(2002) 01 DEL CK 0126

In the Delhi High Court

Case No : CW No. 649 of 1979 31 January 2002

Mahavir Prasad Jaipuria APPELLANT

Vs

WTO RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Citation : (2002) 124 TAXMAN 856

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 Revenu, for the Appellant;

Judgement

S.B. Sinha, C.J.

In this petition, the petitioner has questioned the valuation and final estimates made by the second respondent herein purported to be in terms of section 16A(5) of the Wealth Tax Act, 1957 (hereinafter referred to as ''the Act'') dated 24-3-1979, of the fair market value of the property of the petitioner.

2. The petitioner No. 1 is a HUF owning several properties including one at 8, Prithviraj Road, New Delhi. The said property is covered under one lease deed dated 11-6-1923. One-third share of the undivided portion of the property was settled upon petitioner No. 1 by virtue of the trust deed dated 11-11-1974. The said undivided share in the said property was physically divided and partitioned on 21-12-1975 as per the memorandum dated 22-12-1975. The relevant assessment years are 1971-72 to 1977-78, the respective accounting years being ending Diwali 1970 to Diwali 1976. The Valuation Officer estimated the fair market value of the property of the petitioner situated at 8, Prithviraj Road, New Delhi, at Rs. 10,53,200 for the assessment year 1971-72; Rs. 10,98,000 for 1972-73; Rs. 12,22,800 for 1973-74; Rs. 12,76,000 for 1974-75; Rs. 8,68,800 for 1975-76; Rs. 9,01,000 for 1976-77 and Rs. 9,96,800 for 1977-78.

3. Having regard to the contentions advanced by the parties, it may not be

necessary to delve deep into the matter.

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

5. Rules have been made by the Central Board of Direct Taxes in terms of section 46 of the Act. Rule 1BB of the Wealth Tax Rules, 1957 prescribes the manner in which the market value of the property is to be determined.

6. 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 be, the fraction of 100/9 in clause (b), the fractions 100/9 and 100/10 respectively, had been substituted."

7. 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 11 The Apex Court held that the Valuation Officer would be bound by the said rules.

8. 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." (p. 893)

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 in the domain of the law of evidence. . . ." (p. 895)

10. Mr. Khanna, the 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''s 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 or Commissioner. 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, reject this contention of the learned counsel for the petitioner." (p. 924)

11. 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.

12. Having regard to the decision of the Apex Court in Sharvan Kumar Swarup''s case (supra), there cannot be any doubt that the assessing officer must act in terms of the aforementioned rules.

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

14. 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.