
(1969) 12 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Estate Duty Reference No. 2 of 1965

Dina Nath

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 18-12-1969

Acts Referred:

Estate Duty Act, 1953 — Section 36, 4(3)

Citation : (1970) 77 ITR 193

Hon'ble Judges : Mehar Singh, C.J.; Balraj Tuli, J

Bench : Division Bench

Advocate : Rajinder Sachar and A.L. Bahri, for the Appellant; D.N. Awasthi and B.S. Gupta, for the Respondent

Judgement

Mehar Singh, C.J.—On June 12, 1957, Jaswanti Devi died leaving her only son, Dina Nath, as her heir and assets, both movable and immovable, the last mentioned including what has been described as Shri Karam Chand Jain Market in the heart of Jullundur City. In the years 1950-51 the old construction having been demolished, the deceased constructed a new building in the shape of a market over an area of 3 Kanals, 5 Marias, and 20 square-feet as stated, in the heart of Jullundur City, with covered built area on the ground floor 7,627 square-feet and on the first floor 5,363 square-feet. The property comprised of among other parts of the building 41 shops. On the first floor 16 rooms have been with Jain Brotherhood for religious purposes. The Assistant Controller of Estate Duty, Amritsar, in his order of December 30, 1958, gives detailed description of the property and the quality of the material used and the quality of the construction of the building. So this building was constructed by the deceased in the year 1950-51.

2. After the death of Jaswanti Devi, deceased, proceedings were started by the Assistant Controller of Estate Duty for payment of estate duty on the estate left by the deceased in the hands of her son. He filed a statement of account in regard to the estate of his deceased mother, and the only item which is a matter

of controversy here in this reference is the valuation of the property named and styled as Shri Karam Chand Jain Market in Jullundur City, Dina Nath in his statement of account valued that property at Rs. 78,000, showing its annual rental at Rs. 18,000. At that annual rental the value of this building would be recovered in 4 1/2 years. He produced two letters from property dealers one fixing the value of this property at Rs. 1,00,000 and the other fixing it at Rs. 1,10,000 but this material was not accepted by the Assistant Controller of Estate Duty and was not even subsequently relied upon before the Central Board of Revenue in appeal. The Assistant Controller of Estate Duty not having accepted those two letters as satisfactory and reliable evidence in the case in regard to the market value of this particular property on the date of the death of the deceased, the accountable person, Dina Nath, produced a certificate from a chartered engineer, Mr. Hari Chand, in regard to the market value of the property on the crucial date. With regard to this certificate the Assistant Controller of Estate Duty proceeded to say that :

"Shri Hari Chand in the certificate admits that the detailed measurements of every item involved in the construction were given and estimated by one Shri Ram Singh, District Engineer, and the value was based on cost method which in the present case has no reliance. Moreover, the cost was calculated at pre-war P.W.D. scheduled rates and then stepped up by 175% over and above the pre-war rates. The certificate given by Shri Hari Chand is apparently biased in favour of the person accountable and he has taken into account the Maria tax which was not there at the time of the death. He has also taken into consideration that this is a big building which is no consideration at all in view of Section 36(2), He has also taken into account the political unrest prevailing in this frontier province which has made the investors shy. The statement is of no value at all and is self-contradictory. Had there been any political unrest, the deceased would not have constructed this property so recently, and this new market of wholesale cloth could not have made rapid strides as it has done to-day. It is unthinkable that a property worth Rs. 89,000 would yield a gross rental income of Rs. 20,000 annually."

3. So the Assistant Controller of Estate Duty rejected the certificate of the chartered engineer as to the market value of this property on the date of the death of the deceased, because it has proceeded to valuation on considerations either non-existent or not germane such as : (a) the Maria tax which has never been imposed, (b) the prevailing political unrest in this frontier province for which there has neither been any material nor it has affected the value of the property in Jullundur City, and (c) that the building in question is a big building, which is hardly any consideration because even a big building, if it comes to the question of its disposal, may be available for disposal in parts. The Assistant Controller of Estate Duty also found the method of assessing the actual cost of the building not satisfactory in relation to a given increase over the pre-war schedule of rates of the Public Works Department. These are apparently sound reasons on the basis of which it was open to the Assistant Controller of Estate

Duty not to accept the valuation certificate of this chartered engineer. This officer then proceeded to value this property on the basis of rental method. He took the gross letting value of the property on the date of the death of the deceased at Rs. 18,836 and adding to it Rs. 160 per mensem as the gross letting value for the portion of the building in the occupation of the religious brotherhood, he arrived at its gross annual letting value as a whole at Rs. 20,756. Making allowances for repairs, municipal taxes, property tax, and collection charges, he arrived at the net annual letting value of this property at Rs. 13,349, which he capitalised twenty times, thus arriving at the figure of Rs. 2,66,980 as the market value of this property on the date of the death of the deceased for the matter of accountability for estate duty. The person accountable filed an appeal against the order of the Assistant Controller of Estate Duty which appeal was heard and disposed of by the Central Board of Revenue on October 28, 1960. The only matter that was urged on the side of the person accountable on this aspect of the matter was the report of the chartered engineer as to valuation of this property. In the appellate order of the Central Board of Revenue the chartered engineer has been described as "the approved valuer", and obviously that means that he was a valuer approved u/s 4 (1)(c) and (3) of the Estate Duty Act, 1953 (Act No. 34 of 1953). It was urged that the report of the approved valuer in this case being that of an expert was conclusive having regard to Sections 45 and 114 of the Evidence Act unless it was shown that it was not correct, and it was said that that was not shown. The Central Board of Revenue found that the report of the approved valuer was neither correct nor reliable and proceeded to observe that:

"He (approved valuer) has arrived at the valuation of Rs. 89/144 on the basis of the cost of construction of the building and also on the basis of the rental income. The cost of construction was arrived at by taking the value of the land at Rs. 24,000 and the construction at Rs. 5-8-0 per square-foot for ground floor and Rs. 4-13-0 for the first floor. The total cost of construction on the above basis was estimated at Rs. 69,740 from which depreciation of Rs. 3,896 was deducted. In regard to the rental method, the net income from the property was taken at Rs. 11,469 and it was capitalised to give an yield of 12.7 per cent. This yield was considered by him as reasonable keeping in view the rental received for properties in Jor-Bagh and other newly developed localities in New Delhi. The value taken by the valuer for the cost of construction is absurdly low and the yield expected on properties at Jullundur at 12.7 per cent. is very high. It is an open fact that the rent received in some of the newly developed localities in New Delhi is very high on account of special circumstances. These considerations were not applicable to Jullundur, and the yield there would be very much lower. The report of the valuer has, therefore, been rejected." "

4. So even the Central Board of Revenue found the report of the approved valuer neither reliable nor acceptable as having exaggerated the matter of valuation very much to the advantage of the person accountable. Both the original authority and the appellate authority thus found the report of the approved

valuer, after due consideration and on sound grounds, as not reliable and not acceptable as giving the correct market value of the property in question on the crucial date. This concurrent conclusion of the two authorities is based on due and proper consideration of the report of the approved valuer and going to the appraisal of this piece of evidence is not open to reconsideration in a reference of this type and it is not open to this court to reappraise evidence and to form its own opinion with regard to the same finding of fact by discarding the appraisal of the evidence by the authorities under Act 34 of 1953.

5. The Central Board of Revenue then started with the gross rent of the property in question at Rs. 18,834 per annum and deducting "outgoings for municipal taxes, collection charges and repairs at the rate of one month's rent in the amount of Rs. 5,421", they arrived at the net annual rental of this property at Rs. 13,413. In the Principles and Practice of Valuations by John A. Parks, 1965 edition, valuation table is given at page 420 under the caption "Present Value of Re. 1 per annum allowing for redemption of capital at 3 per cent." and at the end of 50 years with return of 5 per cent. on the capital the value given is 16.988, which the Central Board of Revenue has rightly taken as 17. If the expected life of the property is 50 years and the investment on it is Rs. 17 then, allowing 3 per cent. towards capital redemption and a return of 5 per cent. on the capital of seventeen rupees invested the return every year would be one rupee. In other words, if the rental value is Re. 1 to-day, the market value of that property according to the above formula is seventeen rupees. So they proceeded to determine the market value of the property in question in this manner :

"The expected life of the building being 50 years, it would be fair to value the building at seventeen times of the net income, that is, Rs. 2,28,021, to give a net yield of 5 per cent., after allowing for redemption of capital. To this is to be added the land value reversion which on the present value of Rs. 40,000 for the land would come to Rs. 10,000. The total value of the building would, therefore, come to Rs. 2,38,022. In view, however, of the fact that the material utilised for the construction is not of the very best, and since timber of the old building has also been utilised, it would be fair to value the property at only Rs. 2,25,000 on the date of death. This would mean a reduction of Rs. 41,980."

6. The person accountable not being satisfied with the appellate order of the Central Board of Revenue moved an application before it u/s 64(1) of Act 34 of 1953 for a reference of this question to this court :

"Whether, in view of the fact that there is no evidence on the record to rebut the valuation of the property in dispute, made by Shri Hari Chand, a qualified person appointed to act as a valuer u/s 4(3) of the Estate Duty Act, the Central Board of Revenue have erred in law in rejecting the valuation made by the valuer and on estimating the valuation of the property at Rs. 2,25,000 as against Rs. 72,412 reported by the valuer ?"

7. The Central Board of Revenue being of the opinion that the matter of valuation

decided by them was a question of fact dismissed the application of the person accountable on June 19, 1962. It was after that that the person accountable, Dina Nath, made an application to this court for mandamus directing the Central Board of Revenue to refer the question of law arising in the case according to him. His application was allowed and this court required the Central Board of Revenue to refer this question by its order of September 3, 1964.

"Whether, on the facts and circumstances of the case, the Central Board of Direct Taxes was justified in law in fixing the valuation of the property at Rs. 2,25,000 ?"

8. The Central Board of Direct Taxes (Central Board of Revenue) has accordingly made a reference of this question by its order of April 1, 1965. This is how this reference has come before this Bench.

9. The facts have been stated in detail above and there is no controversy over them, as much appears also from the statement of case by the Board in its order of April 1, 1965. The controversy is with regard to the market value of Shri Karam Chand Jain Market in Jullundur City on the date of the death of the deceased. Leaving out the proviso, Sub-sections (1) and (2) of Section 36 of the Act 34 of 1953 read :

"36. (1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time...."

10. So it is the market value of the property in question on the date of the death of the deceased that is relevant and it is specifically provided that reduction in the estimate of the market value of such property shall not be made on the assumption that the whole property is to be placed on the market at one and the same time. The Assistant Controller of Estate Duty having rejected all the three valuation reports, two by property dealers and the third by the approved valuer, proceeded to its valuation according to the annual rental value by capitalising it in relation to 20 years and allowing certain deductions. In appeal the only argument urged was that the report or the certificate of the approved valuer could not be rejected, he being an expert, unless it was shown not to be correct and reliable. It was pointed out that he is a valuer appointed u/s 4(3) of the Act. During the hearing in this reference the learned counsel has not been able to refer to any provision in the Act which says that any such report or certificate of such valuer is binding on the authorities under the Act or carries any weight more than an ordinary piece of evidence. The Assistant Controller of Estate Duty and the Central Board of Revenue both agreed in finding that the report or certificate of the approved valuer was both inaccurate and unreliable. It was on

those grounds that they concurrently proceeded to reject the same. As stated it was open to them to consider such evidence and either to accept its veracity or not and that reappraisal of testimony cannot be done in this court in a reference of this type. It was not that those authorities arbitrarily dismissed the report or certificate of the approved valuer. They had given sound reasons for finding the same not correct and unreliable. It was a case then in which there was no other material available for the matter of arriving at the market value of the property on the particular date, and, therefore, even the Board of Revenue was obliged to proceed on considerations of the net annual rental value and its capitalisation for 17 years on the formula to which reference has already been made to reach the market value after allowing the deductions referred to in their orders. The criticism of the learned counsel for the person accountable is that there was no evidence before the authorities that the cost of construction as worked out by the approved valuer was wrong and it was only his report which gave the cost of construction. So there was no basis for rejection of the same. As that report or certificate could not be rejected, so the authorities were in law not at all justified in proceeding, in the face of that evidence, to arrive at the market value of the property according to the formula of capitalising the net rental value over a certain number of years. In this respect the learned counsel has relied upon *T. Kanagasabapathy Pillai Vs. Commissioner of Wealth-Tax, Madras.*, which case supports the argument of the learned counsel to this extent that where evidence for the market value of property is otherwise available there is no justification in proceeding on the formula of multiplying the annual letting value by a certain number of years to arrive at such valuation. Here is a case in which there was no evidence whatsoever with regard to the market value of the property on the crucial date, and the authorities had no option but to proceed in the manner in which the Central Board of Revenue did. It has already been pointed out that the report or certificate of the approved valuer was rightly rejected by the authorities below concurrently on having been found not correct and unreliable. An unreliable piece of evidence is no evidence in the case. So the argument of the learned counsel proceeds on a basis which does not exist in this case. In the circumstances of this case, the authorities had no option but to proceed in the manner in which the Central Board of Revenue did at the stage of the appeal in arriving at the market value of the property by multiplying the net annual rental over a period of 17 years in terms of the formula followed by them from Parks' Principles and Practice of Valuations. So the case relied upon by the learned counsel in this respect does not advance the argument on his side.

11. In the absence of any other material on the basis of which the authorities could have proceeded in this case to the market value of the property on the crucial date, there was with them no option but to proceed in the manner in which the Central Board of Revenue has done in this case by taking the net annual rental value of the property and capitalising it 17 times according to the formula from Parks' Principles and Practice of Valuations, at page 420. No other manner or method better than that, whether in principle or in fact, has ever been

suggested on the side of the person accountable. The Central Board of Revenue has proceeded on an accepted basis for arriving at market value of properties as in the work referred to above. This was the only formula available to them in the circumstances of this case on the basis of which they could proceed to their decision.

12. There is only one other argument which is urged on the side of the person accountable and that is that proper deductions have not been allowed. It is first said that the adjustment for reversion of land value has not been done in a proper manner, but it is not quite clearly explained what is the error in the approach of the Central Board of Revenue in this respect. This matter is also dealt with in Parks' book, at pages 256 and 424. On the last-mentioned page a table of valuation is given in relation to percentages and years over present valuation of one rupee. The formula for working out the same is given at page 256 and it is this formula along with the table at page 422 in the column of 3 per cent. in relation to the period of 50 years that the Board has taken into consideration. Nothing has been said beyond this that the approach of the Board is not correct in this respect. The other objection as to deductions is that while on the gross annual rental the Assistant Controller of Estate Duty allowed repairs at 1/6th of the same, the Central Board of Revenue has in its order allowed it only at 1/12th. It is urged by the learned counsel for the person accountable that there is no reason why the criterion laid down in the Indian Income Tax Act of allowing repairs at the rate of 1/6th of the annual rental value should not be followed in this respect, particularly as no other measure is available according to the provisions of Act 34 of 1953. To this objection there is no adequate reply on the side of the department. So in allowing deductions from gross annual rental to arrive at the figure of net annual rental in the deductions allowed by the Board of Revenue deduction for repairs is to be allowed at the rate of 1/6th of the rent and not at the rate of 1/12th. This will mean slightly recasting the figures, which will obviously be done by the department in the wake of what has been said above.

13. There is no other argument which has been urged on the side of the accountable person. In the result the answer to the question is in the affirmative except to this extent that the market value of the property in question, shall be recalculated according to the formula followed by the Central Board of Revenue with this difference only that the deduction for repairs shall be increased from 1/12th to 1/6th of the rent for the matter of arriving at net rental value of the property. In the circumstances, there is no order as to costs in this reference.

Bal Raj Tuli, J.

14. I agree.