

(1979) 06 KAR CK 0030
In the Karnataka High Court
Case No : Tax Revision Case No. 48 of 1977

S. Neelaveni

APPELLANT

Vs

Commissioner of Wealth Tax, Karnataka

RESPONDENT

Date of Decision : 26-06-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 27 (2), 7

Citation : (1980) 125 ITR 665

Hon'ble Judges : M.K. Srinivas Iyengar, J;M. Rama Jois, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; S.R. Rajashekhara Murthy, for the Respondent

Judgement

Srinivasa Iyengar, J.—Pursuant to an order made by this court under s. 27(2) of the W. T. Act, the Income Tax Appellate Tribunal, Bangalore bench, has referred the following question for the decision of this court:

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the valuation by the Wealth-tax Officer of the residential house at Rs. 1,70,000 and rejecting the valuation report by the approved valuer ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the rental method had no validity in determining the value of the residential house ?"

2. The question relates to the assessment to wealth-tax for the assessment year 1971-72, the relevant valuation date being March 31, 1971. The assessee, among other properties, owned a residential house situate at Annaswamy Mudaliar Road, near Ulsoor Tank. She also owned another house in Rathna Vilas Road near Basavanagudi. So far as the Rathna Vilas road property was concerned, the WTO initiated proceedings for reassessment. Such a proceedings was also taken in regard to another property situate at Madras. The assessee

had furnished a valuer's report in regard to the Annaswamy Mudaliar Road house which was self-occupied and the Rathna Vilas Road property which was in the occupation of certain students on a charitable basis under her permission without payment of any rent. The valuer had furnished an estimated value of the property adopting the land and building method as well as the value computed by capitalisation of the probable rental. So far as the self-occupied property was concerned, the value according to the land and building method was given as Rs. 1,40,790 and on the basis of the rental it was worked out at Rs. 75,640. The valuer stated that the building was an old one which would come under the purview of the House Rent Control Act and the more reasonable and fair value to be adopted was on the rental method and the value could be fixed at Rs. 75,000. Similar valuation had been given for the Rathna Vilas road building which was at Rs. 1,35,000 on the land and building method and Rs. 47,000 on the rental method.

3. The WTO however, determined the value of the self-occupied property at Rs. 1,70,000 observing that the valuer had allowed larger depreciation than was permissible. He did not take into consideration the valuation arrived at on the rental basis. On an appeal to the AAC, he was of the opinion that the fair basis to fix the market value of both these properties was to take the average of the value as had been furnished by the valuer on the land and building method and on the rental basis. He, accordingly, reduced the valuation of both these properties. The department being aggrieved by this preferred an appeal to the Tribunal. The Tribunal accepted the conclusion reached by the AAC so far as the Rathna Vilas Road property was concerned but disagree with it in regard to the valuation of the other property and restored the value as had been determined by the WTO. It is in these circumstances that the question has arisen in regard to the valuation of the self-occupied property.

4. The second question has been formulated as the Appellate Tribunal in its order made a categorical observation that "we do not agree with the AAC that the rental method has any validity in this case, since the property is self-occupied and is not let out. The valuation has, therefore, to be made only on the land and building method". Section 7 of the W. T. Act specifies that subject to the rules made in that behalf, the value of any asset, other than cash, shall be estimated to be the price which in the opinion of the WTO would fetch if sold in the open market on the valuation date. So what is relevant is the price that a property would fetch if sold in the open market on the valuation date. This assumes a notional sale and a prospective willing buyer and a willing seller. There are several methods adopted in determining the market value of a particular property at a particular time. The best evidence in regard to the market value would be the value of the property itself if it has been subject of purchase near about the valuation date. The next best evidence would be the value fetched for a similar property in the vicinity at about the same time. In the absence of such evidence resort is made to determine the value by capitalising the rent which the property would fetch if let out or is fetching if already let out. Resort is also made

to an estimate by an expert on the basis of value of the land and building. It is usual to value the properties by more than one method so as to cross-check and adopt an average. This is resorted to when there is great disparity between the valuation arrived at by different methods.

5. When evidence is available in regard to the rent which a property is fetching or the rent for which it would be let out, the authorities who have the duty to determine the value of the property cannot ignore the same altogether. It may be that in a particular case the rent fetched may not at all indicate the worth of the property, where there is other direct evidence about the value of the property as in the case decided by this court in the case of *K. Bhoomiamma and Another Vs. Controller of Estate Duty, Mysore, Bangalore*, . On the facts and in the circumstances of the instant case, the second question formulated above would really be academic in view of the final conclusion we are taking in this case on the first question. But as the question has been formulated in order to allay any doubts about the matter, we would answer the second question by saying that it would not be correct to say that the rental method has no validity at all in determining the valuation of the self-occupied residential house.

6. Now, coming to the main question, it is undisputed that the property had not been let out, but was occupied by the assessee. In the corporation registers the annual rental had been mentioned as Rs. 2,100. However, the valuer had taken the monthly rental at Rs. 400 for this property and at Rs. 300 per month in regard to the Rathna Vilas road property in regard to which the annual letting value was Rs. 2,000 as entered in the municipal registers. These buildings had been constructed prior to 1947 and were within the purview of the House Rent Control Act. The WTO had not stated that the monthly rental adopted by the valuer was in any way inadequate. The WTO rejected the value given by the valuer on the basis of the land and building method, by stating that the depreciation taken into account by the valuer is more than the normal depreciation admissible considering the age of the building. This observation is quite vague and appears to us without any meaning. What the valuer had done was to estimate the value of the building on the basis of its depreciated value, apparently having regard to the age of the building - the ground floor had been constructed in 1939 and the first floor had been constructed in 1950.

7. It is, therefore, seen that the reasons given by the WTO to reject the value given by the valuer according to the land and building method is untenable and he totally ignored the valuation arrived at on the basis of the rental method. What the AAC did was to notice that the building would fall within the purview of the House Rent Control Act according to the Corporation Regulations three times the area occupied by the building would also form part of the building, as being appurtenant to it, and in these circumstances an average of the two valuations that had been made by the valuer would be just and reasonable. The Tribunal accepted this principle in regard to the Rathna Vilas Road property but did not adopt it in regard to the self-occupied property. The only reason given is that the

property was self-occupied and was not let out. This is no reason at all to forsake the principle that had been approved in regard to Rathna Vilas Road property. The persons in occupation of it were there only on sufferance and had no right to in possession thereof; they were not tenants. Even the Rathna Vilas Road property had not been let out. The value of the property would not depend upon the person occupying it. The Tribunal restored the valuation that had been made by the WTO without scrutinising the reasons given by him to reject the valuation made by the valuer even according to the land and building method which, as we have pointed out earlier, was not tenable. Having regard to the facts in the instant case, the course adopted by the AAC was just and reasonable and there was no ground to deviate from it so far as the self-occupied property was concerned when the Tribunal adopted it in regard to the Rathna Vilas Road property. The first question above-mentioned is answered as follows:

8. The Tribunal was not justified in confirming the valuation made by the WTO of the residential house and there was no justification to interfere with the valuation as had made by the AAC.

9. Parties to bear their own costs.