
(1977) 02 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Wealth-tax Reference No. 27 of 1975

Jaswant Rai

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 15-02-1977

Acts Referred:

Wealth Tax Act, 1957 — Section 12A, 16(3), 3

Citation : (1977) 107 ITR 477

Hon'ble Judges : S.S. Sidhu, J;M.R. Sharma, J

Bench : Division Bench

Advocate : Gopal K. Sood, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

M.R. Sharma, J.—The following questions of law have been referred to us for opinion by the Income Tax Appellate Tribunal, Chandigarh Bench :

"(1) Whether, on the facts of the case, the Tribunal was, in law, in error :

(i) in sustaining the rejection of the valuer's report at annexure 3, so far as the assessee's 1/3rd share in the house property in Harkishan-pura is concerned;

(ii) in sustaining the rejection of the land and building method for valuation of the aforesaid asset; and

(iii) in adopting a multiple of 12 for valuing the aforesaid asset according to the capitalization method ?

(2) Whether, on the facts and circumstances of the case, the Tribunal's order as to valuation of the assessee's 1/3rd share in the house property in Harkishanpura, Ludhiana, is vitiated by reason of not having taken into consideration the wealth-tax assessment order dated January 7, 1975, made in the case of the assessee's brother, Shri Ranjit Kumar, a co-sharer in the said property for the assessment year 1972-73 ?"

2. The assessee was the owner of 1/3rd share of the property in dispute which

he valued at Rs. 73,333 on the basis of the certificate given by an estate valuer appointed by the Government of India. The said valuer had in his certificate mentioned that the property concerned was situate in Harkishan-pura behind Gill Road and was connected to Gill Road by a lane. He further mentioned that the locality was not very important from business angle.

3. The Wealth-tax Officer fixed the value of this property at 17 times the annual letting value of Rs. 10,270. The Appellate Assistant Commissioner sustained the rejection of the report of the valuer and upheld the value as fixed by the Wealth-tax Officer. On further appeal, the Appellate Tribunal fixed the value of the property at 12 times the annual letting value.

4. In this reference, the learned counsel has submitted that if the value determined on the basis of the land and building method is more favourable to the assessee, the method of determining the value of the property on the basis of its annual letting value should not be accepted. It was further submitted that in the case of Ranjit Kumar who is a co-sharer and holds 1/3rd share of the property in question the Wealth-tax Officer, vide his assessment order dated January 7, 1975, has accepted the value of 1/3rd share as Rs. 73,333 and that a different yardstick should not be adopted in case of the present assessee.

5. On the other hand, Shri D. N. Awasthy, the learned counsel for the revenue, has argued that it was permissible for the Tribunal to fix the value of the property on the basis of 12 times its annual letting value. The principle of res judicata applied to a case in which the same parties were arrayed as against each other and if one assessee had been able to hoodwink the revenue it was no ground to give the same benefit to another assessee.

6. After giving our careful consideration to the arguments advanced at the Bar, we are of the view that the pleas raised on behalf of the assessee deserve to be upheld.

7. Section 3 of the Wealth-tax Act, 1957 (hereinafter called "the Act"), is the charging Section and entitles the authorities to impose tax on the net wealth of an assessee on the corresponding valuation date. When the items of wealth consist of immovable property, their value has to be determined at the rates at which a willing buyer would purchase the same from a willing seller.

8. C.B.R. Circular No. 3 W.T. of 1957 of the Central Board of Revenue, New Delhi, dated the 28th September, 1957, laid down that the value of lands and buildings should be estimated with due regard to the nature, size and locality of the property, the amenities available and the price prevailing for similar assets in the same locality. It also recognises the method by which the value of the property is determined for purposes of property tax under the laws and regulations relating to the municipalities and municipal corporations. In *State of Kerala v. P. P. Hassan Koya* AIR 1968 SC 1201 the Supreme Court approved of the method of capitalization of return actually received from buildings which are used for business purposes. It was held that a multiple approximately equal to the return

from gilt-edged securities prevailing at the relevant time formed an adequate basis for finding out the market value of the land.

9. The determination of the value of property in accordance with either of the aforementioned three methods at best gives an estimate of its value. The estimate made by adopting one method may vary with the estimate made by adopting another method. In such a situation, it looks fair and proper that the benefit of the method which is most favourable to the assessee should be allowed to him. In *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, it was held by the Supreme Court that if the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the assessee. This principle applies with full vigour to a case in which different values of the same property are arrived at by adopting different methods. We are, accordingly, of the view that the choice of the method to be adopted for determining the value of property should be left to the assessee.

10. Now, if the valuation determined by the municipal authorities for determining property tax can form the basis of assessment of wealth-tax, there appears to be no reason why assessment of value of a part of the same property made by the Wealth-tax Officer for the same assessment year against a co-sharer should not be accepted as the basis for framing assessment of wealth-tax against another co-sharer of the same property for the same assessment year. Under the Act the incidence of taxation is the ownership of net wealth. If during the same assessment year the same quantity of wealth in possession of one co-sharer is subjected to a lower rate of taxation, it would look highly improper to burden a similarly situated co-sharer with a higher rate of tax. If such an action on the part of the assessing authorities is sanctioned, it would clearly militate against the principle of equality of laws enshrined in Article 14 of the Constitution.

11. It is no doubt true that assessment for a particular year is final and conclusive between the parties only and the decision given in an assessment for an earlier year is not binding either on the assessee or on the department in a subsequent year, but this is not an absolute rule. In *Commissioner of Income Tax Vs. Dalmia Dadri Cement Ltd.*, a Division Bench of this court observed as under :

"An assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding either on the assessee or the department in a subsequent year. But this rule is subject to limitations, for there should be finality and certainty in all litigations including litigation arising out of the Income Tax Act and an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision, and if the Tribunal giving the earlier decision has taken into consideration all material evidence. No doubt in this case earlier the matter was not taken to the Income Tax Appellate Tribunal, but then, as pointed out, it was

never questioned by the Commissioner of Income Tax in exercise of his powers of revision which was the mode open to the revenue for re-consideration of the decisions of the Income Tax Officer year after year."

12. In the instant case, the assessee is not invoking the bar of res judicata on the basis of a decision given regarding an earlier assessment year. He claims that the same property in the hands of his brother for the same assessment year had been valued at a particular figure and the same figure should be adopted in his case also. We are accordingly of the view that it was not open to the Wealth-tax Officer to disregard the order dated January 7, 1975, passed by the Income Tax Officer, District 1(4), Ludhiana, in which the value of 1/3rd share of the property belonging to Shri Ranjit Kumar, co-sharer, was determined at Rs. 73,333. We may also mention that this value was arrived at on the basis of the report made by the valuation officer appointed u/s 12A of the Act. The learned counsel for the revenue has submitted that the order, dated January 7, 1975, passed by the Income Tax Officer, Ludhiana, was not based on a full-fledged enquiry. We do not agree with this submission because the order on the face of it shows that it had been passed u/s 16(3) of the Act which contemplates an enquiry in which evidence can be led and the assessee can also be heard. So long as this order is not challenged in appeal or revision, it is not open to the department to adopt a different yardstick in the case of the present assessee.

13. For the reasons mentioned above, we answer the questions referred to us in favour of the assessee and against the revenue.