**(2009) 02 RAJ CK 0148**

**In the Rajasthan High Court**

CWT APPELLANT

Vs

Rawal Rajeshwarsingh of Samod RESPONDENT

**Date of Decision :** 19-02-2009

**Acts Referred:**

Wealth Tax Act, 1957 — Section 7(1), 7(4)

**Citation :** (2010) 322 ITR 39

**Hon'ble Judges :** R.C. Gandhi, Acting C.J.;Munishwar Nath Bhandari, J

**Bench :** Division Bench

## Judgement

1. The Tribunal, Jaipur Bench, Jaipur has referred the following question in R.A. Nos. 258 to 263/Jp/1988 arising out of WTA Nos. 32 to 37/Jp/1988 for the assessment years 1975-76 to 1980-81:

1 Whether on the facts and in the circumstances of the case the Tribunal was right in holding that rule IBB of Wealth Tax Rules was applicable to work out the value of the residential property known as Samod House which was used by the assessee for self-occupation ?

2. Brief facts relevant to the case are that a property known as "Samod House" was used as residential house by the assessee and the question of its value came up for consideration before the Wealth Tax Officer where such determination was made as per the provisions of Section 7(4) of the Wealth Tax Act, 1957 (for short the Act). The order of Wealth Tax Officer was then challenged before the Appellate Assistant Commissioner by the assessee. While hearing the matter by the Appellate Assistant Commissioner a question came up for consideration as to whether the valuation of property is to be determined by invoking rule IBB of the Wealth Tax Rules, 1957 (for short the Rules) as r. IBB of the Rules came by way of amendment: in the Rules and accordingly the said rule was inserted with effect from 1-4-1979. Taking the aforesaid rule to be procedural in nature, it was treated as retrospective. Rule IBB of the Rules provides for method of determination of value of the house and accordingly the Appellate Assistant Commissioner gave a direction to the Wealth Tax Officer to determine the value

of the residential house by applying rule IBB of the Rules. The order of the Appellate Assistant Commissioner was challenged before the Tribunal by the revenue and the Tribunal maintained the order of the Appellate Assistant Commissioner. Accordingly, reference was sought as to whether the Tribunal was right in holding that rule IBB of the Rules was applicable to work out the value of the residential house. It is a case where assessment years related to 1975-76 to 1980-81.

3. We have heard learned Counsel for the revenue and perused the record carefully.

4. The issue for our answer relates to application of rule IBB of the Rules for the purpose of determination of value of the residential property known as "Samod House". Before referring to rule IBB, it is necessary to refer the main provisions of Sections 7(1) and 7(4) of the Act for ready reference which are quoted hereunder:

7(1) Subject to any rules made in this behalf the value of any asset, other than cash, for the purpose 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(4) Notwithstanding anything contained in Sub-section (1), the value of a house belonging to the assessee and exclusively used by him for residential purpose throughout the period of twelve months immediately preceding the valuation date may, at the opinion of the assessee, be taken 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 next following date on which he became the owner of the house, or on the valuation date relevant to the assessment year commencing on the 1-4-1971, whichever valuation date is later:

Provided that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of this Sub-section shall apply only in respect of one of such houses which the assessee may at his opinion, specify in this behalf in the return of net wealth.

Explanation : For the purpose of this Sub-section--

(i) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(ii) house includes a part of a house, being an independent residential unit.

5. Section 7(1) of the Act provides that subject to any rules made in this behalf, the Wealth Tax Officer will determine the value of asset based on sale price in open market. So far as Section 7(4) of the Act is concerned, it provides method for determination of value of house used for residential purpose notwithstanding anything contained in Sub-section (1) of the Act. Perusal of Section 7(4) reveals

 

that if the property was in the ownership of an assessee prior to 1-4-1971, then its valuation would be made by the Wealth Tax Officer, which would be the value if sold in the open market on valuation date relevant to the assessment year for 1-4-1971. Perusal of the aforesaid provision reveals that the 1-4-1971 is a crucial date and accordingly the aforesaid provision, once valuation of the property is taken for the assessment year 1971-72, it would then be freezed for all subsequent assessment years. In the present matter, for the assessment year 1971-72 the valuation of the property was made. Now coming to rule IBB, which is quoted hereunder for ready reference:

IBB. (1) For the purpose of Sub-section (1) of Section 7, the value of a house which is wholly or mainly used for residential purpose shall be the aggregate of the following amounts, namely:

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction 100/8, and

(b) the amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction of 100/9:

Provided that in relation to a house which is built on leasehold, this sub-rule shall have effect as if for the fraction 100/8 in Clause (a) or, as the case may be, the fraction 100/9 in Clause (b), the fraction 100/9 and 100/10 respectively had been substituted.

Explanation : For the purpose of this sub-rule, a house shall be deemed to be mainly used for residential purposes, if the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent of its total built-up floor area.

Perusal of the aforesaid rule reveals that how the value of the house would be determined. The aforesaid rule was brought on 1-4-1979 and is being treated as retrospective, hence, was made applicable even for the assessment year prior to year 1979.

6. In view of the above, rule IBB of the Rules becomes applicable even for the assessment years 1975-76 to 1980-81.

7. The question now remains as to whether by bringing rule IBB of the Rules the valuation of the property having been determined for the assessment year 1971-72 and such assessment having been finalized can be redetermined for the purpose of assessment of the value of the property for subsequent assessment years. The perusal of Section 7(4) of the Act reveals that once the valuation is determined for the assessment year 1971-72, then same would be freezed for subsequent years and in the present matter, the valuation of the property was determined for the assessment year 1971-72 and the said assessment has attained finality as it was not challenged and assessment years involved in the present matter are of subsequent years.

 

8. In view of the above, it cannot be accepted that contrary to the provisions of Section 7(4) of the Act, value of the property is to be determined more so when the value of the property so assessed in the year 1971-72 has not been questioned by the assessee on the strength of rule IBB of the Rules and thereby said assessment became final. Thus, in our opinion the question in reference has to be answered in favour of the revenue and against the assessee and we hold that the valuation of house having been determined by the assessment year 1971-72 is to be applied for the subsequent years and as the assessment years involved in the present matter are of subsequent years. Thus, the value of the house would be determined accordingly. The question referred for our answer is accordingly answered.

 