(1999) 03 MAD CK 0013

In the Madras High Court

Case No : WTA No''s. 721 to 724/Mad of 1994 A.Y. 1988-89 to 1991-92 24 March, 1999

DR. E.V. KALYANI APPELLANT

Vs

ASSISTANT COMMISSIONER OF INCOME TAX RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:
Wealth Tax Act, 1957 — Section 16A

Citation : (2000) 67 TTJ 788

Hon'ble Judges : P.K. Bansal, J;G.E.Veerabhadrappa, J

Bench : Full Bench

Advocate : VD. Gopal and N. Jayakar, for the Appellant;

Judgement

P.K. Bansal, A.M.

These four appeals by the assessee are preferred against the consolidated order of the CWT dated 29-11-1994. The appeals relate to the

assessment years 1988-89 to 1991-92.

2. The brief facts of the case are that the assessee has filed the wealth-tax return for the assessment years 1988-89, 1989-90, 1990-91 and 1991-

92 on 20-3-1989, 11-7-1989, 16-7-1990 and 28-11-1991, respectively, showing wealth of Rs. 17,14,100, 17,56,500, 30,32,200 and

30,46,700 respectively. While the assessments were pending the assessing officer made a reference to the departmental Valuation Officer on 12th

July, 1991, for determining the fair market value of the immovable property consisting of land and building located at No. 4, Radhakrishnan Salai,

2nd St., Mylapore, Madras-4, for the assessment years 1988-89, 1989-90 and 1990-91. The Valuation Officer filed his report dated 20-2-1992,

determining the following fair market value of the above said property :

Valuation date Asst. yr. FMV as per

departmental

valuer

Rs.

31-3-1988 1988-89 2,04,26,600

31-3-1989 1989-90 2,76,62,300

31-3-1990 1990-91 3,48,42,100

While these assessments were pending, the assessing officer issued notice u/s 17 for the assessment years 1988-89 and 1989-90 and in respect

thereto assessee filed second return for assessment years 1988-89 and 1989-90 on Ist June, 1992, showing wealth of Rs. 29,86,760 and Rs.

45,61,500 respectively. The assessing officer completed the assessments for the assessment years 1988-89, 1989-90, 1990-91 and 1991-92 on

31st March, 1994, 31st March, 1994, 26th March, 1993 and 31st March, 1994, respectively on a wealth of Rs. 72,13,900, Rs. 72,36,600,

75,68,527, and Rs. 74,931,100 respectively. The property at No. 4 Dr. Radhakrishnan Salai, was let out for 30 years to Dr. EV. Kalyani

Medical Foundation (P) Ltd. in which the assessee and her close relatives were the shareholders. The assessing officer assessed the value of the

property situated at No. 4, Radhakrishnan Salai at Rs. 63,87,325 for each of the assessment years by applying the Sch. IE of the Wealth Tax Act

and thereby capitalised the rental income as was duly shown by the assessee in its Income Tax return. The assessee has not objected to the value

of the aforesaid property as estimated by the assessing officer by applying Sch. III to the Wealth Tax Act. The assessee has also not challenged

the notice issued u/s 17 of the Wealth Tax Act for the assessment years 1988-89 and 1989-90 before the appellate authority. The CWT after

scrutinising the record of the assessee for the assessment years 1988-89 to 1991-92 found that the assessing officer has totally ignored the fair

market value as estimated by the departmental Valuation Officer in each of the assessment years. According to the CWT under rule 20(2) of the

Sch. III of the Wealth Tax Act read with section 16A of the Wealth Tax Act, the assessing officer was bound to follow the fair market value as

had been determined by the departmental Valuation Officer and, therefore, considered that the wealth-tax orders passed for each of these

assessment years by the Wealth Tax Officer are erroneous and prejudicial to the interest of the revenue and hence directed the Wealth Tax Officer

to pass fresh '' orders for each of the assessment years by taking the value of the immovable property at No. 4 Radhakrishnan Salai as had been

determined by the departmental valuer in his report dated 20th Feb., 1992.

3. The assessee being aggrieved has come before us and challenged the order of the CWT passed u/s 25(2) of the Wealth Tax Act. The

authorised representative submitted that the property was let out and, therefore, the only method for valuation of the property was the one which is

given under rule 1BB/Sch. M of the Wealth Tax Act. He relied on the decision of the Hon''ble Supreme Court reported at (1994) 210 TTR (St)

13. He stressed that the CWT was not having any power to set aside the assessment merely on the basis that the assessing officer has not followed

the valuation as has been worked out by the Valuation Officer u/s 16A of the INT Act, and that the assessment orders were not erroneous. The

assessing officer has taken the value of the property at No. 4, Radhakrishnan Salai, at Rs. 63,87,325 for each of the assessment years by applying

rule IBB/Sch. M of the Wealth Tax Act. He drew our attention towards section 7(1) of the Wealth Tax Act which speaks that the value of an

asset other than cash for the purpose of the Act shall give the value as determined in the manner laid down in Sch. III of the Wealth Tax Act. He

further submitted that the assessing officer applied rules 3 and 4 of Sch. III while framing the assessment and has not invoked rule 8 and, therefore,

the order passed by the Wealth Tax Officer was in accordance with law. Even the Valuation Officer does not have any power to reject rule 3.

Rule 20 of Sch. III will be applied only in case rule 8 is applicable. None of the sub-clauses of rule 8 were applicable in the case of the assessee.

The power given under rule 8(a) to the assessing officer can be exercised only with the previous approval of the Dy. CIT. The assessee is 84 years

of age and there is a nursing home running in the building. The rental income from the property has been accepted by the assessing officer in the

Income Tax proceedings. The Valuation Report was available before the assessing officer before the passing of the assessment order and the

assessing officer while framing the assessment himself found that the reference to the valuation cell was totally illegal and that rule IBB/Sch. III of

the Wealth Tax Act are mandatory and binding on him. He accordingly worked out the value of the property. The CWT has exceeded his

jurisdiction by setting aside the assessment while there was no error in the order passed by the Wealth Tax Officer. The authorised representative

relied on the following decisions -.

(1) Smt. Uma Debi Jhawar Vs. Wealth Tax Officer and Others, .

(2) Satyendra Chunder Ghose Vs. Wealth Tax Officer and Others, , and

(3) Onkarji Kasturchand (HUF) Vs. Wealth Tax Officer, ""D"" Ward and Others, .

The departmental Representative relied on the order of the CWT and requested for sending back the matter to the file of the CWT. He relied on

the decision of the Kerala High Court in the case of P.J. George Vs. Commissioner of Income Tax, wherein it was held that Sch. III is prospective

and not retrospective in operation.

4. We have heard the rival contentions and perused the material on record.

Before deciding the issue involved, it is necessary to refer to section 251) of the Wealth Tax Act which is reproduced hereunder:

Without prejudice to the provisions contained in sub-section (1), the CWT may call for and examine the record of any proceeding under this Act

and if he considers that any order passed therein by an assessing officer is erroneous insofar as, it is prejudicial to the interests of revenue , he may,

after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such

order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a

fresh assessment.

From the said section it is clear that the power of revision u/s 25(2) can be exercised by the CWT when the following factors are in existence

(a) There should be a proceeding under the Act;

(b) In such proceeding the assessing officer must have passed an order;

(c) The CWT should consider that the said order is erroneous and prejudicial to the interests of revenue.

So far as the first two conditions are concerned there is no doubt that these two conditions have been duly complied with. The dispute is with regard to the compliance of the third condition i.e., whether the order passed by the assessing officer can be regarded to be erroneous on the basis

of law. The CWT in his order dated 29th Nov., 1994 in para 3 has stated as under :

As this report was available with the assessing officer before passing of the wealth-tax assessment orders, the adoption of lower fair market value

of the said property was considered erroneous and hence prejudicial to the interests of revenue .

xx xx xx

which clearly denotes that the CWT has taken it to be an error committed by the assessing officer as he had not taken the value of the property at

No. 4 Radhakrishnan Salai as has been estimated by the departmental valuer. ''Erroneous'' means erring or wrong or full of error. The error may

be of a fact or law. From paras 9, 10, 11 of the order of the CWT, it is apparently clear that according to him the

assessing officer was bound u/s 16A read with rule 20(2) of WT Rules to complete the assessment in accordance with the value as has been

estimated by the Valuation Officer. If the assessing officer has committed an error of law, it can be said that the CWT was having the power to

revise the assessment. But if there is no error in the order of the assessing officer, we cannot say that the CWT can revise the assessment order

passed by the assessing officer. To ascertain whether the assessment has been framed by the assessing officer in accordance with law or not we

have to refer to section 7 of the Wealth Tax Act. Sec. 7(l) as amended with effect from 1st April, 1989, as applicable to assessment years. 1989-

90, 1990-91 and 1991-92 lays down as under :

Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the

valuation date determined in the manner laid down in Sch-III.

As per this section, it is apparently clear that the value of any asset other than the cash shall be in accordance with Sch. III except in the case which

falls under sub-section (2). Sub-s. (2) is not applicable to the facts of the assessee. Sec. 7(1) does not speak of market value. The word used is

''value''. Value and market value are both different terms. Had there been an intention of the legislature to take the market value of the property, this legislature would have used the word market value. The legislature has specifically used the word I value'' with objective that the market value

has not to be taken into account. In this regard, we refer to section 269UC of the Income Tax Act, 1961. There also the legislature has used the

word ''value''. Value has been separately defined by the legislature under rule 48K for the purposes of section 269UC as the apparent

consideration. Likewise in the Wealth Tax Act the value has to be worked out in accordance with the manner specified under Sch. III prior to

amendment of section 7, the value itself has been defined to be the price which in the opinion of the assessing officer any asset would have fetched

if sold in the open market on the valuation date. After the amendment, determination of the value has been explained under rule 1 of Sch. III which

states that the value of an asset other than cash for the purpose of this Act shall be determined in the manner laid down in these Rules. Therefore,

as per section 7(l) of the Wealth Tax Act as it stood after 1st April, 1989, it has become mandatory under the law to determine the value in

accordance with St. III. Rules 3 to 7 explain in detail the method how the value has to be worked out in case of any immovable property be it a

building or land appurtenant there to. In the case of the assessee, the assets in question is building and land appurtenant thereto. The assessing

officer has worked out the value by applying rr. 3 to 7 of Sch. III. There is no dispute on this fact. Rule 8 lays down three criterias under which

rule 3 will not apply. The first criteria laid down is that if the assessing officer is of the opinion that it is not practicable to apply rule 3, the assessing

officer is empowered not to apply rule 3, but for this, he has to get the previous approval of the Dy. CWT, In the case of the assessee the learned

departmental Representative could not place any material to prove that the assessing officer has exercised his jurisdiction under rule 8(a) of Sch. III

with the previous approval of the Dy. CWT. No such case has been brought on record. The second criteria relates where the difference between

the unbuilt area and the specified area exceeds twenty per cent of the aggregate area. The third criteria relates to where the property is constructed

on leasehold land and the lease is about to axpire within a period not exceeding 15 years from the date of the relevant valuation date and under the

terms of the lease deed, no option is given to the lessee for the renewal of the lease. The departmental Representative could not prove that the case under consideration falls under any of the criteria laid down under rule 8 of Sch. III. Rule 8 further states that if a case falls under any of the three

criterias given thereunder the value of the property shall be determined in the manner laid down in rule 20. Thus in the case of the assessee, the

assessing officer has not invoked rule 8 so that the determination of the valuation of property may come out of the purview of rule 3.

5. Rule 20 consists of three sub-rules, sub rule (1) relates to the determination of the value of an asset which is not covered by rr. 3 to 19. This is

not so in the instant case. sub rule (2) relates to a case where the valuation of any asset has been referred to the Valuation Officer by the assessing

officer u/s 16A. And sub-r. (3) relates to a case where the property is saleable in the open market. For the purpose of looking into the applicability

of sub-r. (2) to rule 20 we have to refer to section 16A of the Wealth Tax Act. For ready reference section 16A is being reproduced as under :

16A(1) for the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of

coming into force of this section) under this Act, where under the provisions of section 7 read with rules made under this Act, or, as the case may

be, the rules in Sch. III, the market value of any asset is to be taken into account in such assessment, the assessing officer may refer the valuation of

any asset '' to a Valuation Officer :

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the assessing officer is of

opinion that the value so returned is less than its fair market value;

(b) in any other case, if the assessing officer is of opinion

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as

returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

(2) For the purpose of estimating the value of any asset in pursuance of a reference under sub-section (1), the Valuation Officer may serve on the

assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as

the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of asset has been correctly declared in the return made by the assessee u/s 14 or

section 15, he shall pass an order in writing to that effect and send a copy of his order to the assessing officer and to the assessee.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee u/s 14

or section 15, or where the asset is not disclosed or the value of the asset s not declared in such return or where no such return has been made, the

Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to

state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be

produced on that date such evidence as the assessee may rely in support of his objections.

(5) On the date specified in the notice under sub-section (4) or as soon thereafter as may be, after hearing such evidence as the assessee may

produce arid after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant

materials which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the

assessing officer and to the assessee.

(6) On receipt of the order under sub-section (3) or sub-section (5) from the Valuation Officer, the assessing officer shall so far as the valuation of

the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer.

6. Sub-s. (1) of section 16A empowers the assessing officer to refer the valuation of any asset to a Valuation Officer only in cases where under

provisions of section 7 read with the rules made under this Act or under the rules as stipulated in Sch. III, the market value of asset is to be taken

into account in such assessments. In the case of the assessee the question was not related to determination of market value of the property at No.

4 Radhakrishnan Salai as section 7(1) read with rr. I and 3 of Sch. III to the Wealth Tax Act which are applicable in the case of the assessee, it

was only the value which was to be determined and not the market value. As we have already stated in the earlier paragraph that there is difference between the terms ''value'' and ''market value'' we hold that section 16A(l) of the Wealth Tax Act, 1957, does not empower the assessing officer

to refer the determination of value of asset to the Valuation Officer. We hold so because rule 8 also empowers the assessing officer to determine

the value in the manner laid down in r, 20 where he is of the opinion that it is not practicable to apply the provisions of rule 3. The assessing officer

in this case has not exercised the power given under rule 8 of Sch. III of the Wealth Tax Act. If the reference to the Valuation Officer itself is void

ab initio how can it be binding on the assessing officer. sub rule (2) of rule 20 is applicable only in a situation where a reference u/s 16A has been

made by the assessing officer by invoking rule 8 of Sch. III of the Wealth Tax Act, 1957. If the reference to the Valuation Officer itself is void ab

initio, it cannot be binding on the assessing officer. Accordingly the valuation report submitted by the Valuation Officer is merely a piece of paper

which does not have any sanctity in the eyes of law. In the case of the assessee the assessing officer during the course of assessment proceedings

itself had arrived at a finding which has a force of law that the value of the property of the assessee situated at No. 4 Radhakrishnan Salai has to be

worked out in accordance with Sch. III and he accordingly worked out the value in the manner laid down under rr. 3 to 7 of the said Schedule. In

the pith and substance of the case, we are of the considered opinion that no error of law has been committed by the assessing officer while

completing the assessment totally disregarding the departmental valuation report even though a reference has been made to the Valuation Officer

by the assessing officer u/s 16A of the Wealth Tax Act. Sec. 16A read with rule 20(2) of Sch. III does not give blanket power to the Valuation

Officer that its report will be binding on the assessing officer even if the reference made by the assessing officer is not in accordance with law or is

illegal in the eyes of law.

7. We have gone through the case laws relied on by the authorised representative of the assessee. But we find that these cases are not applicable

to the facts of the assessee. The three cases relied on by the authorised representative :

(i) Onkarji Kasturchand (HUF) v. Wealth Tax Officer (supra);

(ii) Satyendra Chunder Ghose v. Wealth Tax Officer & Ors. (supra), and

(iii) Smt. Uma Dehi Jhawar v. Wealth Tax Officer & Ors. (supra)

holds only that reference to the Valuation Officer can be made when the proceedings before the assessing officer are pending. In the case of the

assessee the proceedings were very much pending before the assessing officer when the reference was made to the Valuation Officer. The tenancy

of the building had not been rejected by the assessing officer while framing the assessment. The Hon''ble Supreme Court in the case of Bharat

Commerce and Industries Ltd. Vs. Commissioner of Income Tax and another, (since reported as CWT v. Sharvan Kumar Swarup & Sons

(1994) 122 CTR (SC) 380 : (1994) 210 TFR 886) dealt with the question as to whether rule 1BB is procedural or not and has laid down as

under therein :

Rule 1BB thus partakes of the character of rule of evidence. It deems the market value to be the one arrived at on the application of a particular

method of valuation which is also one of the recognised and accepted methods. Even if a law raises a presumption and renders the presumption

irrebuttable it is yet in'' the domain of the law of evidence on a consideration of the matter we are persuaded to the view that rule IBB is essentially

a rule of evidence as to the choice of one of the well-accepted methods of valuation in respect of certain kinds of properties with a view to

achieving uniformity in valuation and avoiding disparate valuations resulting from applications of different methods of valuation respecting properties

of a similar nature and character. The view taken by the High Courts, in our opinion, cannot be said to be erroneous. The appeals are accordingly

dismissed.

On the basis of the decision of the Hon''ble Supreme Court cited supra, we hold that Sch- III incorporated in the Wealth Tax Act, with effect from

1-4-1989, is procedural in nature and is applicable to all pending assessment even though neither the learned departmental Representative nor the

authorised representative point out any material difference in the method of valuation in respect of immovable property under rule 1BB of the WT

Rules or Sch. III of Wealth Tax Act. Therefore, rule 1BB and Sch. III are mandatory and are binding on the authorities - below while working out

the value of an immovable property. Under the facts and circumstances of the case, we hold that the orders passed by the assessing officer were not erroneous in law. Hence the order passed by the CWT u/s 25(2) of the Wealth Tax Act directing the assessing officer to pass fresh orders

after substituting the fair market value of the property situated at No. 4, Radhakrishnan Salai as worked out by the Valuation Officer in place of the

value as has been worked out by the assessing officer in his assessment in accordance with section 7(l) read with rr. 1 and 3 to 7 of Sch. III to the

Wealth Tax Act is not in accordance with law. We, therefore, set aside the order of the CWT.

8. In the result, the appeals by the assessee are allowed.