
(2006) 09 AHC CK 0307
In the Allahabad High Court
Case No : WT Reference No. 245 of 1989

CWT (Central)

APPELLANT

Vs

Sadiram Ganga Prasad (HUF)

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Income Tax Act, 1961 — Section 23

Citation : (2006) 09 AHC CK 0307

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal, Allahabad has referred the following question of law u/s 27(3) of the Wealth Tax Act, 1957, hereinafter referred to as "the Act" for opinion to this Court:

Whether in law and on facts of the case, the ITAT was justified in holding that the "gross maintainable rent" should be adopted on the basis of ,annual reasonable rent" as per U.P. Rent Control Legislation?

2. The present Reference relates to the assessment years 1968-69 to 1976-77.

3. Briefly stated the facts giving rise to the present Reference are as follows:

The assessee, an HUF, owns a building, which was occupied by the assessee for its own residential purposes. The value of that property was to be determined in accordance with rule 1BB of the Wealth Tax Rules. The question that arose was as to what should be the "gross maintainable rent". The contention of the assessee before the Commissioner of Wealth-tax (Appeals) was that "gross maintainable rent" should be taken to be the municipal valuation as determined by the Cantonment Board. It was stated that that was the rent which the assessee could be reasonably expected to receive from a hypothetical tenant and hence that rent should be taken as "gross maintainable rent".

This contention of the assessee did not find favour with the Commissioner of

Wealth-tax (Appeals). According to the Commissioner of Wealth-tax (Appeals), the municipal assessment was not the safe-guide for the determination of the "gross maintainable rent". He observed that the municipal annual letting value could not give correct idea of the actual rent, which the assessee would be in a position to get, if he let out the property. The Commissioner of Wealth-tax (Appeals) hence held:

Although rule 1BB is held to be applicable, but while deciding the annual maintainable rent, we have to disregard the municipal assessment and determine the fair market rent of the property to arrive at the fair market value for the purpose of wealth-tax.

4. The Commissioner of Wealth-tax (Appeals) hence rejected the contention of the assessee that the annual value, as fixed by the Cantonment Board, should be adopted as "gross maintainable rent". For the determination of the fair market rent, which was to be adopted as the "gross maintainable rent" for the purposes of working out the value as per rule I-BB, the Commissioner of Wealth-tax (Appeals) sent the matter back to the Wealth-tax Officer.

5. Aggrieved by the order of the Commissioner of Wealth-tax (Appeals), the assessee had carried the matter in further appeal before the Tribunal and the Tribunal after considering the rival submissions and the various provisions of the U.P. Rent Control Legislation, came to the conclusion that it is only the reasonable rent as per the Rent Control Legislation, which has to be adopted as the "gross maintainable rent". Therefore, the Tribunal had directed the Wealth-tax Officer to adopt the gross maintainable rent, on the basis of the annual reasonable rent, as per rent control legislation. In coming to that conclusion the Tribunal had recorded its finding in the following words:

12. We have considered this argument of the departmental Representative very carefully. It is true that as per U.P. Rent Control Legislation, to which the property is subject, if the landlord and the tenant agree on rent higher than the "annual reasonable rent", then such higher rent can be charged. Section 3A of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 had provided for determination of the annual reasonable rent by the District Magistrate. But that applied only in case no rent had been agreed between the landlord and the tenant u/s 5(1). Section 5(4) undoubtedly contains a provision for variation of the agreed rent, but only in case the contract was unfair. This Act was applicable up to 14-7-1972 and thereafter its place was taken by U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. In that Act also, similar provision with regard to higher rent was there. But the question that arises for consideration is whether, on the basis of its having been provided that higher rent could be charged by agreement it would be justified to adopt the market rent as the gross maintainable rent. To find an answer to this, we will have to examine the scheme of the Rent Control Legislation operative in U.P. Section 7(1) (a) of U.P. (Temporary) Control of Rent and Eviction Act, 1947 provides that "every landlord shall, within 7 days after an accommodation becomes vacant, by

his ceasing to occupy it give notice of the vacancy in writing to the District Magistrate", and, then, as per sub-Section (2) of Section 7, the District Magistrate was authorised to require a landlord to let or not let to any person any accommodation which was or had fallen vacant or was about to fall vacant. It is provided under sub-Section (1) of Section 3A that the District Magistrate may, on an application of a person, who has been allotted any accommodation, to which sub-Section (1) of Clause (f) of Section 2 applies, declare the "annual reasonable rent" payable therefore. As per Section 2(f)(1), "reasonable annual rent" in the case of accommodation constructed before 1-7-1946, which is the case in the present appeals, means municipal assessment plus 25 per cent thereon. It is thus obvious that on an application being made by the person, to whom the accommodation has been allotted, the District Magistrate is to fix the rent which will be on the basis of the municipal assessment plus 25 per cent thereon. It is true that if the tenant agrees to pay rent higher than that, then the question of the determination of the rent by the District Magistrate will not arise. By an agreement between the landlord and the tenant, higher rent can be fixed and this agreed rent cannot be varied unless the court is satisfied that the transaction was not fair. But the question that arises is whether anyone, to whom the accommodation is allotted, will agree to pay rent higher than the "reasonable rent". Normally, a tenant will not like to pay more than the "reasonable rent" as per the Rent Control Legislation and, as such, the chance that the assessee may get rent which is higher than that is slender. We are of the view that it is only the "reasonable rent" as per Rent Control Legislation for which the property can be reasonably expected to let from year to year. As pointed out above, the landlord does not have the final say in the matter of the choice of a tenant. If he had such a discretion, it goes without saying that he would have been in a position to get the market rent; as he would have chosen a tenant who offered the best rent. But, as mentioned above, the District Magistrate can tell the landlord to let or not to let the building to a particular person. Hence, when the assessee does not have the final say in the matter of a choosing a tenant, we do not think that it will be fair to reasonably expect the assessee to let the property from year to year at the market rent.

13. We have to examine the matter from another angle as well. It may be that the existing tenant has agreed to pay rent which is higher than the "reasonable rent" to the assessee. But, it may happen that that tenant vacates the premises and thereafter a new tenant comes to occupy the house. Can it be taken for granted that the new tenant will also agree to pay higher rent? Even if the assessee is getting higher rent from the existing tenant, he may not be able to maintain that when a new tenant comes. The term used in rule IBB is "gross maintainable rent", which means the rent that can be expected to be maintained. When we have to decide as to what is the rent for which the assessee can be reasonably expected to let the house, we have to proceed on the basis of a hypothetical tenant and we do not think that the assessee can be reasonably expect to let the property from year to year for anything more than the

reasonable rent as per the Rent Control Legislation. We will draw attention to the decision of the Supreme Court in the case of *Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi*, . In that case, the assessee had let out the property on rent which was higher than the standard rent under the Delhi Rent Control Act. The period of limitation prescribed for making an application to the Controller for fixation of the standard rent had already expired. As such, the assessee was to continue to get the contractual rent, as the tenant had not made any application for the fixation of the standard rent and the time prescribed for the making of the standard rent and the time prescribed for the making of such an application had already expired. The question arose as to the determination of the annual rent for the purposes of chargeability to tax under the Income Tax Act. It was held by the Supreme Court that standard rent determinable under the provisions of Rent Control Law is to be taken as the annual value for the purposes of charging tax under Income Tax Law. The Supreme Court repelled the argument of the department that, since the assessee was to continue to get the contractual rent, the annual value should be taken to be the contractual rent. The Supreme Court said that it may be that as far as the existing tenant was concerned, he should be paying the contractual rent, but if that tenant vacated the premises, the landlord may not be in a position to get the same rent from the new tenant as the new tenant could approach the Rent Controller for the fixation of the standard rent. It was held by the Supreme Court that the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant would constitute the correct measure of the annual value of the building. Since the definition of the "gross maintainable rent" under rule 1BB is in terms which are identical with the terms of the definition of annual value as u/s 23(1) of the Income Tax Act, the decision of the Supreme Court will become applicable for deciding the question of "gross maintainable rent" as well.

14. The departmental Representative had relied on the decision of the Allahabad High Court in the case of *Maharani Raj Laxmi Kumari Devi Vs. Controller of Estate Duty*, That case was under the Estate Duty Act. In that case, the Tribunal had held that in the case of a self-occupied property, the only method of finding out the market value thereof was by applying an appropriate multiple to the annual value worked out for the purposes of municipal assessment. The High Court did not approve of the decision of the Tribunal. The High Court had held that the Municipal annual value was not the safe-guide for determining the market value of the property. A view to that effect had already been taken by the Allahabad High Court in the case of *P.D. Singhania Vs. Commissioner of Wealth Tax, Their Lordships*, while deciding the estate duty case of *Maharani Raj Laxmi Kumari Devi*, saw no reason to depart from the view which had been already taken in the case of *P.D. Singhania v. CIT*. We do not find anything in this decision in the case of *Maharani Raj Laxmi Kumari Devi*, which could give support to the contention of the departmental Representative that the Commissioner (Appeals) was justified in coming to the conclusion that the market rent was

required to be adopted as the "gross maintainable rent" for the purpose of valuing the property under rule 1BB. At the outset, we will point out that in the case of Maharani Rai Laxmi Kumari Devi, the question was about the determination of the market value of the property that is, the value which the property would fetch, if sold in the open market. The question in that case was not the determination of the concessional value as envisaged by the provisions of rule 1BB. It was in the context of the determination of the market value of the property that they had said that the municipal annual value was not the safe-guide for determining the market value of the property. It is true that they had also noticed difference between the U.P. Rent Control Legislation and such other Legislations, insofar as the former permitted for the charging of higher rent by agreement in coming to the conclusion that municipal value was not the safe-guide for working out the market value of the property. The argument of the departmental Representative is that on account of the U.P. Rent Control Act being different from other such Legislations, we should also hold in the present appeals that the gross maintainable rent under rule 1BB cannot be fixed on the basis of reasonable rent as per U.P. Rent Control Legislation. According to the departmental Representative, it should be held that the market rent is to be adopted as the "gross maintainable rent". We do not find this contention of the departmental Representative to be tenable. As we have already discussed above the limitation imposed by the Rent Control Legislation cannot be ignored. If the Rent Control Legislation had not imposed any limitations, it cannot be denied that the market rent would have been adopted as being the "gross maintainable rent". We have discussed above the restrictions under the Rent Control Legislation to which the property in question was subject. We have discussed at length as to how, on account of the limitations imposed by the Rent Control Legislation, the assessee cannot be reasonably expected to let his property from year to year for more than the reasonable rent as per Rent Control Legislation. In the case relied upon by the departmental Representative, the question was whether the municipal value was a safe-guide for the determination of the market value of the property. The question with which we are confronted in the present appeals is different. Now, we are not concerned with the determination of the market value of the property. We are concerned with the determination of the sum for which the property can be reasonably expected to let from year to year. For this purpose, as pointed out above, it is the decision of the Supreme Court in the case of Smt. Sheila Kaushish (*supra*) which has to guide us. We have already discussed at length above that on the basis of the decision of the Supreme Court in the case of Sheila Kaushish, it is only the reasonable rent as per the Rent Control Legislation which has to be adopted as the "gross maintainable rent".

15. The matter has to be examined from another angle as well. The Government cannot be expected to speak with more than one voice. The intention of the Rent Control Law was to put an end to the exploitation of the tenant by the landlord. It was with that view in end that it was laid down as to what was to be regarded

as being reasonable rent. Now, when it comes to the question of levying municipal taxes or Income Tax or wealth-tax, can the Government say that a landlord can be reasonably expected to get more than what is, as per Rent Control Legislation, "reasonable rent"? We will draw attention to the following observation of the Supreme Court in the case of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*,

The problem can also be looked at from a slightly different angle. When the Rent Control Legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the landlord. Any rent which exceeds this norm of reasonableness is regarded by the Legislature as unreasonable or excessive. When the Legislature has laid down this standard of reasonableness, would it be right for the court to say that the landlord may reasonably expect to receive rent exceeding the measure provided by this standard? Would it be reasonable on the part of the landlord to expect to receive any rent in excess of the standard or norm of reasonable laid down by the Legislature and would such expectation be countenanced by the court as reasonable? The Legislature obviously regards recovery of rent in excess of the standard rent as exploitative of the tenant and would it be proper for the court to say that it would be reasonable on the part of the landlord to expect to recovery such exploitative rent from the tenant?

16. There is another aspect of the matter also which is to be kept in view. Wealth-tax is an annual levy. The intention of the Legislature, as would be apparent from the insertion of rule 1BB, was that the property, which was used for residential purposes, should not be subjected to disintegration, which, it might be, if tax was to be levied every year on its ever rising market value. The value of a house, which is let out, will be determinable on the basis of reasonable rent as per Rent Control Legislation or rent receivable, if that is higher. The value will, in the case of a let out property, get frozen, since the rent cannot be increased from year to year. But in respect of a house, which is not let out, if its value is to be determined on the basis of ever increasing market rent, the result will be that its value will go on increasing from year to year. It will lead to a situation where a person, who is not having any income from house, since he has not let out, is being asked to pay more than the person who has let out the house and is having some income therefrom. This runs counter to the equitable principle of taxation, that burden should be placed on a person according to his capacity to bear it.

6. We have heard Sri R.K. Upadhyay, learned Standing counsel appearing for the revenue and Sri R.S. Agrawal, learned Counsel appearing for the respondent-assessee.

7. Learned Counsel for the revenue submitted that under sub-rule (2) of rule 1BB, as it stood during the relevant period, "gross maintainable rent" in relation

to a house, meant, the sum for which the house might reasonably be expected to let from year to year. There is no such stipulation for the rent which might have been fixed by the Rent and Eviction Officer where the property is subject to Rent Control Legislation of the State should be taken to be "gross maintainable rent". According to him, if the intention of the Legislature is that the amount of rent which might have been fixed by the Rent Control and Eviction Officer under the State Rent Control Legislation or municipal value, the legislation would have specifically provided for the same in rule 1BB as has been done by the Parliament in Schedule III of the Schedules to the Wealth Tax Act, 1957, which was inserted by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989. According to him, rule 5 of Part B of Schedule III specifically provides for computation of "gross maintainable rent" in case where the property is not let out. It provides for taking annual rent assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax on the basis of such assessment and where no such assessment is made, or the property is situated outside the area of any local authority the amount which the owner can reasonably be expected to receive as annual rent had such property been let out. According to him, as there is no specific provision under-rule 1BB for taking the valuation as assessed by the local authority, the rent which the property may fetch is to be taken as "gross maintainable rent". The submission is misconceived.

8. From a perusal of the sub-rule (2) of rule 1BB, it is absolutely clear that the "gross maintainable rent" has to be taken to be the rent which the property is reasonably expected to fetch if let from year to year. However, where the property has actually been let out the annual rent received or receivable by the owner is "gross maintainable rent". It is not in dispute that the residential property which is occupied by the respondent-assessee is an old property and is covered by the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. XIII of 1972). Under the aforesaid Act there is a restriction imposed upon the owner of the building to let out not on its own sweet will to any other person but only to a person in whose favour the Rent Control and Eviction Officer has made an allotment and that too on the rent specified by the said authority. The owner cannot charge the rent in excess of what has been fixed by the authority and it necessarily followed that the sum for which the house might reasonably be expected to let from year to year as mentioned in Clause (a) of rule 1BB shall be the amount which the Rent Control and Eviction Officer may fix while making an allotment in favour of any person in respect of a residential house.

9. We are, therefore, of the considered opinion that the Tribunal had rightly held that "gross maintainable rent" will be taken as annual reasonable rent as it was restricted by the Rent Control Legislation. We are fortified in our opinion with the view taken by the Division Bench decision of this Court in the case of Govind Hari Singhania Vs. Asst. Commissioner of Wealth-tax and Another, wherein this Court has held that we are unable to see any substantial or qualitative difference

between rule 1BB and the rules contained in Part B of Schedule II to the Act insofar as valuation of a house occupied by the owner himself is concerned.

10. In view of the foregoing discussion, we answer the question referred to us in the affirmative i.e., in favour of the assessee and against the revenue. There shall be no order as to costs.