

(2002) 01 DEL CK 0145

In the Delhi High Court

Case No : Civil Writ Petition No. 424 of 1979 31 January 2002 A.Y. 1971-72 to 1977-78

Mahavir Prasad Jaipuria and Another

APPELLANT

Vs

WTO and Another

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Citation : (2002) 174 CTR 501 : (2002) 123 TAXMAN 775

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Full Bench

Advocate : Anoop Sharma, R.K. Raghwan and M. Husain, for the assessed Sanjeev Khanna and Ms. Prem Lata Bansal, for the Revenue, for the Appellant;

Judgement

S.B. Sinha, C.J.

In this petition, the petitioner has questioned the valuation made by the second respondent herein purported to be in terms of section 16A(5) of the Wealth Tax Act, dated 8-7-1977, and 20-7-1978, raising whereof fair market value of the property of the petitioner.

2. The petitioner No. 1 is an HUF owning several properties including one at 52, Janpath, New Delhi. The said property is a leasehold one. They filed wealth-tax returns for the assessment years 1971-72 to 1977-78 stating that the property is an old one which is fully tenanted. According to the petitioners the monthly rent received by them was Rs. 1,201.30. Having regard to the re-entry by the Land & Development office in relation to the said property in the year 1975, the same is being realized directly from the tenants by them. The Valuation Officer in his preliminary valuation estimate, capitalized the net income from rent at 6 per cent and allowed a redemption on capital at 5 per cent and determined the capitalized value of the land and building taken together at Rs. 1,40,798 for the assessment years 1971-72 to 1972-73; at Rs. 1,36,476 for the assessment year 1973-74 at Rs. 1,30,991 for the assessment year 1974-75, at Rs. 1,28,574 for the

assessment years 1975-76, 1976-77 and Rs. 1,26,029 for the assessment year 1977-78.

The petitioner in this writ petition has assailed the aforementioned method of valuation. Having regard to the contentions advanced by the parties, it may not be necessary to delve deep into the matter.

3. Wealth Tax Act was enacted by the Parliament providing for the levy of wealth-tax. Section 2(m) defines the expression "Net wealth". The valuation of the assets is to be determined in terms of section 7.

Rules have been made by the Central Board of Direct Taxes in terms of section 46 of the Act. Rule 1BB prescribes the manner in which the market value of the property is to be determined.

Rule 1BB reads thus :

"1BB. (1) For the purpose of sub-section (1) of section 7, 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 part of the house used for residential purposes by the fraction 100/8; and

(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 :

Provided that in relation to a house which is built on leasehold land, this sub-rule shall have effect as if for the fraction 100/8 in clause (a) or, as the case may, the fraction of 100/9 in clause (b), the fractions 100/9 and 100/10 respectively, had been substituted."

4. The question as to whether the said rules will have prospective or retrospective effect came up for consideration before the Apex Court in *Bharat Hari Singhania v. CWT* (1994) 207 ITR 129 . The Apex Court held that the Valuation Officer would be bound by the said rules.

Yet again in *Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons*, rule 1BB aforementioned was held to be procedural in nature. It was held :

"Procedural law, generally speaking, is applicable to pending cases. No suitor can be said to have a vested right in procedure. It must, however, be noted that a provision can be partly substantive and partly procedural."

It was further held :

"We may now turn to the scope and content of rule 1BB. The said rule merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB it would not have been objectionable, nor would there be any legal impediment, to adopt the mode of valuation embodied in rule 1BB, namely, the method of capitalization of income on a number of years" purchase

value. The rule was intended to impart uniformity in valuations and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1BB thus partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. Even if a law raises a presumption and renders the presumption irrebuttable it is yet the domain of the law of evidence."

5. Mr. Khanna, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the question involved in this writ petition is governed by a Division Bench decision of this court in UDAY KAUSHISH (MINOR BY HIS MOTHER AND NATURAL GUARDIAN, MRS. SHEILA KAUSHISH) Vs. COMMISSIONER OF WEALTH-TAX, DELHI-I, AND OTHERS., wherein Ranganathan, J. as his Lordship then was, held :

"But we are not concerned with all these proceedings here nor are we concerned with the correctness or otherwise of the conclusions of the Wealth Tax Officer of CWT. All we are concerned with is the short question whether the Wealth Tax Officer had some material before him to form an opinion that the value returned by the assessed, though supported by the report of a registered valuer did not reflect the market value of the property. In our view, it is difficult to contend that there was no such material. We, Therefore, rejected this contention of the learned counsel for the petitioner."

6. However, in the instant case, the question which arises for consideration is as to whether rule 1BB incorporated in the Wealth Tax Rules being procedural in nature or being a rule of evidence was to be taken into consideration by the Valuation Officer.

7. Having regard to the decision of the Apex Court in Sharvan Kumai Swarup (supra), there cannot be any doubt the assessment officer must act in terms of the aforementioned rules.

We may notice that such valuation report can also be subject-matter of appeal in terms of rule 23(3A)(a) of the Wealth Tax Act.

For the reasons aforementioned, the writ petition is disposed of directing the respondents to make proper valuation having regard to rule 1BB. There shall be no order as to costs.

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