(1989) 03 DEL CK 0042

In the Delhi High Court

Case No : Wealth-tax Cases No''s. 34, 47 to 53 of 1985

Himalaya Trading Co. APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 19-03-1989

Acts Referred:

Citation : (1989) 180 ITR 393

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

B.N. Kirpal, J.—The petitioner has filed a petition u/s 27(3) of the Wealth-tax Act being Wealth-tax Case No. 34 of 1985 seeking a direction that the following questions of law be stated and referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that, for the assessment years 1959-60 to 1961-62, 1963-64 and 1964-65, the property at 14, Barakhamba Road, New Delhi, being a residential house and used for residence, be valued on ''land and building'' method instead of ''rent capitalisation'' method ?

2. Whether the Tribunal''s conclusion to value the residential house at 14, Barakhamba Road, New Delhi, for the years mentioned in the aforesaid question on ''land and building'' method, is based on evidence and materials, or vitiated as based on no evidence but on irrelevant evidence and surmises ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is right in not directing the allowance of liability towards unearned increase in respect of 14, Barakhamba Road for the assessment years mentioned in question No. 1 above ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal is justified while valuing the fully let out premises at 12, Prithviraj Road, New Delhi, in not valuing the same on ''rent capitalisation'' method ?

5. Whether, on the facts and in the circumstances of the case, the valuation of the fully let out property at 12, Prithviraj Road, New Delhi, should have been done on ''rent capitalisation'' method and reliance on the sale of such property to the tenant subsequently is vitiated in law ?"

2. By order dated May 31, 1985, it was directed that as the aforesaid petition related to eight different assessment years, the said petition, namely, Wealth-tax Case No. 34 of 1985, should be treated as eight petitions. This is how, in respect of other assessment years, the wealth-tax cases numbers which have been given are Wealth-tax Cases Nos. 47 to 53 of 1985.

3. As far as question No. 1 is concerned, learned counsel for the petitioner submits that rule 1 BB is applicable and the value of the residential house should be calculated on the basis thereof. The question as to whether the said rule applies or not is a pure question of law as held by the Karnataka High Court in Commissioner of Wealth Tax, Karnataka, Bangalore Vs. Vidyavathi Kapur, , and followed by this court in Wealth-tax Case No. 188 of 1983 decided on March 3, 1987 [Commissioner of Wealth Tax Vs. Himalaya Trading Company,].

4. With regard to question No. 2, we find that the Commissioner of Wealth-tax has taken into consideration the rates of land prevailing from the year 1970 onwards and then has determined the rate of the land for the earlier years. Moreover, the value of land to which reference has been made by the Commissioner of Wealth-tax is the value of commercial land. The reasoning of the Commissioner has been adopted by the Tribunal. The question whether this basis was correct or not or was relevant is a mixed question of fact and law.

5. Before the Tribunal, the petitioner had contended that the liability towards unearned increase should be taken into consideration as the value of land. It has also been submitted that commercial charges for commercialisation should also be taken into consideration. The Tribunal has concluded that there is no evidence on record to show that there was any liability of the assessed towards unearned increase. This is a finding of fact and in this view of the matter, the question proposed does not arise. It is, however, contended by learned counsel for the petitioner that with regard to commercialisation charges, the question should be referred. We find that commercialisation charges would arise only from the assessment year 1970-71 onwards but question No. 3 is restricted to the assessment years 1959-60 to 1961-62, 1963-64 and 1964-65. In this view of the matter, question No. 3 does not arise for consideration.

6. Questions Nos. 4 and 5 refer to valuation of the premises at 12, Prithviraj Road. These premises were let out to the Spanish Embassy during the relevant assessment years. The premises were sold on February 2, 1973. What the Department has done, and which was been upheld by the Tribunal, is that the sale value has been made the basis for working out the market value of this house for the earlier assessment years. Whether this is permissible or not is a question of law, especially in view of the decisions of this court in Commissioner

of Income Tax, Delhi-II Vs. New India Construction Co., , where it has been held that if there are tenants in the property, normally the method to be adopted is the "rent capitalisation" method.

7. For the aforesaid reasons, we direct the Tribunal to state the case and to refer the following four questions of law to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that, for the assessment years 1959-60 to 1961-62, 1963-64 and 1964-65, the property at 14, Barakhamba Road, New Delhi, being residential house and used for residence, be value on ''land and building'' method instead of ''rent capitalisation'' method ?

2. Whether the Tribunal''s conclusion to value the residential house at 14, Barakhamba Road, New Delhi, for the years mentioned in the aforesaid question on ''land and building'' method, is based on evidence and material or is vitiated as being based on no evidence or on irrelevant evidence an surmises ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal is justified while valuing the fully let out premises at 12, Prithviraj Road, New Delhi, in not valuing the same on ''rent capitalisation'' method ?

4. Whether, on the facts and in the circumstances of the case, the valuation of the fully let out property at 12, Prithviraj Road, New Delhi, should have been done on ''rent capitalisation'' method and reliance on the sale of property to the tenant subsequently is vitiated in law ?"

8. The petition is disposed of accordingly. No order as to costs.

