

(2003) 11 MAD CK 0024

In the Madras High Court

Case No : T.C. No's. 259 to 265 of 1999 and T.C. (A) No. 169 of 2003

George Oakes Ltd.

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (2004) 190 CTR 536 : (2004) 267 ITR 677

Hon'ble Judges : S.R. Singharavelu, J; R. Jayasimha Babu, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; Pushya Sitaraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—Three questions arise in this batch of references and appeals. The first two arise for the assessment years 1984-85, 1985-86, 1987-88, 1988-89 and the third for the assessment years 1988-89, 1990-91 and 1991-92.

2.The three questions are :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's contention that the property at

No. 17, Greams Road, Madras, should be valued on the basis of rent capitalisation method for determining the taxable wealth under the Wealth-tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's contention that the property at

Ooty should be valued on the basis of rent capitalisation method for determining the taxable wealth under the Wealth-tax Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal

should hold that applying the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, that as the assessee was not occupying the land as a lessee under any lease agreement, the property is not exigible to wealth-tax ?

The undisputed facts are that the assessee is the owner of the building and land situated at No. 17, Greams Road, Madras. The building has been let out to a sister concern from which the assessee has been receiving rent. The letting commenced some time in the year 1972 and during these years the tenant concerned, viz., M/s. TAPE, was in occupation of the property.

3. The property has a large vacant area. The assessee claimed that as that was in excess of what was permissible under the provisions of the

Urban Land Ceiling Act which was in force during these years the vacant portion should be valued at the rate of which the land was to be

compensated in terms of that Act. So far as the building was concerned, the claim was that it should be assessed on the basis of the rental method.

Though the Assessing Officer declined to carry out the valuation by the method proposed by the assessee, the Commissioner, on appeal, held that

the vacant land which was quite substantial was required to be valued at the rate at which the compensation is provided for lands in terms of the

Urban Land Ceiling Act. The property at No. 17, Greams Road, has an extent of 31 grounds and 1,820 sq. mt. The building with an area of about

1,394 sq. mt. is situated in an area of 8.75 grounds. In respect of that building and the ground on which it rests, the Commissioner upheld the

method adopted by the Assessing Officer, viz., "land and building method", for determining the market value. The Tribunal has affirmed the order

of the Commissioner.

4. It is contended for the assessee that having regard to what is provided in Schedule III the only permissible method of valuation was the "rental

method" so far as the building is concerned, as it is undisputed that the building has in fact been leased out and that the assessee has been receiving

rents. The fact that it is let out to a sister concern would not on that score make the method of valuation set out in Schedule III of the Act

inapplicable. Schedule III of the Act, it was submitted, though it was introduced with effect from April 1, 1989, being a procedural provision, is

applicable as the matters were pending before the authorities at the time the

Schedule was introduced.

5. Rule 3 of Schedule III sets out the manner in which an immovable property is to be valued. The valuation to be arrived is by multiplying the net

maintainable rent by the figure 12.5. The manner in which the net maintainable rent is to be computed is set out in Rule 4. It is the gross

maintainable rent reduced by the amount of tax paid to the local authorities in respect of the property and the sum equal to 15 per cent. of the

gross maintainable rent. The manner of determining the gross maintainable rent is set out in Rule 5. The Explanation below Rule 5(ii) sets out as to

what is meant by "annual rent". Rent received or receivable is dealt with in Rule 5, Explanation (2).

6. Learned senior counsel for the Revenue, while not disputing the fact that Schedule III is a procedural provision having regard to the decision of

the Supreme Court in the case of Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, the mode of valuation provided in

this Schedule being one of the acceptable modes and the prescription by the Legislature of that mode of valuation being a procedural prescription

would apply to these assessment years as well submitted that having regard to Rule 8 of Schedule III, Rule 3 would not apply.

7. Rule 8 in Clause (a) provides that where it is found by the Assessing Officer with the previous approval of the Deputy Commissioner, that it is

not practicable to apply the provisions of Rule 3 of that rule is not to be applied. There is, however, nothing in the order of the Assessing Officer or

the other authorities to show that it was not practicable to apply the rental method. The finding of the authorities on the other hand, is that there has

been letting and that the assessee has been receiving rents, the identity of the lessee also being known. The only reason given by the authorities for

not adopting the rental method is that in their view the rent received was nominal as the letting was to a sister concern.

8. The fact that in the view of the authority the rent received by the assessee is a nominal rent would not by itself render Rule 3 inapplicable as it

cannot be said that it becomes impracticable to apply Rule 3 by reason of the view of the authority that the rent is nominal. The word "practical

does not take within its scope the opinion of the authority as to whether or not the building was capable of fetching a rent higher than the one that

was actually received by the assessee. The practicality referred to therein is in the manner of application of what is already provided in the rule and

does not refer to the advisability or otherwise of applying Rule 3, in order to arrive at what the Assessing Officer regards as the true market value

of the property.

9. Assessing the value of a property by adopting the rental method is an accepted mode of valuation. It was open to Parliament to prescribe that

method as the method for determining the value for the purpose of the Act. It was equally open to Parliament to specify and limit the circumstances

in which that rule was not required to be applied. If the exceptions to the rule do not take within their fold, the inadvisability of applying Rule 3 on

account of the amount of rent being regarded by the Assessing Officer as being nominal, it would not be open to the Assessing Officer to decline to

adopt the rental method.

10. The prescription made by Parliament binds the Assessing Officer as much as it does the assessee. Section 3 of the Act provides for levy of

wealth-tax in respect of the net wealth on the corresponding valuation date. For the purpose of determining that net wealth in respect of certain

assets the mode of valuation of those assets is also provided for in the Act. The computation of wealth, therefore, has to be in accordance with the

mode of valuation set out in the Act.

11. The mode of valuation set out in Schedule III does not provide for a situation where the rent actually received by the assessee is in the view of

the Assessing Officer, nominal. As long as the rent reported by the assessee is in fact the true and correct amount received by the assessee from its

lessee and the letting is not make believe but is genuine, it is the actual amount received on such letting which has to be taken note of and cannot be

ignored on the sole ground that in the view of the Assessing Officer it is nominal.

12. The first two questions, therefore, are required to be and are answered in favour of the assessee and against the Revenue.

So far as the third question is concerned, the facts are that the assessee is a lessee of a property situated in Triplicane, Madras, in terms of a lease

deed dated May 22, 1968, the period of the lease being 21 years. That lease expired on April 30, 1987. After the expiry of the lease, no fresh

lease was entered into between the assessee and its lessor. On the other hand,

the lessor asserted a right to retake possession and refused to recognise a right in the assessee to obtain renewal. That was followed by the lessor instituting a suit in C. S. No. 913 of 1989 on the original side of this court for recovery of possession of the property. Though the assessee in that suit took the plea that it is entitled to renewal, as to whether it is entitled to renewal and, if so, on what terms is a matter which will be determined only when the suit is ultimately decided. The position of the assessee as of now is a precarious position and it is not possible to predict with certainty as to what the outcome of the suit will be.

13. The Supreme Court, in the case of Faridabad Complex Administration Vs. Yadu etc., , in a situation substantially similar to the one in which the assessee is placed, held that the continued possession of the property by the lessee after the expiry of the lease period, against the wishes of the lessor, was precarious and it could not be said that such a person had a vested interest in the land and would not fall within the scope of Section 2(e)(2)(iii) of the Wealth-tax Act The statutory provision applicable in this case also is Section 2(e)(2)(iii) which refers to interest in property vesting in the assessee for a period exceeding six years. In the absence of any renewal and in the face of the demand by the lessor for possession--a claim which has been followed up by instituting a suit for eviction--it cannot be said that the assessee has an interest in the property which has vested in it for a period exceeding six years.

14. The third question, therefore, also is required to be and is answered against the Revenue and in favour of the assessee. We must, however, make it clear that in the event of the assessee subsequently securing renewal, whether under the orders of the court or otherwise, the assessee's assessment to wealth-tax for the years subsequent to 1987 will be liable to be reopened so as to include the value of this asset as part of its wealth.