
(2009) 12 KL CK 0090
In the High Court Of Kerala

CWT

APPELLANT

Vs

Remamani Bhariravan

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Wealth Tax Act, 1957 — Section 25(2)

Citation : (2009) 12 KL CK 0090

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Judgement

C.N. Ramachandran Nair, J.—The question raised in the connected wealth-tax appeals filed by the revenue is whether the Tribunal was justified in cancelling the suo motu revisional orders issued by the CWT u/s 25(2) of the Wealth Tax Act, 1957 directing modification of respondent-assessee's wealth-tax assessments for the assessment years 1996-97 to 2000-01. The facts leading to these appeals are the following.

2. The assessee was owner of 1/6th share of 1.50 acres of land in Coimbatore which was originally agricultural land. However, later on account of urbanisation, the land came within the city area assessable to wealth-tax. The assessee filed WT returns declaring fair market value as on the valuation date for all the assessment years by adopting cost indexation method. Under this method, the assessee estimated fair market value as on 1-4-1981 which was jacked up for all the years based on the cost indexation prescribed by CBDT for the purpose of assessment of capital gains. The value as on the valuation date, that is, 31-3-1996, returned for the assessment year 1996-97 was Rs. 47,06,750. In the returns filed for the later years, the value declared for 1996-97 was progressively increased @ 10 per cent from year to year. The value returned as on the valuation date, that is 31-3-2000, for the wealth-tax assessment year 2000-01 was Rs. 65,15,750. The assessing officer without any dispute accepted the method of valuation and value returned for 1/6th share of assessee's property and completed all the wealth-tax assessments u/s 16(3) read with Section 17 of the

said Act. However, the CWT noticed that assessee under an agreement for sale dated 19-5-2000 sold one-sixth of her share for Rs. 98,75,000. Based on information obtained from an application filed by the assessee for a certificate u/s 230A of the Income Tax Act, the CWT directed revision of assessments in exercise of powers u/s 25(2) of the Wealth Tax Act on the ground that original assessments completed were erroneous and prejudicial to the interest of the revenue. In short, the CWT was of the view that the value adopted was not representing market value as on the valuation date for all these years because sale within six weeks from the end of the valuation date for the assessment year 2000-01 is much higher than the value adopted for assessment. The assessee challenged the orders issued by the CWT u/s 25(2) before the Tribunal and the Tribunal allowed the appeals by vacating the orders of the CWT holding that original assessments were not erroneous and prejudicial to the interest of the revenue justifying interference by the CWT u/s 25(2) of the Act. It is against these orders, the appeals are filed by the revenue. We have heard senior Counsel Sri P.K.R. Menon appearing for the appellant and Sri T.M. Sreedharan appearing for the respondent.

3. The only question to be considered is whether the sale consideration received by the assessee pursuant to agreement for sale executed six weeks after the relevant valuation date for the assessment year 2000-01, which is higher than the value returned by the assessee and accepted by the assessing officer, constitutes a ground justifying the CWT to set aside the wealth-tax assessments and direct revision of assessments completed for the assessment years 1996-97 to 2000-01. While senior Counsel appearing for the revenue has relied on the decisions of the Supreme Court in MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, , the assessee's counsel has relied on later decision of the Supreme Court in Commissioner of Income Tax Vs. Max India Ltd., in respect of their respective contentions. On going through both the decisions, we are of the view that later decision of the Supreme Court relied on by the assessee applies to the facts of this case because the method adopted by the assessee in the valuation of one-sixth share of property at Coimbatore and accepted by the assessing officer is the method available under the Income Tax Act for the purpose of computation of capital gains. Under this method, the assessee has estimated the market value as on 1-4-1981 and increased the same by index figure prescribed by CBDT from time to time for enhanced valuation for later years. The assessing officer completed the assessments by adopting not only base year value adopted by the assessee but also the indexation applied for valuation.

In fact wealth-tax assessments were completed based on the value of share in property returned by the assessee as on the valuation dates. But for the later agreement for sale at a higher price, which came to the knowledge of the department because of the application filed by the assessee u/s 230A for a certificate for executing the sale deed, we doubt whether the CWT would have interfered with the wealth-tax assessments completed by the assessing officer

based on the returns filed by the assessee because except the value declared in the agreement for sale, there is no material for the CWT to hold that the value returned by the assessee and adopted by the assessing officer for assessments is not market value. Even though senior Counsel appearing for the revenue relying on the decision of the Supreme Court in *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, contended that rules for valuation under Schedule III of the Act are mandatory and there can be no controversy of this, we do not think rent capitalisation method provided under Rule 3 is applicable because the extensive land though with a building thereon is not rented. Further, since the built-up area is less than 25 per cent of the aggregate area, Rule 3 is not applicable by virtue of Rule 8. Therefore in our view, the rule applicable in this case is Rule 20(1) which provides for valuation of the property by estimating the price which in the opinion of the assessing officer would fetch if sold in open market on the valuation date. This presupposes that the assessee has to estimate the notional value of the property which is the value the property would fetch if sold on the valuation date. The market value is a relative concept, and it may vary from property to property in the same area and even from customer to customer. Counsel appearing for the assessee submitted that property has fetched very good price because a Christian church purchased it and the said price need not be fair market price. We are in agreement with this contention because a religious institution like church may purchase property for high price without the risk of being implicated in tax case. In fact, it is a publically known fact that property price has been on the rise for the last few years in geometric proportion which was unpredictable. Therefore we do not find anything unreasonable in the assessee's contention that unprecedented escalation in land value and because of the capacity of a religious institution to purchase property, assessee's property fetched such a fancy price.

4. The question now to be considered is whether the sale price received under an agreement for sale executed six weeks after the valuation date for the assessment year 2000-01 is a ground to treat the completed assessment as an erroneous order and an order prejudicial to the interest of the revenue. There can be no doubt that the CWT has supervisory jurisdiction to correct erroneous orders which certainly cover undervaluation of wealth leading to evasion of tax. In this case, we have already found that the method of valuation for the respondent-assessee's 1/6th share of property is as provided under Rule 20(1) of Schedule III, which is notional market value as on the valuation date. The assessee applied Income Tax method of valuation which found acceptance with the Wealth Tax Officer. If the assessing officer was of the view that base year value adopted as on 1-4-1981 was low, or indexation applied was incorrect, he was free to correct the same. However, the assessing officer accepted the value returned by the assessee as fairly reasonable and he completed the assessments on the value returned by the assessee. The Supreme Court while considering the scope of suo motu revisional jurisdiction by the CWT held that where two views are possible and the assessing officer has taken one view with which the CWT

does not agree, it cannot be treated as an erroneous order prejudicial to the revenue, unless the view taken by the assessing officer is unsustainable in law. We do not think, the method of valuation adopted by the assessee and accepted in assessment by the assessing officer is altogether erroneous or irrelevant because it is seen from the valuation adopted in the original assessment for 2000-01 that it is almost two-thirds of the actual market value realised on sale. Therefore we are of the view that the mere fact that after relevant valuation date if the sale of the property fetched higher price, the same will not render the assessment erroneous and consequently prejudicial to the interest of the revenue. Of course reasoning of the CWT also cannot be said to be erroneous because if the actual sale price is available at the time of completion of assessment, there is nothing wrong in the officer reckoning the same as well as to determine the market value as on the valuation date. However, we do not think the higher sale price fetched for the assessee's property on sale to the church after the valuation date can be treated as market value as on valuation date for revision of assessment by the CIT u/s 25(2) of the Act more so when the method adopted in the original assessment is a reasonable one that found acceptance with the assessing officer.

We therefore confirm the orders of the Tribunal and dismiss the departmental appeals.