

(1990) 06 BOM CK 0012

In the Bombay High Court

Case No : Wealth-tax Reference No. 71 of 1976

Harbanslal B. Gupta

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 25-06-1990

Acts Referred:

Income Tax Act, 1961 — Section 24(1)
Wealth Tax Act, 1957 — Section 27(1)

Citation : (1990) 86 CTR 276 : (1990) 186 ITR 652 : (1990) 52 TAXMAN 87

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : Harbanslal B. Gupta, in person, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla, J.—In this reference at the instance of the assessee, the Tribunal has referred to this court only one question of law u/s 27(1) of the Wealth-tax Act, 1957. The question reads thus :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to deduct the payment of his share made by him for repairs cess u/s 27(4) of the Bombay Buildings Repairs and Reconstruction Board Act of 1969 before arriving at the annual letting value of the three properties in question for the assessment year 1970-71 ?"

2. The assessee is an individual and the proceedings relate to his assessment for the assessment year 1970-71. The assessment was completed on January 31, 1973, in which the assessee's net wealth was computed at Rs. 10,38,660. The wealth, inter alia, comprised certain immovable properties which were mainly let out. Their market value was estimated by applying a multiple to the net income computed for Income Tax purposes. However, there was no mention, far less a discussion, about the payment of the assessee's share of tax under the Bombay Building Repairs and Reconstruction Board Act, 1969, as such. The relevant order of the Appellate Assistant Commissioner is not annexed to the statement of the

case nor is it otherwise made available to us. It is thus not clear whether any claim in that regard was at all made before the Wealth-tax Officer or the Appellate Assistant Commissioner.

3. The Tribunal has, of course, noted that the net income from the assessee's three house properties was taken at Rs. 28,176 in the Income Tax proceedings and that the assessee's claim was that while applying a multiplier to the annual yield from the properties for estimating their value, the net income should have been further reduced by Rs. 4,840, being the assessee's share of tax u/s 27(4) of the Bombay Buildings Repairs and Reconstruction Board Act, 1969. However, for reasons given in paragraph 4 of its order, the Tribunal held that the net income computed under the Income Tax assessment having not been challenged by the assessee, the value of the properties was correctly estimated on the basis of that income.

4. It is submitted before us by the assessee who appeared in person that, under 4. Section 24(1)(vii) of the Income Tax Act, he was entitled to deduction from the annual letting value of any sum paid on account of land revenue or any other tax levied by the State Government in respect of the property. This deduction, according to him, was over and above the deduction allowable in respect of repairs u/s 24(1)(i) of the Act. Shri Jetley, on the other hand, stated that the assessee was allowed a hypothetical deduction in respect of repairs u/s 24(1)(i) which was far in excess of the claim made by him. Therefore, the net income from the property could not be further reduced by the actual burden of tax suffered by the assessee under the aforesaid Act. In any event, according to Shri Jetley, the multiplier applied to the net income from the property computed under the Income Tax Act was a sound basis and did not call for any interference.

5. As stated earlier, it is not known whether any claim in this regard was made by the assessee before the Wealth-tax Officer or the Appellate Assistant Commissioner. The Tribunal rejected the claim observing that the assessee had not challenged the computation of net income from the property in Income Tax proceedings. The manner in which the net income from the property was computed at Rs. 28,176 in the Income Tax proceedings is also not available to the court. On the basis of the assessee's claim that he was to suffer 10 per cent. of the annual letting value by way of tax under the said Act, it could be reasonably taken that the gross annual letting value of these properties must have been Rs. 48,500. In the absence of details, it is not possible to imagine what deductions were allowed or were not allowed to the assessee in the Income Tax proceedings. It is also not known whether the repairs allowed to the assessee were hypothetical or whether the assessee had actually incurred any expenditure on account of repairs. In the above view of the matter, we do not see anything wrong in the Tribunal taking the figure of net income at Rs. 28,176 as per the Income Tax assessment for applying the multiplier. The question is, accordingly, answered in the negative and in favour of the Revenue. No order as to costs.