
(1997) 07 DEL CK 0004

In the Delhi High Court

Case No : Wealth Tax Reference No's. 421, 422 and 423 of 1983

Gurbux Singh

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 27(3)

Citation : (1997) 70 DLT 15 : (1997) 43 DRJ 69

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : P.N. Monga, B. Gupta and R.K. Chauvla, for the Appellant;

Judgement

D.K. Jain, J.

(1) At the instance of the assessee, pursuant to the direction u/s 27(3) of the Wealth Tax Act, 1957, (for short the Act) the Income Tax Appellate Tribunal has referred the following common question relating to the assessment years 1974-75 to 1976-77 :-

"Whether on the facts and in the circumstances of the case, the multiplier of 16-1/2 should have been applied to net A.L.V. by taking into account the actual expenses of repairs and collections or the statutory actual expenses under this head according to Section 24 of the Income Tax Act, 1961."

(2) The assessed before us in an individual having 1/4th interest in immovable property known as Scindia House, New Delhi, wholly let out to 127 tenants. In his returns, under the Act, for the relevant years, the assessed declared the value of his share in the property at Rs. 7 lacs for each of the years. During the course of the assessment proceedings, the Wealth Tax Officer referred the matter of valuation to the Valuation Officer u/s 16A of the Act, who valued the assessor's share at Rs. 46,18,250.00 . The Wealth Tax Officer adopted the said valuation. The assessed appealed against the order of the Wealth Tax Officer to Appellate Assistant Commissioner and challenged the annual aggregate rent receivable as

determined by the Valuation Officer. It was argued before the Appellate Assistant Commissioner that the Valuation Officer had wrongly allowed 1/12th of the gross rent for repairs instead of 1/6th. The Appellate Assistant Commissioner, however, did not consider it necessary to value the property by capitalising the net annual value as was done by the Valuation Officer, but relying on the Bank Nationalisation case he held that the best method to value the property was to take the comparative sale instances in the vicinity and find out the relationship between the sale value realised vis-a-vis the rentals being obtained by the assessee. Applying this method of valuation the Appellate Assistant Commissioner determined the value of the assessor's share at Rs. 22,19,350.00. Still aggrieved, the assessed preferred appeal to the Tribunal and pleaded that the Appellate Assistant Commissioner was wrong in adopting the comparative sales method for determining the fair market value of a fully tenanted property. The plea of the assessed was accepted by the Tribunal, which held that valuation should be done by capitalising the net annual value. The Tribunal further held that since in the assessor's own case, in respect of the earlier years, a multiplier of 16.5 had been applied to the net annual value, the same multiplier should be applied for the years in question. The Tribunal, however, did not accept the plea of the assessed that for determining the annual letting value, 1/6th of the rent should be deducted towards repairs instead of 1/12th as deducted by the Valuation Officer, for the reason that the assessed had been keeping regular accounts for repairs and the actual amounts spent on account of repairs were less than one month's rent permitted under the Delhi Rent Control Act and, Therefore, there was no justification in allowing deduction towards repairs for more than one month's rent. It is against this order that the assessed has obtained reference on the aforementioned question for the opinion of this Court.

(3) Although it is quite apparent from the frame of the question itself but still learned counsel for the assessed has also stated before us that the assessed has no grievance in so far as the multiplier factor of 16.5. is concerned. The only issue which requires our consideration is whether actual expenses incurred by the assessed on repairs and collections or the statutory deductions as permissible u/s 24 of the Income Tax Act, 1961, for determining annual value of the property for the purpose of computing income from house property u/s 22 of the said Act, should be deducted while determining the annual letting value of the property. (4) Prior to its amendment by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1 April 1989, to which period the cases relate, the relevant part of Section 7 of the Act reads as follows:-

"Value of assets how to be determined:

(1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

(2) " As per Section 7 of the Act "The Value of any asset....., for the purpose of this Act, shall be estimated to be the price which in the opinion of the assessing officer, it would fetch, if sold in the open market on the valuation date". The expression "If sold in the open market" does not contemplate an actual sale but only enjoins that it would be assumed that the property has a market value which will be found out by taking into account a hypothetical sale. Section 7 merely provides the machinery for the determination of value of assets but as such does not lay down any method or formula for valuation of the asset.

(5) There are several methods of valuation of a house property. One of the well recognised and generally accepted methods of valuation is the rent or yield capitalisation method, adopted by the Tribunal in the instant case, which contemplates of first finding out the net annual yield from the house property and then multiplying it with the appropriate multiplier, depending on the average yield on securities etc. with which we are not presently concerned. The net yield is to be arrived at by deducting from the gross annual rent received or receivable, the outgoings in respect of property like municipal taxes, repairs, collection charges etc. So far as the Act is concerned, prior to the framing of Rule 1 BB, laying down the procedure for determination of fair market value of property, there were no guidelines for the determination of the net annual letting value of a property. Section 24 of the Income Tax Act, enumerating various expenses which could be allowed as deduction for arriving at the annual value of a property for the purpose of its taxability u/s 22 of the said Act could provide some basis in that behalf. Expenses towards repairs, collection charges etc., are some of the expenses which qualify for deduction under the said section subject to certain limits.

(6) The question, Therefore, is whether in the absence of any provision with regard to the allowability of an expense or its quantum under the Act in the relevant years, the procedure prescribed for determining the annual value of the property for the purposes of assessment under the Income Tax Act could be applied for arriving at the annual letting value of the property for the purposes of determining its fair market value for the purposes of the Act. For answering the question it would be relevant to notice the subsequent changes/amendment which took place in the Act and have some bearing on the issue involved.

(7) Section 46 of the Act confers power on the Board to make rules. Relevant portion of Section 46 is extracted below :-

"Power to make rules.

46.(1) The Board, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for :-

(a) the manner in which the market value of any asset may be determined.

(b).....

....."

(8) In exercise of its power u/s 46 of the Act, which as per Section 46(2)(a) of the Act, extracted above, includes the power to frame rules to provide for "the manner in which the market value of any asset may be determined", the Board framed Rule 1 BB, now omitted by the Wealth Tax (Second Amendment) Rules, 1989 w.e.f. 1.4.89 to make room for insertion of Schedule III to the Act itself. The said Rule as also the newly inserted Schedule III, gave statutory recognition to the rent capitalisation method of valuation for the house properties wholly or mainly used for residential purposes. Besides prescribing the multiplying factor, the Rule sets out the procedure for determining the net maintainable rent for that purpose. Schedule III to the Act, is, in substance, on similar lines of Rule 1 BB, except that Schedule III is meant to be applied for valuation of residential as well as commercial properties. Under Rule 1 BB 2 (c), "net maintainable rent" for the purpose of multiplying the same with a fixed fraction to arrive at the value of the house, means the amount of "gross maintainable rent", minus certain deductions like a sum equal to 1/6th in respect of repairs and an amount spent during the previous year for collection of the rent not exceeding 6% etc. Rule 1 BB only sets out the method or formula for determining the market value of a particular asset and it is now settled that it is procedural and not substantive in nature. Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, . It is intended to carry out the purpose and object of Section 7(1) of the Act, namely, an estimate of the price of the asset "If sold in the open market". Though Rule 1 BB, was applicable for determining the value of a house which was wholly or mainly used for residential purposes, but being procedural in nature it could be applied even for valuing the other let out properties as well, which has now been done in the newly inserted Schedule III to the Act.

(9) Since Section 7(1) itself opens with the words "subject to any rules made in this behalf" and Rule 1 BB having been framed though subsequently, (on lines similar to Section 24 of the Income Tax Act), to provide for the "manner" used in Clause (a) of Sub-section (2) of Section 46 of the Act, in which the market value of a house property could be determined, it seems to us almost axiomatic that the same procedure should be applied to determine the value of the property in question, even though it is not self-occupied. As noticed above once a well recognised method of valuation, namely, the rent capitalisation method, incorporated initially in the form of Rule 1 BB and now in Schedule III to the Act, is directed to be adopted by the Tribunal and accepted by both sides, we find no reason why the procedure laid down therein should not be followed and applied in entirety. In our view, Therefore, the Tribunal was not right in holding that while determining the annual letting value for the purpose by applying a multiplier of 16.5, only actual expenses incurred by the assessed on repairs and collections should be deducted and not to the extent of 1/6th of the gross maintainable rent, as permissible under Rule 1 BB, which Rule, in so far as those

deductions are concerned, in substance, is identical to Section 24 of the Income Tax Act.

(10) We are, Therefore, of the opinion that for the relevant assessment years, when the Tribunal directed adoption of rent capitalisation method for valuing the property in question, the net maintainable rent should have been arrived at in the same manner as the annual letting value is determined u/s 23 for the purpose of Section 22 of the Income Tax Act.

(11) For the aforesaid reasons the question is answered in negative i.e., in favor of the assessed and against the Revenue. There will be no order as to costs.