
(1997) 06 KL CK 0015

In the High Court Of Kerala

Case No : Income-tax Reference No's. 45, 46, 47 and 48 of 1990

P.J. George

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-06-1997

Acts Referred:

Wealth Tax Act, 1957 — Section 7, 7(1)
Wealth Tax Rules, 1957 — Rule 1BB

Citation : (1998) 145 CTR 138 : (1998) 231 ITR 19

Hon'ble Judges : K.K. Usha, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : C. Kochunni Nair and S. Vinod Kumar, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

K.K. Usha, J.—References are at the instance of the assessee from two orders passed by the Income Tax Appellate Tribunal, Cochin Bench, in W. T. A. Nos. 24 and 25 of 1979 and 93 and 94 of 1979. The relevant assessment years are 1974-75 to 1977-78. The following question is referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in their finding that the switching over to valuation of the property to rental capitalisation method from land and building method followed in the assessment in 1974 is correct and justified ?"

2. The relevant facts are as follows. The assessee constructed a godown on a leasehold land of 24 cents in Palluruthy, Cochin. The land belongs to John and Sons Pvt. Ltd. The managing director of the company was the father of the assessee and the other two shareholders were the assessee's close relatives. The lease was originally granted in the year 1968 for a period of 10 years which was thereafter extended up to 1988. The rental payment under the lease was Rs. 3,840 per annum as per the agreement. The lessee was free to construct a building on the land and on termination of the lease, the superstructure was to

remain on the land and the assessee was entitled to receive the market value of the superstructure as on the date of termination of the lease. The assessee constructed a godown on the land at a cost of Rs. 96,500 in the year 1969. The godown was let out to Packwell (Kerala) Industries for a period of 10 years. The rent was originally agreed at Rs. 2,900 per month for the first three years and thereafter at Rs. 3,450 per month. This arrangement was subsequently revised and for 1975-76 the rent was fixed at Rs. 3,150 and for 1976-77 at Rs. 3,250 per month.

3. Up to the assessment year 1973-74, the property of the assessee, namely, the godown, and the rights in the land were valued at Rs. 96,500 on the basis of the land and building method. For the assessment year 1974-75, the Wealth-tax Officer adopted a different method--the rental capitalisation method--and took the value of the property at Rs. 4,19,500. On appeal, the Appellate Assistant Commissioner modified only the multiplicand. He held that the rental from the property should be multiplied 12 times to arrive at the market value. Taking the net rental after deducting the municipal tax and the statutory deduction of 1/6th for repairs allowed for Income Tax purposes, he worked out the value of the property on a rental capitalisation method at Rs. 3,65,820. On appeal by the assessee, the Tribunal affirmed the order passed by the Appellate Assistant Commissioner. It is contended by learned counsel for the assessee that the valuation method adopted by the authorities is wrong. According to him, the basis of the annual rental method is not applicable in this case. He would contend that before the Direct Tax Laws (Amendment) Act, 1989, there was no specific provision under the Act or the Rules for the purpose of valuing a commercial building. Rule 1BB took in only residential buildings. The amendment, which was brought in by the Direct Tax Laws (Amendment) Act, 1989, introducing Schedule III which contains specific provision for valuation of buildings constructed on leasehold property, viz., Rule 8(c) read with Rule 20, should be taken as clarificatory in nature and it should apply for the assessment year 1974-75 onwards. If that be so, learned counsel would further submit that the switch over to valuation on rental basis by the assessing authority which was approved by the appellate authorities was unjustified.

4. Learned standing counsel for the Revenue points out that the insertion of a new Schedule III, which was brought in by the Direct Tax Laws (Amendment) Act, 1989, came into effect only from April 1, 1989, and it has no application whatsoever for the assessment years in question. He submits that Section 7(1) of the Wealth-tax Act, 1957, as it stood at the relevant time provided that "Subject to any rules" made in this behalf, the value of any asset, other than cash, for the purposes of this Act, 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". Therefore, it is the market value that has to be assessed. Referring to a decision of the Rajasthan High Court in Smt. Sabita Mohan Nagpal Vs. Commissioner of Wealth-tax, learned counsel would further submit that when the property is occupied by the tenants and the assessee receives rent, the

market value is to be determined on the basis of the annual rent multiplied by certain years of purchase. It was this method which had been followed by the assessing authority in this case and it cannot be held unsustainable in law only for the reason that during earlier years a different method of valuation was followed.

5. On going through the order passed by the first appellate authority as well as the Tribunal, we do not find that any specific contention had been taken by the assessee on the ground that valuation has to be made by applying Rule 8(c) read with Rule 20 of Schedule III. In any view of the matter we are inclined to consider the above contention raised by the assessee on the merits. As mentioned earlier, Section 7(1) of the Wealth-tax Act, 1957, as it stood in the relevant period provided that the value of the asset other than cash shall be estimated on the basis of the open market value. Rule 1BB referred only to valuation of residential buildings.

6. If that be so, we do not find any illegality in valuing a commercial building which is rented out on the basis of a rental receipt by the assessee. On this aspect, we are in full agreement with the view taken by the Rajas-than High Court. The only other question to be considered is whether Schedule III introduced by the Direct Tax laws (Amendment) Act, 1989, can be given retrospective effect considering it as clarificatory in nature. Section 78 of the Direct Tax Laws (Amendment) Act, 1989, reads as follows (see Commissioner of Income Tax Vs. M.P. Agro Morarji Fertilizers Ltd.,) :

"Insertion of new Schedule III. -- In the Wealth-tax Act, after Schedule II, the following Schedule shall be inserted."

7. Section 1(2) of the Amendment Act provides that "save as otherwise provided in this Act, Sections 2 to 31 and 33 to 95 shall come into force on April 1, 1989". When a new Schedule is inserted and there is no indication in the section that it has to be given retrospective effect, the provisions contained under the Schedule, in the ordinary course, cannot be given retrospective effect. But the contention of the assessee is that the Schedule is clarificatory in nature. We find it difficult to accept this contention. Learned counsel is not in a position to point out the particular rule or section which is clarified by the provisions contained under Schedule III. Apart from the above, on an examination of the relevant section as well as the provisions contained in the Schedule we do not understand Rule 8(c) read with Rule 20 as clarificatory in nature so as to be given retrospective effect. In view of the above we find that the Tribunal was fully justified in upholding the method of valuation on rental capitalisation. The question referred is, therefore, answered in the affirmative in favour of the Revenue and against the assessee.

8. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.