the newly inserted Schedule III, gave

statutory recognition to the rent capitalisation method of valuation for the house properties wholly or mainly used for residential purposes. Besides prescribing the multiplying factor, the rule sets out the procedure for determining the net maintainable rent for that purpose. Schedule III to the Act is in substance, on lines similar to rule 1BB, except that Schedule III is meant to be applied for valuation of residential as well as commercial properties. Under rule 1BB(2)(c), "net maintainable rent" for the purpose of multiplying the same with a fixed fraction to arrive at the value of the house, means the amount of "gross maintainable rent", minus certain deductions like a sum equal to 1/6th in respect of repairs and an amount spent during the previous year for collection of the rent not exceeding six per cent., etc. Rule 1BB only sets out the method or formula for determining the market value of a particular asset and it is now settled that it is procedural and not substantive in nature. Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, . It is intended to carry out the purpose and object of section 7(1) of the Act, namely, an estimate of the price of the asset "if sold in the open market". Though rule 1BB was applicable for determining the value of a house which was wholly or mainly used for residential purposes, being procedural in nature, it could be applied even for valuing other let out properties as well, which has now been done in the newly inserted Schedule III to the Act.

Since section 7(1) itself opens with the words "subject to any rules made in this behalf" and rule 1BB having been framed though subsequently, (on lines similar to section 24 of the income tax Act), to provide for the "manner" used in clause (a) of sub-section (2) of section 46 of the Act, in which the market value of a house property could be determined, it seems to us almost axiomatic that the same procedure should be applied to determine the value of the property in question, even though it is not self-occupied. As noticed above once a well-recognised method of valuation, namely, the rent capitalisation method, incorporated initially in the form of rule 1BB and now in Schedule III to the Act, is directed to be adopted by the Tribunal and accepted by both sides, we find no reason why the procedure laid down therein should not be followed and applied in entirety. In our view, therefore, the Tribunal was not right in holding that while determining the annual letting value for the purpose of applying a multiplier of 16.5, only actual expenses incurred by the assessee on repairs and collections should be deducted and not to the extent of 1/6th of the gross maintainable rent, as permissible under rule 1BB, which rule, in so far as those deductions are concerned, in substance, is identical to section 24 of the income tax Act.

11. In Schedule III, Rule 5 it is stated that where an owner has accepted an amount or deposit, not being an advance payment towards rent for a period of 3 months or less, an amount calculated at the rate of 15% per annum on the amount of deposit outstanding from month to month shall be added to compute the annual rent. Thus interest on security deposited of Rs. 31.50 lacs could be added to compute the annual rent

12. In view of the aforesaid position, the question of law mentioned above is answered in negative i.e. in favour of the appellant-Revenue and against the respondent-assessee. The computation and addition made by the Assessing Officer by adding interest at the rate of 14% per annum at Rs.31.50 lacs to compute the figure of annual rent is upheld. The appeal is disposed of. No costs.