
(2002) 07 GUJ CK 0094

In the Gujarat High Court

Case No : WT Reference No. 7 of 1988 4 July 2002

Harshadkumar S. Mehta

APPELLANT

Vs

CWT

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Wealth Tax Act, 1957 — Section 27(2)

Citation : (2002) 124 TAXMAN 183

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Full Bench

Advocate : B.D. Karia, for the Assessee and B.B. Naik, for the Revenue, for the Appellant;

Judgement

K.A. Puj, J.

The assessee-applicant has moved an application u/s 27(2) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act") requesting this court to permit the Tribunal to refer the questions of law mentioned therein. This court, accordingly, passed an order on statement of case and in pursuance of the said directions, the following questions of law were referred for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the valuation of Rs. 10,37,153 adopted by the Appellate Assistant Commissioner for assessment year 1973-74 disregarding the valuation of the registered valuer as well as the Valuation Officer was correct ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in considering the DVO's report for upholding the Appellate Assistant Commissioner's order even when the Appellate Assistant Commissioner had mainly adopted the report of the registered valuer and, thus, whether the Tribunal's order cannot be said to be vitiated, it having based its decision on partly relevant and partly irrelevant material ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the valuation adopted by the Appellate Assistant Commissioner when the Appellate Assistant Commissioner and the Tribunal both have failed to take into consideration the DVO's report in relation to the same property in the hands of the vendor and the true import of the said valuation report and whether it cannot be said that the decision of the Tribunal was vitiated in law and was one at which no reasonable person would arrive at ?

4. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal upholding the valuation adopted by the Appellate Assistant Commissioner is based on any relevant evidence and material on record and/or can be said to be one which has been arrived at after considering all the relevant evidences and whether the same is not unreasonable and perverse ?"

2. Heard Mr. B.D. Karia, the learned advocate appearing for the applicant and Mr. B.B. Naik, the learned senior standing counsel appearing for the revenue. At the outset, it is to be noted that though the Tribunal's order is in respect of 7 years, that is, for the assessment years 1973-74 to 1979-80, the questions referred to this court are in respect of only one assessment year 1973-74. It appears to us that either there might be some typographical error or omission due to which reference for other assessment years was not made or the assessee has preferred reference for only one assessment year, that is, 1973-74. Be that as it may, we are concerned with the assessment year 1973-74 only in the present reference before us.

3. It is also pointed out to us that there are five co-sharers of the property involved in this reference. However, the reference is made only with regard to one of the co-sharers, that is, the applicant before us.

4. The only dispute involved in the present reference is in respect of valuation of house property known as "Morvi House" which comprises of permanent leasehold land admeasuring about 16,505 sq. yds. and 5 sq. ft. The superstructure on it consists of (1) double storeyed main bungalow, (2) double storeyed guest house, (3) quarters for staff and servants and (4) garages and sanitary block.

5. For the assessment years 1973-74, 1974-75 and 1975-76, the assessee relied upon the valuation report of M.P. Rathod & Co., dated 9-2-1976 according to which Morvi House had been valued at Rs. 5,16,500 as on 4-4-1972. The Wealth Tax Officer referred the question of valuation to the official valuer who, by his report dated 20-9-1977, valued the said property at Rs. 12,03,070 as on 4-4-1972 and at Rs. 14,85,710 as on 31-3-1975. The Wealth Tax Officer completed the assessment by adopting the valuation of the DVO. In appeal, the Appellate Assistant Commissioner after critically examining the reports of the two valuers and mainly adopting the report of the assessee's valuer, adopted the valuation of Rs. 10,37,153 for all the three years, i.e., assessment years 1973-74, 1974-75 and 1975-76.

6. For the assessment years 1976-77 to 1979-80, the Wealth Tax Officer valued

the property at Rs. 8,09,315, Rs. 8,07,500, Rs. 5,94,500, and Rs. 8,56,728, respectively. Taking into consideration the effect of the Urban Land Ceiling Act and finding that the valuations adopted by the Wealth Tax Officer were less than those of the earlier years, the Appellate Assistant Commissioner confirmed the same and dismissed the assessee's appeals.

7. Being aggrieved by the order of the Commissioner (Appeals), the assessee has taken the matter in second appeal before the Tribunal. After hearing the parties at length and on going through the material filed before the Tribunal, a view was taken by the Tribunal that in the preparation of its report the DVO had taken all objections raised by the assessee into consideration. It was further observed by the Tribunal that the DVO had adopted the land and building method of valuation for valuing the self-occupied property in the building and rent-capitalisation method for the valuation of the rented portion. The Tribunal further observed that in the computation of gross annual rental income deductions on account of collection, management charges, bad debts, vacancies, maintenance and repairs were given and the net income was capitalised with 5 per cent return in perpetuity of the tenanted portion and the DVO had also noted land attached with rented building which was 1112 sq. yds. The Tribunal has further observed that the first appellate authority has allowed 10 per cent discount in the valuation on account of joint ownership and had also kept in mind the effect of Urban Land Ceiling Act and Rent Control Laws. After discussing all these aspects of the matter and all the relevant points touching the subject-matter of the appeal, the Tribunal has confirmed the order passed by the first appellate authority.

8. Mr. B.D. Karia, the learned advocate appearing for the applicant, has vehemently argued before us that the Tribunal has committed an error in confirming the order of the first appellate authority as the adoption of the valuation of Rs. 10,37,153 adopted by the first appellate authority for the assessment year 1973-74 is in complete disregard of the valuation adopted by the registered valuer as well as the DVO. Mr. Karia has further argued that when both the reports were available with the first appellate authority, he has no business to adopt his own value disregarding the expert's opinion on the valuation of the properties. It was further submitted that the first appellate authority has adopted the valuation ignoring the report of the DVO in relation to the same property in the hands of the vendor and the report of the said Valuation Officer.

9. Lastly, he has submitted that the Tribunal has materially erred in confirming the order of the first appellate authority who has adopted the value of the property in question ignoring the relevant materials and without properly appreciating the evidence placed before him. He, therefore, urged that the order of the Tribunal may be reversed and the questions raised in the present reference may be answered by this court in favour of the assessee and against the revenue.

10. Mr. B.B. Naik, the learned senior standing counsel appearing for the revenue, has, on the other hand, supported the orders passed by both the authorities below and further submitted that it is not obligatory on the part of the appellate authority to accept in toto the valuation report submitted either by the assessee or by the department. It is still open for the appellate authority to consider the said report on the basis of the relevant principles of valuation and to come to right conclusion. Since this was done by the Appellate Assistant Commissioner and which was rightly confirmed by the Tribunal, no interference is called for in the order of the Tribunal.

11. We have considered the arguments of both the sides and we have also gone through the record. We are of the view that the Tribunal has come to the right conclusion in upholding the order of the Appellate Assistant Commissioner. The questions referred to us are only the different facets of the issue. Further, ultimately the findings given by the authorities are based on facts and the facts were correctly appreciated by the authorities below. We, therefore, answer all these four questions in the affirmative, that is, in favour of the revenue and against the assessee. The reference is, accordingly, disposed of with no order as to costs.