

(1974) 09 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 711 of 1970

Debi Prosad Poddar

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 13-09-1974

Acts Referred:

Wealth Tax Act, 1957 — Section 7

Citation : (1977) 109 ITR 760

Hon'ble Judges : Sabyasachi Mukharji, J; R.N. Pyne, J

Bench : Division Bench

Advocate : Sanjoy Bhattacharyya, for the Appellant; S.C. Sen and Ajit Sen Gupta, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference we are concerned with the question of valuation of immovable property. In order to appreciate the question referred we will briefly state the facts. This reference is in respect of assessment to wealth-tax for the assessment years 1957-58 to 1962-63. The assessee purchased the house property (godowns) at Nos. 196, 197 and 198, Maharshi Devendra Road, Calcutta, in 1946 for a sum of Rs. 3,20,000. The said property bears three municipal numbers but the property is really one. It consists of very old godowns standing on an area of about 42 cottahs of land on the said Maharshi Devendra Road, opposite Mayo Hospital in Calcutta. It was let out to three different tenants. The net annual rents received from these godowns were) Rs. 10, 359 in the assessment years 1957-58 to 1960-61, Rs. 11,490 in the assessment year 1961-62 and Rs. 8,971 in the assessment year 1962-63. We are not quite aware as to the reasons for the variation of rents for the different years mentioned above. Counsel for the assessee suggested that perhaps it was due to the agreement or contract between the tenants and the landlord in question. The question arose about the valuation of these properties on the relevant valuation dates for different years with which we are concerned in this reference varying some time in the end of March, 1957, or beginning of April of the subsequent years. The assessee valued this property for all these six assessment years at

Rs. 2,07,180 at the rate of 20 times of annual rental income. The Wealth-tax Officer did not accept the valuation shown by the assessee. He valued the land separately at the rate of Rs. 15,000 per cottah and, accordingly, valued the land at Rs. 6,30,000. He valued the structures and godowns on the said land at Rs. 90,000 taking the gross value at Rs. 1,50,000 and allowed depreciation on this value for Rs. 60,000 and computed the net value of the buildings at Rs. 90,000. Thus, the total value of the property was computed by the Wealth-tax Officer at Rs. 7,20,000 for all these years. It would be appropriate in this connection to set out the reasons of the Wealth-tax Officer for this conclusion with reference to the order passed in respect of one of these years. He stated :

"The assessee has house property in Calcutta at 196, 197 and 198, Maharshi Debendra Road, Calcutta. The property consists of about 42 cottahs of land on which single storeyed structure exists. The structure is about 100 years old. The property was acquired in 1946 for Rs. 3,20,000. It is fully let out. Municipal value is Rs. 13,470. The assessee has valued the property at Rs. 2,07,180. In my opinion the valuation is not correct. The assessee purchased the property in 1946 for Rs. 3,20,000. The valuation after 11 years must have very much increased. I value the properties according to the land and building valuation methods. I estimate the value of land at Rs. 15,000 per cottah. Therefore, for 42 cottahs the valuation comes to Rs. 6,30,000. As mentioned hereinbefore the cost of construction was taken at Rs. 1,50,000 and depreciation was allowed at 50 per cent. and the total net cost of construction was computed at Rs. 90,000 making the valuation of the property at Rs. 7,20,000."

2. The assesses went up in appeal before the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner it was contended that the Wealth-tax Officer was in error in valuing the land and building separately. According to the assessee the same should have been valued at 20 times the net rent income. The Appellate Assistant Commissioner, however, did not accept the said contention. The Appellate Assistant Commissioner was of the view that the property was situated in the heart of the commercial centre of the city. According to him there was a great demand for land and building in that area amongst the business community. However, considering the fact that the godowns were in possession of the tenants who could not be evicted easily and there could not be many willing buyers for the same, the Appellate Assistant Commissioner took the valuation of the property at Rs. 4 lakhs in the assessment year 1957-58 and increased the same progressively to Rs. 4,25,000 for 1958-59, Rs. 4,50,000 for 1959-60. Rs. 4,75,000, for 1960-61, Rs. 5 lakhs for 1961-62 and Rs. 5,25,000 for 1962-63. The Appellate Assistant Commissioner observed in his order:

" The property in question is situated in the very heart of the commercial centres of the city. There is great demand for land and building in that area among the business community. It is at the same time to be considered that the godowns were in the possession of tenants as a result of which no willing buyer for it would be readily available,"

3. The assessee thereafter preferred appeals to the Tribunal. The revenue also preferred appeals to the Tribunal against the said orders of the Appellate Assistant Commissioner. On behalf of the revenue it was contended that the Appellate Assistant Commissioner was in error in reducing the valuation from Rs. 7,20,000 as adopted by the Wealth-tax Officer, while on behalf of the assessee it was contended that the valuation fixed by the Appellate Assistant Commissioner was excessive. The assessee submitted that when the property was purchased in 1946, the assessee had expected to build a multi-storeyed house by demolishing the godown. With this end in view the assessee filed suits against all the three tenants mentioned above but they could not be evicted up to the date of hearing before the Tribunal which was some time in the middle of 1970. It was submitted -that the suits were still then pending before the High Court and the Supreme Court. According to the assessee the market value of the said property had fallen below the cost which the assessee had paid in 1946 in the expectation of having vacant possession and of building a multi-storeyed house thereon. It was submitted on behalf of the assessee that the valuation as shown by the assessee in the returns was fair and reasonable and had its proper basis--20 times of the net rental--and should, therefore, be accepted. On behalf of the revenue, on the other hand, it was urged that even though the land and building could not be valued separately, and the valuation of the structure which was said to be 100 years" old was taken at nil, the valuation of the land in the heart of the commercial area of the city would be over Rs. 6 lakhs and, therefore, there was no justification for the Appellate Assistant Commissioner to reduce the valuation. The Tribunal, after considering the respective view-points, observed in its order, inter alia, as follows:

" We are of the opinion that as the assessee is yet unable to evict the old tenants and the litigations are still pending, this will be a great drawback on getting current price even for the land because the prospective buyer will not be able to utilise the land in building a new house. Having regard to the net annual rental income and after taking into consideration the fact that the area is near Burrabazar which is the centre of trade and commerce, it would be fair, in our opinion, to take the valuation of this property at Rs. 4 lakhs for the first three years, namely, 1957-58 to 1959-60 assessment years, and at Rs. 4,50,000 in the subsequent three years."

4. In the premises, the Tribunal modified the order of the Wealth-tax Officer accordingly. In the circumstances mentioned above, u/s 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred the following question to this court :

"Whether, on the facts and circumstances of the case, the valuation of the properties Nos. 196, 197 and 198, Maharshi Debendra Road, at Rs. 4 lakhs and Rs. 4,50,000 for the assessment years 1957-58 to 1959-60 and 1960-61 to 1962-63, respectively, as taken by the Tribunal is correct ?"

5. In order to decide this question we have to remember that u/s 7 of the Wealth-tax Act it is necessary for the Wealth-tax Officer to determine what in his opinion

the property would fetch if sold in the open market on the valuation date. Section 7(1) enjoins the Wealth-tax Officer to do so. It is, therefore, necessary to find out on the valuation date what the willing purchaser would pay in respect of the said property sold by a willing seller in a hypothetical market. It appears that in order to work out this system a circular was issued on the 28th September, 1957, by the Central Board of Revenue dealing with the question of valuation. Regarding the valuation of the immovable properties, land and buildings, the circular provided as follows :

"The value of lands and buildings should be estimated with due regard to the nature, size and locality of the property, the amenities available and the price prevailing for similar assets in the same locality or in the neighbourhood of that locality.

Where the value is not easily ascertainable in this manner, the Wealth-tax Officer may adopt the capital value of the property determined by the appropriate authority in the latest assessment for purposes of property taxation, under the laws and regulations relating to municipalities and municipal corporations.

Where the municipal valuation is *prima facie* too low having in view the rents actually received, or where an assessment of capital value is not made by a municipality, or the property is located in an area where there is no municipality, the Wealth-tax Officer may estimate the reason able annual value of the property and determine its capital value as a multiple, say 20 times, of such annual value."

6. We were told from the Bar that this multiple of 20 times has from time to time been altered and modified by the circulars issued by the Central Board of Revenue, and at present it is varying from 13 to 14 times. In any event, we are not concerned in this reference with the subsequent circulars issued in this regard. The question of valuation of property has cropped up often and in this regard it is important to remember the observations of Viscount Simon in the case of *Gold Coast Selection Trust Ltd. v. Humphrey (Inspector of Taxes)* [1948] AC 459; [1949] 17 ITR (Supp) 19,

" Valuation is an art, not an exact science. Mathematical certainty is not demanded nor indeed is it possible. It is for the commissioners to express in the money value attributed by them to the asset their estimate, and this is a conclusion of fact to be drawn from the evidence before them."

7. The question of valuation has cropped up under the Land Acquisition Acts where compensation of market value is provided under the provisions of those Acts. In this connection we may refer to the decision of the Mysore High Court in the case of *Rajasekhara v. Chairman, City Improvement Trust Board, Mysore City* AIR 1957 Mys 20, where, in connection with Section 23 of the Land Acquisition Act, 1894, it was held that Section 23 required that the first thing to be taken into account in determining compensation was the market value of the property at the time of the notification. Market value had to be ascertained by the court in each case with due regard to the conditions of the time and factors which

affected transactions between a willing seller and intending buyer. In any case, the decision at best was to be regarded as approximate and not mathematically accurate estimate. A well-recognised basis of valuation of buildings in urban areas was the rent normally realised by these when these were leased to others and the rent expected to be got if these were in occupation of the owners. The valuation of land with building thereon by valuing the land and the building separately and adding the value of the one to the other did not furnish a reliable estimate of the property.

8. In the case of *State of Kerala Vs. P.P. Hassan Koya*, , the Supreme Court was also considering Section 23 of the Land Acquisition Act and the Supreme Court observed that in determining compensation payable in respect of land with buildings, compensation could not be determined by assessing the value of the land and the "break-up value" of the buildings separately. The land and the building constituted one unit and the value of the entire unit must be determined with all its advantages and its potentialities. The Supreme Court farther observed that when the property sold was land with building, it was often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification u/s 4. Therefore, the method which was generally resorted to in determining the value of the land with buildings, especially those used for business purposes, was the method of capitalization of return actually received or which might reasonably be received from the land and the buildings. It could not be laid down as a general rule applicable to all situations and circumstances that a multiple approximately equal to the return from gilt-edged securities prevailing at the relevant time formed an adequate basis for finding out the market value of the land.

9. In this connection we may also refer to the observations of the Judicial Committee in the case of AIR 1939 98 (Privy Council) :

"There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by " the market value" in Section 23."

10. Also with regard to the Wealth-tax Act with which we are concerned in this case, this question has very often cropped up. In the case of *T. Kanagasabapathy Pillai Vs. Commissioner of Wealth-Tax, Madras.*, it was observed that u/s 7(1) of the Wealth-tax Act, 1957, for the purpose of assessment of wealth-tax, the value of any asset other than cash was the price which in the opinion of the Wealth-tax Officer the asset would fetch in the open market, and it was the duty of the Wealth-tax Officer to estimate the price which the asset would fetch if sold in open market. The formula of multiplying the annual letting value by twenty times could be resorted to only if the market value was not easily ascertain-able by

other methods. Under the circular of the Central Board of Revenue, discretion was granted to the Wealth-tax Officers to determine the actual value by multiplying the annual value by twenty times, only where other modes of determination of the true market value failed or where materials were not available to make a proper determination. This mode of valuation should be the last resort and should not be the first to be adopted in preference to every other mode of valuation. The Madras High Court further held that the departmental view that whenever the assessee's mode of valuation was not accepted the rule of twenty times the annual letting value should be adopted was not correct and was based on a misconception of the circular of the Central Board of Revenue. The Madras High Court further observed that as the Wealth-tax Act was a charging statute and what the statute empowered was only to levy a tax on the net wealth of an assessee, to be determined according to the provisions of the statute, the burden was on the taxing department to find out the true net value assessable and even if the assessee had overvalued, the department must make an effort to determine the true market value. The question was again considered in the case of Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran, . The Mysore High Court held that in the case of buildings with compounds in a city, which were in the possession of tenants and the tenants could not be either evicted or the rent payable by them enhanced except in accordance with the provisions of the Rent Control Act, the only appropriate method of valuation was to capitalise the annual rent by certain number of years' purchase. The method of valuing the site and the building separately and adding up the values would be improper in such cases.

11. In that case some houses in a prominent locality of Bangalore were let out to tenants and had been valued at twenty times the rental value, but for the year 1959-60, the Wealth-tax Officer valued the site at Rs. 3 per square ft. and the buildings separately and assessed the total value of the house property on this basis, and the Tribunal held that this method of valuation was not proper and adopted the earlier method of valuing at 20 times the annual rent. It was held by the High Court that the Tribunal was justified in ignoring the value of the land surrounding the building and valuing the property at twenty times the rental value. The view that an immovable property acquired a market value only if there was an intention to sell on the part of the owner was not correct. The court further observed that the power conferred on the Wealth-tax Officer u/s 7 of the Wealth-tax Act was a judicial power, it had to be exercised in a judicial manner and the exercise of that power was open to review in appeal by the Appellate Assistant Commissioner and thereafter by the Tribunal.

12. In this connection we may also refer to a decision to which a reference was made by the Madras High Court in the case of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, . It was held by the Supreme Court in that case, that, in determining the value of a property, regard must be had to provisions of law which controlled the fixation of rent as well as those regulating the power of the landlord to take possession of his own property.

13. In the case of *CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN.*, this court, under the Estate Duty Act, had to consider a similar question. Counsel for the assessee strongly relied on the said decision in favour of his contention. The court held that in case of buildings which were in the possession of tenants and the tenants could not either be evicted or the rent payable by them enhanced, except in accordance with the provisions of the Rent Control Acts, the only appropriate method of valuation was to capitalise the annual rent by a certain number of years' purchase. The method of valuing the land and the building separately and adding up the values would be improper in such cases, because that would ignore the impact of the Rent Control Acts on the value of the land and the building. If there had been no rent restriction law in operation, the Controller could make a fair and an objective estimate of the rent which the property might have fetched if a willing lessor wanted to let out the property to a willing lessee; but, if the property was subject to Rent Restriction Acts, in estimating the rent at which the property was capable of being let out, the Controller was bound to take into account the restrictions imposed by the Rent Restriction Act and to arrive at the figure of fair rent accordingly. As mentioned hereinbefore, the court was concerned with the question under the Estate Duty Act under which the question of valuation cropped up, which is in *pari materia* with the section with which we are concerned in this case.

14. In the case of *C. Krishna Prasad Vs. Commissioner of Wealth-tax, Bangalore*, the Mysore High Court has again dealt with this question. There a site was leased out at certain rent for a term of 30 years with an option to the lessee to renew the lease for a further term of 10 years. The tenant was to build a theatre building on the site at his own cost which he should surrender to the lessor at the end of the lease without any compensation. The tenant constructed the theatre accordingly. On the valuation date for the purposes of valuation of wealth-tax, six years of the lease had expired. It was held by the Mysore High Court that the proper method of valuation of the property, for the purposes of wealth-tax assessment, was to determine the value of the building on the valuation date, deduct therefrom depreciation at two and a half per cent. per annum, which was the depreciation allowed by the Income Tax department for a first class building, for 34 years, that was, the unexpired portion of 24 years of the lease plus the period of ten years for which the lessee had an option of renewal, and on the basis of that figure, determine the value of the right as on the valuation date applying the Parks Table and taking the interest yield at 5 per cent. and add to that figure the value of the site as on the valuation date. It would not be correct to take the value of the building at the end of the lease period at the same figure as the value as on the date of valuation and adding to the valuation the value of the right to collect rent for the remaining period of the lease. According to the court, u/s 7 of the Wealth-tax Act, the Wealth-tax Officer had to compute the value of the property on the basis of the value it would fetch if sold in the open market on the valuation date, that was, on the basis of what a willing seller would reasonably expect from a willing purchaser. In the case of buildings which

were in the possession of tenants and the tenants could not either be evicted or the rent payable by them enhanced, the only proper method of valuation, if there were no sale transactions of house property that would have given the basis for valuing the market value of the property, would be to capitalise the annual rent by a certain number of years" purchase. The method of valuing the land and the building separately and adding up the values would be improper in such cases. It was held that no material by way of sale transactions of house property leased to tenants was placed before the officer and, on the facts of the case, the mode of valuation by capitalisation at twenty times the annual rental value was the only proper method of valuation which the officer and the Tribunal should have accepted. The method of valuation adopted by the Tribunal of valuing the building and the land separately and further adding the benefit of the future rent was not justified in law. Before we deal with a decision of this court on which reliance has been placed, we may also refer to another decision of the Madras High Court in the case of Gouthamchand Galada and Gyanchand Galada Vs. Commissioner of Wealth-tax, . There the assessee who owned a building constructed on a land of 18 grounds had let it out to the Government of Madras on a monthly rent. In his wealth-tax return, the assessee had valued the property, at twenty times the annual rental value of the premises. The Wealth-tax Officer held that the capital value returned by the assessee was only for the building and 5 grounds which was necessary for the convenient occupation and enjoyment thereof and valued the balance of 13 grounds at the market price. On appeal, the Appellate Assistant Commissioner deleted the addition holding that in a property let out along with vacant land appurtenant to it, it must be assumed that the rent included the ground rent also unless it was shown that the rent was confined to the use of the building alone. The departmental appeal was allowed by the Tribunal in the view that, as the assessee had not produced evidence to show that the lease was of the entire property including the land, it must be presumed that the Government had taken on lease only the building and hence the method of valuation adopted by the officer was justified. It was held by the Madras High Court that the inference of the Tribunal that the lease was of the building alone being purely on the fact that the lease was in favour of the Government could not be supported as correct. The matter was remitted back to the Tribunal for disposal.

15. Counsel for the revenue placed strong reliance on a decision, in support of his contention, of this court. In the case of Mahmudabad Properties (P.) Ltd. Vs. Commissioner of Income Tax, the question was about the computation of capital gains. The property of the assessee at Arif Road, Calcutta, was sold away on September 30, 1961, for Rs. 1,05,000. The property at Russa Road was sold on April 4, 1961, for Rs. 3 lakhs. In the return filed by the assessee for the assessment year 1962-63, the assessee had declared loss under the head "Capital gains" of Rs. 6,300 on the sale of the said two properties. In the computation adopted by the assessee, the valuation of these properties as on May 1, 1954, being the relevant date for computation of capital gains as opted

for by the assessee, was claimed to be Rs. 79,200 and Rs. 3,06,000 respectively. These computations were based on the valuation reports of Messrs. Talbot & Co. The Income Tax Officer held that the valuation report of Messrs. Talbot & Co. was not based on verifiable data but was based on certain estimates which could not be acted upon; and on the basis of the value of the properties declared by the assessee for the assessment years ending December 31, 1956, 1957 and 1958 at Rs. 18,000 for the Arif Road property and Rs. 1,68,924 for the Russa Road property, and having regard to the rise in the valuation of real properties between May 1, 1954, and December 31, 1956, estimated the value of the two properties as on May 1, 1954, at Rs. 18,000 and Rs. 1,60,000 respectively and, on the said basis, the Income Tax Officer computed the capital gains on the sale of the Arif Road property at Rs. 72,876 and on the sale of the Russa Road property at Rs. 1,30,870. On appeal, the Appellate Assistant Commissioner held that the value taken by the Income Tax Officer on the basis of the wealth-tax assessments was erroneous inasmuch as the wealth-tax assessments had been made on the basis of global valuation and on the basis of the book cost of the properties, and accepted the valuer's report and directed the Income Tax Officer to re-value the capital profit or loss by adopting the valuer's figures. On second appeal, the Tribunal accepted the Appellate Assistant Commissioner's finding about the Arif Road property and held that the valuation of the Russa Road property by the valuer was not justified, that the valuation of that property on May 1, 1954, would not be more than 75 per cent. of the sale price in 1961, and the capital gains of that property would be Rs. 75,000 only as against the Appellate Assistant Commissioner's determination that there was a loss of Rs. 6,000 as claimed by the assessee. On a reference at the instance of the assessee in respect of the Russa Road property only it was held by the High Court that there was a valid and legal basis for the Tribunal's conclusion that capital gains arising out of the sale of the Russa Road property would be Rs. 75,000 instead of a loss of Rs. 6,000.

16. Before we deal with this decision relied on on behalf of the revenue we must observe that in this case the court was not concerned with the question of valuation in respect of the property which had been let out to the tenants. That is a significant difference which must be borne in mind. Secondly, in order to make the valuation of the property in question which was ultimately accepted by the High Court, the main basis upon which the revenue authority proceeded was the valuation put in the Income Tax assessment by the assessee himself for few years immediately after the relevant date. Thirdly, both the Income Tax Officer and the Tribunal found certain intrinsic infirmities in the valuer's report. Indeed, some of these infirmities have been carefully noticed by this court as to why the basis of valuation made by Messrs. Talbot & Co. could not in the facts and circumstances of this case be relied upon. For our purpose it may be relevant to refer to two aspects of these infirmities which have been inferred by this court.

17. The court observed at page 511 of the Mahmudabad Properties (P.) Ltd. Vs. Commissioner of Income Tax, :

" What is fundamental, however, and a point which cannot be emphasized too strongly in our view, is that this is not the valuation of what will be willingly paid by a hypothetical buyer who is capable of either enjoying this property at the relevant date or obtain a return therefrom. This infirmity in the report makes it practically useless for the purpose of computation of capital gains according to the scheme of the Act noted above."

18. The court further observed at page 514 :

" Another infirmity of the report and which was strongly commented upon by Mr. Basu for the revenue is that there is no clear indication of any basis of the valuation arrived at by the valuer. It is stated in the " commentary " portion of the report that the property is situated in one of the best parts of Tollygunge and is opposite to Tollygunge Club Ltd., and there is a good development for middle-class people and a demand for small plots. This, in our view, is not enough to arrive at the specific computations of the value of the land per cottah as has been done in the present case. In our view Mr. Basu is right in his comment, that is not a " valuer"s valuation".

19. As we have noticed the significant difference between the facts of that case and the facts of the instant case, we may however observe that there are two aspects of the said decision, on which strong reliance was placed on behalf of the revenue in the case before us. It was urged that one of the reasons that induced the court to reject the valuer"s report was the fact that by the valuer"s report a valuation was put upon the property subsequently to the date of purchase which was less than the purchase price paid by the assessee. The second aspect upon which reliance was placed was the fact that the court recognised that judicial notice could be taken of the fact that there had been a steady rise of land price in Calcutta between 1954 and 1962. Relying on the aforesaid decision counsel for the revenue submitted before us that in this case the valuation put by the assessee was less than the price at which the assessee had purchased the property in question in 1946 and, therefore, the valuation suffered from an intrinsic improbability and so could not be relied upon. It was, secondly, urged that as the Tribunal had noted that there was a general increase in the valuation of the property, therefore, it was natural to presume that the land value, specially in respect of lands which were situated as the assessee"s were situated in the heart of the commercial centre, must have increased and, therefore, it could not be that the Tribunal had not acted on the materials before it. It was, thirdly, urged on behalf of the revenue that in the facts and circumstances of this case the Tribunal had taken into consideration all the relevant factors and had arrived at a factual conclusion about valuation. It was urged that the Tribunal had taken into consideration the fact that the property in question has been let out and there were difficulties in ejecting the tenants. - After taking into consideration all the relevant factors it had arrived at a factual conclusion about valuation. It was urged that the Tribunal had taken into consideration the fact that the property in question has been let out and there were difficulties in

ejecting the tenants. After taking into consideration all these factors the Tribunal had also relied upon the fact of common knowledge, which counsel for the revenue contended in view of the aforesaid decision of the court the Tribunal was entitled to do, about the steady rise of land prices in Calcutta over the years. Counsel for the revenue submitted before us that the Tribunal came to a correct decision having regard to the facts and having regard to the factors considered by the Tribunal.

20. We have noticed the requirement of the section and the problems of valuation of property of this kind as discussed by the different courts in respect of the Wealth-tax Act and other provisions where the question of valuation of the immovable property is involved. Having regard to the aforesaid decisions, in our opinion, the following principles emerge :

(1) Attempt must be made to find out the price which the immovable property would fetch on the valuation date imagining a willing buyer to purchase the property from a willing seller in respect of the property ;

(2) In respect of the immovable property there is no fixed market such as market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property there must necessarily be certain element of guess. But the guess must be based on certain facts and according to certain principles which would be, in the facts and circumstances of each case, as fair as possible to the revenue as well as to the assessee in trying to imagine reasonably and intelligently the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(3) Such a determination, therefore, involves adopting Certain methods in determining the valuation and there are different kinds of methods, as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the court as noticed before.

(4) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible guess as to the valuation on the valuation date.

(5) Another factor that has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of

the same type and in approximately same time then that would, however, provide more reliable method to follow.

21. In the instant case we have to bear in mind that the property in question had been let out. Also it appears that the litigation for eviction of the tenants were pending on the relevant valuation dates and even when the hearing of the appeal were going on before the Tribunal. It was stated that the assessee had purchased the property in question for the purpose of building multistoreyed structure in the property. It has to be borne in mind that the godowns and other structures are over 100 years old. There was no evidence or no assertion to the contrary to contradict the purposes of purchase by the assessee. The fact that the building and structures were very old and the fact that the assessee had been litigating in court for several years to obtain possession corroborate this assertion that the assessee wanted the property in question for better amount--perhaps better return. To take the value on the basis of building and land separately or even of land separately would not be the appropriate method because the land could not have been sold without demolishing the structure and the structures could not have been demolished without ejecting the tenants which in view of the Rent Restriction Act and the present position of the litigation was no easy matter. Having regard; therefore, to these features and also to the fact that there were no objective factors to indicate any real transaction of sale of the property of this type or of the same quality or approximately at the same time, there is even the absence of any reliable evidence by the broker or dealer which could have justified any view about the trend of market, it appears that the rental method, i.e.; method based on the expected return by letting out is the more reliable method in the facts and circumstances of the case, than the method of valuing it on the basis of land which we said before could not have been availed of because of the difficulties mentioned before. In the premises, we are of the opinion, that in this case there is no basis for rejecting the rental method even though that method gives the result of having a value less than the price paid prior to the date of valuation, but that was because the original purpose was frustrated. In the aforesaid view of the matter the question referred is answered in the negative and in favour of the assesses. Each party will pay and bear its costs.

Pyne, J.

22. I agree.