
(1982) 08 BOM CK 0040
In the Bombay High Court
Case No : Petition No. 601 of 1980

Madhusudan Dwarkadas Vora

APPELLANT

Vs

Superintendent of Stamps

RESPONDENT

Date of Decision : 16-08-1982

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1BB

Citation : (1982) 84 BOMLR 595 : (1983) 35 CTR 370 : (1983) 141 ITR 802 : (1982) MhLj 842

Hon'ble Judges : Bharucha, J

Bench : Single Bench

Judgement

Bharucha, J.—The petitioner has filed a petition in this court for probate of the last will and testament of his father, Dwarkadas's Hargovandas Vora, who died on December 29, 1979. The petitioner has annexed to the petition a schedule of the late late Dwarkadas's assets. Item No. 21 thereof relates to a 1/2 share in a self-occupied house property at Kallol, Plot No. B.9, Kapole Society Juhu Village Parle, Bombay 59. It is valued at Rs. 1,64,000 in the schedule. This has been found to be an under valuation by the Collector and Superintendents of Stamps, Bombay, who has sent to the prothonotary and Senior Master a valuation made by the Assistant Director of Town planning, Bombay City Survey and land Records, in the sum of Rs. 3,70,787. This valuation has been made on the land-plus-building method. The petitioner having filed his objection, an enquiry has to be held under the provisions of s. 28(5) of the Bombay Court Fees Act, 1959.

2. Ordinarily, the matter would forthwith have been referred to the Prothonotary and Senior Master for holding the enquiry. Mr. Seervai, learned counsel for the petitioner, has, however, contended that a question of principal should first be decided by the court, namely, whether the property should be valued on the basis of the rental months as suggested by the Superintendent of Stamps.

3. The other half share in the property is owned by the petitioner. The property consists of a bungalow of a ground and one upper floor. There is an unutilised

surplus land surrounding it measuring 454 sq. yds.

4. I do not reproduce Mr. Seervai's arguments in any detail, I am satisfied that one argument is unanswerable.

5. The W.T. Act imposes a tax upon a man's wealth while he lives. The E.D. Act imposes a tax upon a man's wealth at the time he died. Under s. 7 of the W.T. Act "the value of any asset... shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date". Under s. 36 of the E.D. Act "the principal value of any property shall be estimated to be the price which, in the opinion of the Controller, it would fetch if sold in the open market at the time of the deceased's death". The emphasis, which I have supplied, shows the basis of the valuations to be the same.

6. Under s. 40 of the W.T. Act, the CBDT is empowered to "make rules for carrying out the purposes of this Act". In respect of the valuation of a house, r.IBB of the W.T. Rules, 1957, is made. Clause (1) states that for the purposes of s. 7(1) the value of a house which is wholly or mainly used for residential purposes shall be the aggregate of the following amounts, namely :

(a) The amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purposes by the fraction $100/8$;

(b) The amount arrived at by multiplying the net maintainable rent in respect of the remaining part of the house, if any, by the fraction $100/9$". Clause (2) defines :

"Gross maintainable rent", in relation to a house, means -" the sum for which the house might reasonable be expected to let from year to year..."

""House" includes an independent residential unit."

""Net maintainable rent", in relation to the house, means the amount of the gross maintainable rent as reduced as therein stated in respect of local tax, repairs, rent collection, insurance premia, ground rent and land revenue. "

7. Clause (3) provides that where the unbuilt area of the plot of land on which the house is built exceeds the specified area, the value of the house arrived at in accordance with the provisions of sub-r. (1) shall be increased by the percentages therein stated.

"Specified area" in regard to a house situated in Bombay is stated to mean sixty per cent. of the aggregate area.

8. There are no such rules for the E.D. Act.

9. For the purpose of determining the value of a house, on the basis of the price it would fetch if sold in the open market, the W.T. Rules provide a method. It seems to me almost axiomatic that the same method must be applied to determine the value of a house, on the basis of the price it would fetch if sold in

the open market, for the purpose of estate duty.

10. I am supported in this view by the judgment of a division Bench of the Mysore High Court in the case of Controller of Estate Duty, Mysore Vs. J. Krishna Murthy, The court was concerned with the valuation of unquoted shares for the purposes of estate duty. There was no rule under the E.D. Act providing for such valuation. The court observed that, in the absence of rules, valuation for the purposes of the Act had to be made in accordance with the well-recognised valuation methods followed in India. The method of valuation prescribed by r. 1D of the W.T. Rules being the only statutorily recognised method of valuation of unquoted shares, it would not be wrong to adopt that method of valuation for the purposes of estate duty also.

11. Mr. Shah, learned counsel for the Superintendent of Stamps, submitted, however, that r. 1BB laid down an artificial method for the assessment of market value; since there was no such rule under the E. D. Act, the actual value had to be computed. The W.T. Act requires an assessment of the price, which the property would fetch if sold in the open market. The rule is made for the purpose of the Act. The rule provides how the valuation of a house is to be arrived at. It is not possible to hold that the Rules does not provide for the valuation on the basis of what the house would fetch if sold in the open market.

12. Mr. Shah submitted that since the property yielded no rent and since it had unutilised surplus land, the land and building method of valuation was the appropriate method. It is correct that the property, being owner occupied, does not yield an actual rent upon which the assessment can be made; but it can be made on the basis of a hypothetical standard rent. The W.T. Rules provide a method for assessing the value of unutilised surplus land up to 20% of the aggregate area, as it is here.

13. I am obliged to Mr. Shah for pointing out a judgment of the Supreme Court which is apposite. In Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, the court stated that the -

"... annual value or ratable value is arrived at by one of three modes, namely, (i) actual rent fetched by land or building where it is actually let, (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of building, and (iii) where of these two modes is not available, by valuation based on capital value....."

14. The petitioner for probate is obliged, by virtue of item 10 of sch. I of the Bombay Court fees Act, 1959, to pay court fees on the value of the property in respect of which the grant is sought. Where such property is a house, its value, i.e., the price it would fetch if sold in the open market, on the date of the death must be determined in the same manner as it would for the purpose of estate duty, that is to say, by an application of the principles laid down in r. 1BB of the W.T. Rules, 1957, made under the W.T. Act 1957.

15. I wish, however, to make it clear that where the house has unutilised surplus land surrounding it in excess of 20% of the aggregate area what I have here laid down may not apply.

16. Counsel have made a statement that the parties are agreed in the W.T. Rules should apply for the determination of the market value of the property for the purposes of estate duty, that the difference between the unbuilt area and the specified area is less than 20% of the aggregate area of the plot.

17. The matter is now referred to the Prothonotary and Senior Master for an enquiry into the valuation of the property under the provisions of s. 28(5) of the Bombay Court fees Act. The enquiry shall be held having regard to what is here laid down.