

(1990) 06 KAR CK 0022

In the Karnataka High Court

Case No : Tax Reference Cases No's. 25 to 32 of 1980

Hajee Abdul Sattar Sait

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 11-06-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 2 (m), 27, 7 (1)

Citation : (1990) 88 CTR 165 : (1990) 186 ITR 134 : (1990) 2 KarLJ 113 :
(1991) 55 TAXMAN 46

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : K.R. Prasad, for the Appellant; G. Chandra Kumar, for the Respondent

Judgement

M. Rama Jois, J.—All these eight references have been made u/s 27 of the Wealth-tax Act, 1957, by the Income Tax Appellate Tribunal, Bangalore Bench, on the application made by the assessee to the Tribunal.

2. The question of laws referred for our opinion reads :

"Whether, on the facts and in the circumstances of the case and on a true construction of sections 7(1) and 2(m) of the Wealth-tax Act, 1957, the Tribunal was right in holding that, in valuing the assessee's properties u/s 7(1) and computing his net wealth u/s 2(m) for the assessment year 1963-64, the assessee was not entitled to deduction of liability for capital gains tax which was a statutory liability of the assessee if the assessee's properties were sold or deemed to have been sold as contemplated by section 7(1) ?"

3. Briefly stated the facts of the case are these : The assessee owns immovable properties assessable in his hands for payment of Wealth-tax. They include immovable properties situated in Infantry Road, Bangalore, which was self-occupied. The Wealth-tax Officer reopening the assessment, considered that the value of the immovable properties should be ascertained as on the date of valuation for the relevant assessment year in accordance with section 7(1) of the

Wealth-tax Act, 1957, and should be taken into account in computing the total wealth of the assessee as on the valuation date. Before the Tribunal, the assessee claimed that in quantifying the value of the immovable properties, the capital gains tax leviable on the estimate price of the immovable property as on the date of valuation should be deducted. The Tribunal held that, in accordance with section 7(1) of the Act, the value of the immovable properties as on the date of valuation, should be ascertained on the basis of the price which the properties could have fetched as on that date and the contention of the assessee that, out of the said amount, the capital gains tax payable in the event of the sale of the properties for the said amount should be deducted, was untenable. Thereafter, at the instance of the assessee, the question of law set out earlier has been referred for our opinion.

4. Learned counsel for the assessee contended that when section 7(1) of the Act requires that for the purpose of the Act, the value of an asset should be estimated on the basis of the price which, in the opinion of the Wealth-tax Officer, the asset would fetch if sold in the open market on the valuation date, it means that only the price which the asset would fetch should be taken into consideration but also the liability to pay capital gains tax which would arise in the event the sale of the asset for the said price as on the valuation date were to take place should be deducted.

5. In support of the above contention, learned counsel relied on the judgment of the Delhi High Court in *P. N. SIKAND Vs. COMMISSIONER OF WEALTH-TAX.*, which has been confirmed by the Supreme Court in *Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand*. In the said case, the facts were these : A land and building had been leased by the Delhi Development Authority in favour of the assessee. The conditions of the lease were that, before any assignment or transfer of the land and building permission should be obtained for doing so from the Delhi Development Authority, and further, fifty per cent. of the unearned increase in the value of the asset which the lessee receives on such assignment or transfer should be made over to the Delhi Development Authority. The question for consideration before the court was whether, in ascertaining the value of the asset u/s 7(1) of the Act, the entire amount of unearned increase in the value of the asset receivable by the assessee in the event of assignment or transfer should be taken into account or only 50 per cent. of the unearned increase. The Supreme Court held that the aforesaid condition was a covenant running with the land and it would bind whosoever was the holder of the leasehold interest for the time being that the condition was a constituent part of the rights and liabilities and advantages and disadvantages which went to make up the leasehold interest and it was an incident which was in the nature of a burden on the leasehold interest and, therefore, when the leasehold interest in the land had to be valued, this burden or disadvantages attaching to the leasehold interest had to be duly discounted in estimating the price which the leasehold interest would fetch and that the only way of valuation in a case of this kind was to take the market value of the leasehold interest as if it were

unencumbered or unaffected by the burden or restriction of clause (13) and to deduct from it 50 per cent. of the unearned increase in the value of the land on the basis of the hypothetical sale, as representing the value of such burden or restriction, as on the date of valuation. Learned counsel for the assessee submitted that the same principle must be applied even in respect of the liability to pay capital gains tax.

6. Learned counsel for the Revenue, however, submitted that the above decision of the Supreme Court is not at all apposite to the question arising for consideration in this case. He relied on the judgment of the Supreme Court in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, . In that case, the question for consideration was whether in computing the value of an immovable property as on the valuation date, brokerage or commission payable by the vendor in the event of sale was deductible from the value of the asset as on the date of valuation. On an interpretation of section 7(1) of the Act, the Supreme Court held as follows (p. 103).

"There is nothing in the language of section 7(1) of the Act which permits any deduction on account of the expenses of sale which may be borne by the assessee if he were to sell the asset in question in the open market. The value according to section 7(1) has to be price which the asset would fetch if sold in the open market. In a good many cases, the amount which the vendor would receive would be less than the price fetched by the asset. The vendor may, for example, have to pay for the brokerage or commission or may have to incur other expenses for effectuating the sale. It is not, however, the amount which the vendor would receive after deduction of those expenses but the price which the asset would fetch when sold in the open market as would constitute the value of the asset for the purpose of section 7(1) of the Act. To accede to the contention advanced on behalf of the appellant would be reading in section 7(1) the words "to the assessee" after the words "it would fetch", although the Legislature has not inserted those words in the statute. Such a course would not be permissible unless there is anything in the relevant provisions which may show that the intention of the Legislature was that the value of an asset would be the price fetched after deducting the sale expenses."

7. Learned counsel submitted that the principle laid down in the above case equally applies to the question arising for consideration in this case. In support of this, learned counsel relied on the judgment of the Madras High Court in *Late T.S. Srinivasa Iyer (by legal representatives) Vs. Commissioner of Wealth-tax*, . In the said case, an identical question had been referred for the opinion of the Madras High Court. The Madras High Court, on an interpretation of section 7(1) of the Act and section 2(m) which defines the expression "net wealth", and applying the ratio of the judgment of the Supreme Court in *Lakshmi Kant Jha Vs. Commissioner of Wealth Tax, Bihar and Orissa*, , held that section (71) refers to the cost price which the purchaser would have paid if the asset was sold in the open market and that no hypothetical expenditure in regard to the sale was

deductible and, in any event, no capital gains tax is deductible in determining the value of the assets u/s 7 of the Act.

8. Section 7(1) of the Act with which we are concerned read :

"Subject to any rules made in this behalf, the value of any asset, other than cash, for the purpose 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."

9. In our opinion, the language of the section is clear and gives no scope for deduction of capital gains tax which an assessee might have to pay if and when the property is sold. What the section speaks about is the price which, in the opinion of the Wealth-tax Officer, the asset would fetch, if it had been sold in the open market on the valuation date. It is impossible to say that the price which a property would fetch as on the date of valuation is the price minus capital gains tax. We are in respectful agreement with the view taken by the Madras High Court in the case of Late T.S. Srinivasa Iyer (by legal representatives) Vs. Commissioner of Wealth-tax, .

In the result, we make the following order

10. We answer the question referred in all these cases in the affirmative and against the assessee.