

(1991) 12 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 2664 of 1988

Dilip Kumar Mitra (deceased) (by legal heir Debashish Kumar Mitra) APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 16A
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (1993) 200 ITR 336 : (1993) 71 TAXMAN 141

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—This consolidated reference u/s 27(1) of the Wealth-tax Act, 1957, at the instance of the legal representative of the deceased assessee relates to four assessment years 1972-73 to 1975-76. The question concerns valuation of the house properties of the assessee, since deceased, owned on the respective valuation dates. The original assessment was completed on the value as returned for the respective assessment years. The properties and their values returned were as follows :

Name of the property Value returned for the assessment years
(Rs.)

86/1, Suren Sarkar Road 56,400

4, Ram Mohan Roy Road 38,500

34 and 34A, Motilal Basak Lane 1,15,000

2. The Wealth-tax Officer later noticed that the Valuation Officer had determined the value of those properties differently as mentioned below:

Name of the property Assessment years

1972-73 1973-74 1974-75 1975-76

(Rs.) (Rs.) (Rs.) (Rs.)

(i) 86/1, Suren Sarkar Road 1,16,500 1,16,500 1,16,500 1,16,500

(ii) 4, Ram Mohan Roy Road -- 53,500 60,500 58,000

(iii) 34 and 34A, Motilal Basak Lane -- 1,44,000 1,49,000 1,41,000

3. Out of the said properties, the property at 86/1, Suren Sarkar Road, was leased out for non residential purposes and the other two properties were leased out for residential purposes.

4. According to the Wealth-tax Officer, there was a glaring mistake in the original assessments for those four years in accepting the value of those properties as shown by the assessee and not completing the assessments in conformity with the estimate of the Valuation Officer, He, therefore, rectified the mistake u/s 35 of the Act and modified the assessment orders by adopting the value of all the three properties for all the four assessment years as determined by the Valuation Officer as was required by Section 16A(6) of the Act.

5. The legal representatives of the assessee went in appeal before the Commissioner of Wealth-tax (Appeals). Their contention before the Commissioner of Wealth-tax (Appeals) was that the value of the said properties should have been determined in accordance with Rule 1BB of the Wealth-tax Rules, 1957, This was not accepted by the Commissioner of Wealth-tax (Appeals) and he dismissed the appeals for all the four years by a consolidated order dated October 25, 1984.

6. They came in appeal before the Tribunal with the same objection, namely, that all the properties should have been valued in accordance with Rule 1BB. According to them even in respect of the properties at Suren Sarkar Road, leased out for non-residential purposes, the rental method should have been adopted for the purposes of determining its value. The Tribunal construed Sub-Sections (1) and (3) of Section 7 placing reliance upon the judgment of the Delhi High Court in the case of Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, and reached the conclusion that Rule 1BB of the Wealth-tax Rules, though mandatory, is not binding upon the Valuation Officer and, therefore, there was no error in the valuation made by the Valuation Officer though not in accordance with Rule 1BB.

7. On these facts, the Tribunal has referred the following question :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Valuation Officer was not bound by Rule 1BB of the Wealth-tax Rules, 1957, and thereby to follow the rental method of valuation of the tenanted properties?"

At the hearing before us, the contentions raised before the Tribunal have been

reiterated.

8. At the very outset, we must point out that the reliance placed by the Tribunal on the decision in *Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others*, is misconceived. The said decision of the Delhi High Court was in connection with Rule 1D. There, the Delhi High Court laid down that, where the valuation date of the company whose shares the assessee holds is the same as the valuation date of the assessee, the application of Rule 1D for the purpose of valuing the unquoted equity shares of the company is mandatory, but where the two dates do not coincide, the applicability of Rule 1D would cease to be mandatory and it will be open to the assessee to show to the Wealth-tax Officer that, on the valuation date, the value of the unquoted share was different from the value to be arrived at by applying Rule 1D. This decision has nothing to do with the question that was to be decided by the Tribunal. The issue before the Tribunal was a straightforward one, viz., whether, as advocated by the assessee, the house property should be valued on capitalisation of the rent as prescribed by Rule 1BB. The Tribunal held that Rule 1 BB is mandatory but is not binding upon the Valuation Officer. Therefore, the Tribunal indirectly held that the value of a property, unless referred to a departmental Valuation Officer u/s 16A, has to be compulsorily determined in accordance with the method prescribed in Rule 1BB, but otherwise not. According to the Tribunal, once the question of valuation is referred to the Valuation Officer u/s 16A of the Act, the latter is free of the mandatory rules for valuation and can apply any method at his free will and pleasure.

9. Such a situation cannot be said to be conceivable under the law. Where the statute itself fixes a method of valuation as the statutory method, that method shall have its authoritative and statutory force for all Officers under the Act--the Assessing Officer, the Appellate Officer or the Appellate Tribunal or the Departmental Valuation Officer.

10. Rule 1BB has taken its shape as a mandatory, method of valuation through a process of evolution of judicial opinion on valuation of immovable properties. This court, as early as 1968, in *CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN.*, , held that a tenanted property has to be valued on rent capitalisation method and not on land and building method. Again, in *Commissioner of Income Tax Vs. Smt. Ashima Sinha*, , this court upheld the rent capitalisation method as the proper method for valuation of the immovable property in preference to other methods. Eventually, all the High Courts were unanimous on the question that the capitalisation of maintainable rent is the only fair method of valuation of an immovable property. It was in this context that Rule 1BB emerged.

11. The Tribunal itself has accepted that the rental method of valuation as conceived by Rule 1BB is mandatory. If it is mandatory, it is in our view immaterial as to which authority is entrusted with the task of valuation--the Assessing Officer or the Valuation Officer. In fact, the Delhi High Court in

Commissioner of Wealth Tax Vs. Ganga Pershad Kedia, , has opined that if Rule 1BB is applicable, it is immaterial as to what value the valuation cell has arrived at.

12. The Bombay High Court in Smt. Bella Cajeton Travasso Vs. Third Wealth-tax Officer and others, , expressly held that the Valuation Officer is duty-bound under the Act and the Rules to value the property in accordance with the procedure prescribed by rule 1BB and that it is futile to claim that the Valuation Officer would ignore the applicability of Rule 1BB. It is not possible to imagine how the Valuation Officer can refuse to consider the applicability of the statutory Rules while entertaining the reference made by the Wealth-tax Officer. The Gujarat High Court in Commissioner of Wealth-tax Vs. Kasturbhai Mayabhai, , has held that once a reference is made to the Valuation Officer, the asset has to be valued in accordance with Section 7(3) or Section 7(4), as the case may be. While valuing the assets u/s 7(3) or Section 7(4) read with Section 16A(1) and 16A(5), the Valuation Officer must have regard to the well-recognised methods of valuation. Rule 1BB merely introduced one such method with suitable modifications so that it can govern practically all cases of assets used wholly or mainly for residence. It would, therefore, not be inconsistent with the scheme of the Act to hold that the Valuation Officer would have to estimate the value in conformity with Rule 1BB. In our view, Rule 1BB is as much binding on the Departmental Valuation Officer acting u/s 16A as it is on the Wraith-tux Officer. There is no diminution in the authoritative value of the rule simply by reason of the valuation of an asset being referred to the Valuation Officer.

13. Because of rent control, the tenanted property cannot be valued otherwise than by the yield method ; the Valuation Officer cannot depart from the said principle. It is not within the authority of the Valuation Officer to ignore the decisions of High Courts, It is not that, by virtue of the matter being referred to him, the Valuation Officer can sit in appeal over such decisions of High Courts. This view has been taken earlier by this court in Aditya Narain Roy and Another Vs. Commissioner of Wealth Tax, .

14. We, therefore, answer the question in the affirmative and in favour of the assessee.

Shyamal Kumar Sen, J.

15. I agree.