(1976) 02 GAU CK 0002

In the Gauhati High Court

Case No : Estate Duty Reference No. 1 of 1970

Controller of Estate Duty APPELLANT

Vs

Bijoy Kumar Khandelwal RESPONDENT

Date of Decision : 24-02-1976

Acts Referred:
Estate Duty Act, 1953 — Section 36

Citation : (1976) 02 GAU CK 0002

Hon'ble Judges : M.C. Pathak, C.J;K. Lahiri, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; P. Choudhuri and B.P. Saraf, for the Respondent

Judgement

Pathak, C.J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953.

2. The following question of law has been referred:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing that house property in question be valued on the rental method as contrasted with land and building method ?"

3. The facts relevant for answering the above question of law may be briefly stated as under:

The deceased owned a house at Hospital Road, Silchar, which is a two-storeyed building, standing on a plot of land measuring 10,350 sq. ft. The plinth area of the building is 6,040 sq. ft. The ground floor was let out to Silchar Automobiles, a partnership firm in which the deceased was interested holding one-third share, on a rent of Rs. 200 per month. The first floor was used for the residence of the deceased. This property cost the deceased Rs. 60,000. The Assistant Controller taking into account the type of construction, proximity to the commercial places of the town, valued the land and super-structure separately at Rs. 34,128 and Rs, 1,82,000, respectively, that is, the entire property at Rs. 2,25,128. There is another building of wooden structure on the same land behind the main building.

The Assistant Controller fixed the value of this house at Rs. 16,000 and included it in Rs. 1,82,000.

4. When the matter went before the Appellate Controller, he remanded the case to the Assistant Controller and on receipt of the remand order, he fixed the fair market value of the land at Rs. 19,000, value of super-structure at Rs. 1,35,086 and the value of the wooden structure at Rs. 16,287 and the total value at Rs. 1,70,000 in round figures. Against this order of the Appellate Controller, the accountable person preferred an appeal before the Tribunal and the Tribunal held that the Appellate Controller was not right in valuing the land and property on the disapproved method of valuing land and building separately and then adding up the both. For the reasons stated in the order, the Tribunal held that it saw no reason as to why the gross rental should not be adopted as fair in the instant case and, having so held, directed that the building property should be valued on rental basis, and further directed that the value fixed by the Appellate Controller should be substituted by the value arrived at on rental basis.

5. On the above facts, the above question of law has been referred. Section 36 of the Estate Duty Act reads as follows :

"36. Principal value how to be estimated.--(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased''s death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased''s death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price."

6. Thus, Section 36 of the Estate Duty Act lays down the method of estimating the principal value of the property.

7. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , it has been observed by the Supreme Court as follows :

"It is not disputed that the function of the court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification u/s 4(1) and the methods of valuation may be,--

(1) opinion of experts,

(2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, and

(3) a number of years'' purchase of the actual or immediately prospective profits of the lands acquired."

8. This case arose under the Land Acquisition Act.

9. In Smt. Tribeni Devi and Others Vs. Collector of Ranchi, , which case also arose under the Land Acquisition Act, the Supreme Court has observed as follows :

"This court had in The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, , indicated the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification u/s 4(1), which are:

(i) opinion of experts,

(ii) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages, and

(iii) a number of years'' purchase of the actual or immediately prospective profits of the lands acquired.

These methods, however, do not preclude the court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonable correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined."

10. On the basis of the above observations of the Supreme Court we find that the market value u/s 36 of the Estate Duty Act may also be ascertained as u/s 23 of the Land Acquisition Act by adopting any of those three methods or by taking two or all of these methods into account. We, accordingly, hold that the market value u/s 36 of the Estate Duty Act may be determined by taking one or more of the methods mentioned by the Supreme Court in the above two decisions.

11. In the instant case, the Tribunal has held after considering the facts and circumstances of the case that gross rental value should be adopted as fair. The Tribunal could have adopted one or more methods for estimating the value. In view of the facts and circumstances of the case the Tribunal found that the gross rental value was the proper method to be applied in the instant case to ascertain the market value u/s 36 of the Estate Duty Act. That being the position, it cannot be said that the Tribunal committed any error of law in directing the house property in question to be valued on the rental method in preference to the other methods, such as, the land and building method. The reasonings behind the

order of the Tribunal appear to be that, in the instant case, the Urban Areas Rent Control Act is applicable, and under that Act maximum lent is fixed and the grounds of eviction of the tenants are also laid down tinder that Act, and by the impact of the Urban Areas Rent Control Act ready purchasers of the house property may not be available and thus it would not be just and fair to determine the market value on the land and building method. These considerations are evident in the order of the Tribunal, when it has referred to the Rent Control Acts and the decision of the Calcutta High Court in CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN.,

12. Mr. G. K. Talukdar, the learned standing counsel, submits that the ground floor of the building was rented out at Rs. 200 per month but the first floor was occupied by the deceased, and, therefore, it was not a case of rented house wherein the gross rental method may be applied. His submission is, however, meritless inasmuch as the ground floor is on rent and for the first floor also the Appellate Controller has taken into account some reasonable rent on the basis of the rent received for the ground floor and under such circumstances if the land and building method is adopted it will cause unreasonable hardship against the accountable person. Hence, we find that the Tribunal did not commit any error of law in directing that the house property in question should be valued on the rental method as contrasted with the land and building method.

13. We, accordingly, answer the question referred in the affirmative and against the department. There will be no order as to costs.

K. Lahiri, J.

14. I agree.

