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**(1974) 08 CAL CK 0036**

**In the Calcutta High Court**

**Case No :** Matter No's. 100, 101 and 102 of 1970

J.N. Bose

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

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**Date of Decision :** 29-08-1974

**Acts Referred:**

Wealth Tax Act, 1957 — Section 2, 7

**Citation :** (1976) 104 ITR 83

**Hon'ble Judges :** Sabyasachi Mukharji, J;Janah, J

**Bench :** Division Bench

**Advocate :** J.C. Pal and Manas Banerjee, for the Appellant;Balai Pal and Ajit Sen Gupta, for the Respondent

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## **Judgement**

Sabyasachi Mukharji, J.—In this case we are concerned with valuation of certain property under the Wealth-tax Act, 1957. This relates to the assessment years 1962-63 to 1964-65. The problem is regarding the valuation of half share of the house property situated and lying at No. 2, Justice Chandra Madhab Road, Calcutta, for the purpose of computation of net wealth of the assessee under the Wealth-tax Act, 1957. The assessee is the owner of undivided half share of the aforesaid property, the other half being owned by his brother. A. N. Bose. It is recorded in the order of the Tribunal that the property had not been partitioned between the co-owners. The property waft let out on lease for 15 years with effect from the 1st of August, 1950, to the 31st July, 1965, to India Automobiles on a monthly rent of Rs. 7,500. It is stated that there was an option for a further term of five years. According to the terms of the lease the lessors were entitled to receive Rs. 90,000 per annum inclusive of municipal taxes amounting to Rs. 4,878.16 per annum. There was an option for renewal of the lease. In the wealth-tax returns for the aforesaid years the assessee had shown the valuation of the property as representing his half share at Rs. 4,31,499. The said valuation was arrived at on the basis of an earlier order of the Tribunal in the W.T.As. Nos. 157 and 158 of 1960-61, dated the 14th August, 1961, with regard to the assessment years 1957-58 and 1958-59. In the said order of the Tribunal the

Tribunal has made the valuation after taking into account the valuation report of M/s. Talbot & Company, Surveyors and Valuers. But the Tribunal had modified the valuation made by the said M/s. Talbot & Company to the effect that the Tribunal had held that while the valuer had suggested that the rate of expected yield should be taken at 8%, the Tribunal was of the opinion that it should be taken at 7% and the allowance for the undivided share of the property should be taken at 10% instead of 20%. The face value of the property was taken by the Tribunal at Rs. 8,62,997 and the assessee's half share thus came to Rs. 4,31,499. In the said appeal it had been contended on behalf of the revenue that the assessee's tenant was getting a rent of Rs. 90,000 for a part of the property sublet and, therefore, it was reasonable to presume that when the lease expired the assessee would be in a position to get better rent. The Tribunal observed that this ignored an important fact in the sense that the Tribunal was concerned in that appeal with the market value of the share of the property as on the date of valuation subject to the handicaps and disabilities that existed on the date of valuation. Taking all these factors into consideration the Tribunal had arrived at the figure mentioned hereinbefore. In their report, Messrs. Talbot & Company had given the location of the property and had mentioned about the basis in which they had indicated in respect of two sales, one being a sale dated the 31st August, 1960, regarding 5/6ths share of Ezra Mansion for Rs. 5,00,000 with IV-storeyed blocks of buildings having frontages on Old Court House Street, Waterloo Street and Dacres Lane, land area about 44 kottahs yielding a total monthly rent of Rs. 8,000 and the other which was a sale dated(?) August, 1960, regarding 5/6ths share of Chowringhee Mansion for Rs. 11,470.58, land area 84 kottahs with IV-storeyed blocks of buildings having frontages on Park Street, Chowringhee Road and Kyd Street, yielding a total monthly rent of Rs. 10,970.83. For the relevant years with which we are concerned the Wealth-tax Officer did not agree with the estimated value of the property and fixed the sum of Rs. 13,59,960. His basis of estimate was rental income multiplied by 20 times. The half share of the same came to Rs. 6,79,980 which was taken as the assessee's share.

2. There was an appeal before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner observed that the Tribunal in disposing of the wealth-tax assessment for the assessment years 1957-58 and 1958-59 had taken the figure at Rs. 4,58,788. But according to the said Appellate Assistant Commissioner the said valuation was as on the 31st March, 1957. The Appellate Assistant Commissioner was of the opinion that since the property had been given out on lease by the appellant and the lease was about to expire, the value according to him should increase with the passage of time. The Appellate Assistant Commissioner further observed that the buildings which had been constructed were semi-permanent structures and if these were demolished after the lease period had expired, the value of the land alone would be more than Rs. 10,00,000. Considering all these circumstances the Appellate Assistant Commissioner was of the view that the fair market value of the land and building

could be arrived at after multiplying the rental income by 16 times. By adopting this method of valuation the value of the land and buildings came to Rs. 5,34,000. If this figure was substituted for Rs. 6,79,980, the value of the land and buildings would be reduced by Rs. 1,45,980. The Appellate Assistant Commissioner, therefore, gave relief to the assessee by reducing the multiplying factor from 20 to 16 and reduced the value by Rs. 1,45,980. Against the aforesaid order of the Appellate Assistant Commissioner both the assessee and the department preferred appeals before the Tribunal. It was submitted on behalf of the assessee that the value as shown by the assessee should be accepted while the department contended that the valuation as taken by the Wealth-tax Officer should be restored. The assessee placed reliance on the previous order of the Tribunal referred to hereinbefore and submitted that there was no change since then either in the rent or in the structure. On the other hand, it was submitted on behalf of the revenue that since 1957-58 onwards there had been considerable increase in the valuation of the property. The lease period was on the point of expiry. The Tribunal, therefore, after considering these factors came to the conclusion that the lease was likely to expire shortly and, therefore, the assessee would get possession of the property and could utilise the same as per his own wish. The Tribunal adverted to the fact that the assessee might have to face some unnecessary litigation in getting the possession, etc., but that did not mean that the valuation of the property remained the same as before. The Tribunal, accordingly, was of the opinion that the Appellate Assistant Commissioner had considered these factors and the multiple of 16 times as applied by him could not be said to be in any way unfair or excessive. In the aforesaid circumstances on this aspect of the matter the Tribunal affirmed the order of the Appellate Assistant Commissioner.

3. Thereafter, having failed to get certain question of law referred to this court by the Tribunal (sic) by the assessee on an order being made u/s 27(3) of the Wealth-tax Act, 1957, the Tribunal has referred the following questions to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal applied wrong principles of valuation of the property ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal erred in the consideration of:

(a) the undivided character of the share in the property,

(b) the previous decision of the Tribunal Bench B, Calcutta, for the assessment years 1957-58 and 1958-59 and its applicability to the facts of this case ? and

3. Whether, on the facts and in the circumstances of the case, the Tribunal misinterpreted the chance of the property being got back in valuing the same for the purpose of the Wealth-tax Act ?"

4. The purpose of valuation of a property of this nature under the Wealth-tax

Act, 1957, is to find out the market price likely to be fetched on the valuation date in respect of the property by a hypothetical and willing purchaser in respect of a willing seller. The problem is not capable of easy solution.

"Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible. It is for the Commissioners to express in the money value attributed by them to the asset their estimate, and this is a conclusion of fact to be drawn from the evidence before them."--said Viscount Simon in the case of *Gold Coast Selection Trust Ltd. v. Humphrey* (Inspector of Taxes) [1948] AC 459; [1949] 17 ITR (Supp) 19. The problem of valuation of the immovable property has been dealt with under the Land Acquisition Act, Wealth-tax Act and in computing the capital gains under the Income Tax Acts in various judicial decisions. We may mention the decisions in the cases of *Rajasekhara v. Chairman, City Improvement Trust Board, Mysore City* AIR 1957 Mys 20, *State of Kerala Vs. P.P. Hassan Koya*, , AIR 1939 98 (Privy Council) , *T. Kanagasabapathy Pillai Vs. Commissioner of Wealth-Tax, Madras.*, , *Commissioner of Wealth-tax v. V. C. Ramachandran*, [1966] 60 ITR 102 , *Controller of Estate Duty v. Radha Devi Jalan*, [1968] 67 ITR 760 . *C. Krishna Prasad Vs. Commissioner of Wealth-tax, Bangalore*, , *Gouthamchand Galada and Gyanchand Galada Vs. Commissioner of Wealth-tax*, and *Mahmudabad Properties (P.) Ltd. Vs. Commissioner of Income Tax*, . From the said decisions the following principles emerge :

(a) In respect of immovable property there is no fixed market, such as market for share, or for other commodities like sugar, cloth, etc.

(b) There must be certain amount of guess--but the guess must be an intelligent one based on certain objective factors which have a rational nexus with the valuation.

(c) There are different methods--and which one would be suitable for a particular property must depend upon the particular features of the property; of these methods the one should be preferred which can provide more objective data for reliance. Bearing the aforesaid principles we must consider the facts of this case. The Tribunal in its previous order dated the 14th August, 1961, in respect of the assessment years 1957-58 and 1958-59 had proceeded on a certain basis to which we have referred hereinbefore. The Tribunal had accepted the basis of valuation made by Messrs. Talbot and Company and had relied on certain transactions more or less about that time and had made certain directions which according to the Tribunal were just and necessary to be made in that case. In the instant case the said valuation can be departed from and the basis of the said valuation can be changed if there are materials to indicate that there has been either a change in the structure of the property or in the interest of the property held by the co-sharers or the market, value in respect of that property. In none of these matters, however, there was any positive evidence. There has been no change either in the structure or location of the property. There was no evidence of any appreciation of the market value. The Tribunal has referred to a general tendency of the increase in the value of the property but there was no evidence

that the property of this magnitude was very easily saleable at a higher price than it was on the date when the Tribunal made the previous order. Thirdly, the character of the property remained the same, undivided nature of the assessee's interest and the property was subject to a lease. The assessee in question had undivided half share and the property was subject to a lease. It is true that in the years with which the Tribunal was concerned in the instant appeal the lease was coming to an end. That might be a relevant factor which might be taken into consideration but that factor has also to be taken into consideration with certain other relevant factors, that is to say, in the instant case there was an option of renewal of lease. Having regard to the nature of the lease, having regard also to the fact that there was no evidence that there was any diminution of business of the lessee or desire on the part of the lessee to give up the property or not to carry on business which was being carried on in the said premises and having regard to the fact that there was no evidence of availability of such premises by the lessee on more or less the same price which would have induced the lessee not to exercise the option, it would be wrong to take into consideration solely the fact that the lease was coming to an end without taking into consideration all the other relevant factors. It has further to be borne in mind as was contended by the assessee, and the Tribunal adverted to it, that on the expiry of lease the property does not automatically come to the lessor's possession which is necessary to enjoy the property or to be able to sell the property. The trouble and difficulties of the present rent litigations are well-known facts in respect of which judicial notice can be and should be taken. The Tribunal has also not adverted to the fact that the assessee was the owner of undivided half share of the property. This is also a relevant factor affecting the valuation of the property in respect of market value. Having regard, therefore, to these relevant factors and having regard to the fact that there was no positive evidence of appreciable change, so far as these material facts, to which we have referred before, having altered since the decision of the Tribunal was given for the assessment years 1957-58 and 1958-59, we are of the opinion that the Tribunal had proceeded on a wrong appreciation of the principles and factors applicable in the valuation of the instant property in question. In the premises, the question No. 1 is answered in the affirmative in the light of the observations made aforesaid and in favour of the assessee. As regards question No. 2 the Tribunal was in error in not taking the undivided character of the property into consideration and the Tribunal was in error in not appreciating that after the previous decision of the Tribunal for the assessment years 1957-58 and 1958-59 there were no evidence or factors to indicate any change or departure from the said decision on the facts of this case. So far as the question No. 3 is concerned, we answer it by saying that the Tribunal misinterpreted the chance of the property being got back without taking the clause for option for renewal and without taking the other relevant factors as indicated above into consideration. This is also answered in favour of the assessee. In the facts and circumstances of the case each party will pay and bear its own costs.

Janah, J.

5. I agree.