

(1991) 11 CAL CK 0017
In the Calcutta High Court

Case No : Matter No. 733 of 1990 dated November 11, 1991.

SANKAR NARAYAN GOOPTU

APPELLANT

Vs

WEALTH-TAX OFFICER AND OTHERS

RESPONDENT

Date of Decision : 11-11-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 16A(1)(a)

Citation : (1993) 117 CTR 342 : (1993) 205 ITR 628

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Division Bench

Judgement

AJOY NATH RAY J. - In this application, the assessee writ petitioner challenges the notice appearing at page 66 of the writ petition which is addressed to the assessee by the Valuation Officer of the Valuation Cell regarding the assessee's wealth-tax return. This notice has been issued on a reference by the Wealth-tax Officer to the Valuation Officer regarding the valuation or the purposes of wealth-tax of the life-term interest of the assessee in the building No. 5, Middleton Street, Calcutta.

The reference by the Wealth-tax Officer to the Valuation Officer had been made u/s 16A(1)(a) of the Wealth-tax Act, 1957, as it stood at the relevant time. The said portion of the enactment set out below :

"16A. Reference to Valuation Officer. - (1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, the Wealth-tax Officer may refer the valuation of any asset to a Valuation Officer -

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value."

The short history of valuation of this property for the purpose of wealth-tax assessment is this that in April, 1955, the assessee let out this property to the

Geological Survey of India at the rate of Rs. 4,000 per month as monthly rent. That continued until August, 1981, by which time the assessee had already made unsuccessful round of eviction proceedings against the Geological Survey of India both in the first court and in the appellate court.

In August, 1981, the self-same propriety even though under the tenancy and occupation of the Geological Survey of India was sought to be leased out again by the assessee to one Messrs Kothari Scientific and Research Institute. The terms were that so long as the Geological Survey of India continued in possession, Messrs Kothari Scientific and Research Institute would pay Rs. 6,000 per month and in case the Geological Survey of India vacated, they would pay Rs. 8,000 per month. No dispute has been raised on the part of the Department as to whether such a grant of lease could at all be made in spite of the existence of a lease already. As such, I do not wish to enter into this point at all.

While the Geological Survey of India continued as the only tenant, the wealth-tax assessment in so far as the instant property is concerned proceeded on the basis of a particular valuation report which is annexed at page 23 of the annexures to the writ petition.

After the August, 1981 lease, a second valuation was obtained by the assessee from Dr. Ashoke Nain and that is annexed at page 54 of the writ petition as annexures.

It has been pointed out by Mr. Murarka, appearing for the writ petitioner, that the affidavit-in-opposition filed in this matter shows that the opinion of the Wealth-tax Officer in the matter of reference to the Valuation Officer is vitiated by consideration of legally incorrect materials. Mr. Murarka has placed reliance specially upon paragraph 9 of the affidavit-in-opposition. The Wealth-tax Officer has relied upon rule 1BB and has in effect said that because a amendment effect from March 31, 1986, in that rule of the Wealth-tax Rules, ten per cent. interest rate used by Dr. Nain in his valuation report.

Mr. Murarka has said that there was in fact no amendment effected on or about March 31, 1986, and that only certain draft rules were circulated inviting opinion regarding such amendment. He has also said that rule 1BB of the Wealth-tax Rules applies in terms to premises for residential purposes and, as such, would not apply in terms at all in the instant case. He has also said that in so far as the assessment of life interest is concerned, reliance should be placed solely upon rule 1B of the Wealth-tax Rules which deals with valuation of life interest and if that view is correct then the introduction of rule 1BB at all into the question of valuation of the lie interest of the assessee was a vitiating factor.

A look at section 16A(1)(a) as quoted above would show that when the Wealth-tax Officer is faced with a registered valuers report as to the valuation of a wealth-tax property he may take two courses. If he is of the opinion that the market value would be higher than the value given in the registered valuers valuation report then he may refer it to the Valuation Officer or he may also

reserve it for his consideration at the time of the final wealth-tax assessment.

If he, however, chooses the former course and does refer the valuation to the Valuation Officer then and in that event sub-section (6) of section 16A makes it clear that at the time of assessing wealth-tax he would be bound by the valuation put upon the property by the Valuation Officer.

In the instant case, the choice was made for referring the valuation to the Valuation Officer and as such, the letter at page 69 written by the Wealth-tax Officer was inappropriate. In that letter dated December 6, 1989, the Wealth-tax Officer wrote that the objection regarding his reference for the valuation would be examined at the assessment stage. That was clearly wrong because once the Valuation officer gives his report the Wealth-tax Officer would have no jurisdiction to consider or charge it any further. The matter could then be changed if at all in appeal from the totality of the entire wealth-tax assessment. As such, the letter dated December 6, 1989, is inoperative and cannot be given effect to.

In so far as the main contention regarding the reference notice at page 66 of the writ petition is concerned, I am of the opinion that there are various types of situations where statutory power is exercisable upon the formation of particular belief or a particular opinion by the designated statutory authority. These have different degrees of impact upon a citizen's rights. Sometimes his Income Tax assessment is reopened. Sometimes he is deprived of his personal liberty and sometimes it is only a case of reference of his wealth-tax property valuation to a certain particular officer. The degree of scrutiny of a court of law in all these different situations can never be identical. When the formation of an opinion regarding deprivation of personal liberty is concerned, the court naturally makes its scrutiny stricter than when a formation of an opinion leads, as in the instant case, to merely a different proceeding before a different authority without finally affecting the rights of the assessee in any manner. It may well be that even on reference before the Valuation Officer the Valuation Officer does upon hearing actually accept the report of Dr. Nain in toto.

This, however, does not mean that the formation of opinion u/s 16A(1)(a) is at all a redundancy. It has been inserted in the statute book and it is a pre-condition for exercise of power. If such an opinion does not exist then the Wealth-tax Officer would have no jurisdiction to refer the matter to the Valuation Officer. Such an opinion must be formed in fact and the opinion must not also be vitiated by any of the grounds which are available to a citizen in challenging the formation of an administrative, executive or quasi-judicial opinion of any statutory authority.

Regarding the necessity of the formation of the opinion and the necessity of it being formed properly and without any vitiating factor, Mr. Murarka, in my opinion, rightly relied upon the case of Russell Properties Pvt. Ltd. Vs. A. Chowdhury, Addl. Commissioner of Income Tax and Others, , and he correctly

cited in this regard the passage from the judgment of Justice Sabyasachi Mukharji appearing on pages 240 and 241 of the said report. Any opinion regarding valuation unreasonably formed and unreasonably referred to the Valuation Officer in spite of a registered valuers report would have to be struck down as being exercise of power without jurisdiction.

Mr. Murarka also rightly relied upon the cases of Smt. Uma Debi Jhawar Vs. Wealth Tax Officer and Others, and the case of M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., for supporting the proposition of law that the existence of an opinion of the Wealth-tax Officer that the market value of the property exceeds the registered valuers report is a must and a precondition before valid exercise of power for reference to the Valuation Officer.

From the facts of this case, I am unable to come to this conclusion that the Wealth-tax Officer made the reference of the valuation to the Valuation Officer without harbouring an opinion that the market value would be larger than the valuation put by Dr. Nain. If the affidavit of the Wealth-tax Officer is read as a whole then even in paragraph 9, it is manifest that he is trying to say that he has made the reference to the Valuation Officer because ten per cent. interest rate, if used, would yield a valuation of the property which would be higher than the nine per cent. rate used in the report of Dr. Ashoke Nain. Even if the Wealth-tax Officer is bona fide of the opinion that the valuation put by the registered valuer is lower by only one rupee than the value the property can fetch in the open market then also his reference to the Valuation Officer cannot be challenged on the ground of any illegal exercise of jurisdiction.

Regarding the amendment of rule 1BB of the Wealth-tax Rules, and the said amendment not having actually taken place, I must point out that it is nobodys case that rule 1BB alone would be applicable in all its force in the matter of the valuation of the life-interest. A reading of the report of Dr. Nain as well as a reading of the affidavit-in-opposition would show that rule 1BB is referred to for the purpose of selecting the interest rate that would be used for valuing the property at 5, Middleton Street, Calcutta. Rule 1BB, in other words, is being referred to not for the purpose of making it applicable in terms but for the purpose of drawing a parallel for the purpose of valuing the life interest of the assessee. In this view of the matter, the question whether the actual amendment took place on March 31, 1986, or not is irrelevant. Even if certain projected draft amendment rules were circulated on March 31, 1986, containing a proposed amendment of ten per cent. in certain parts of rule 1BB, the same would afford an equally good reason for drawing a parallel for the purpose of fixing an appropriate interest rate for valuation of the life interest of the assessee.

Mr. Murarka referred me, in this context of interest rate, to rule 1B(1)(c) of the Wealth-tax Rules, 1957, and said that the valuation of life interest as provided in that sub-rule is only 6 1/2 per cent. He further said that Dr. Nain took a rate far higher than that and that he had given a nine per cent. rate. Now, in the matter of valuation whether rule 1B or rule 1BB would apply, or whether those rules

would be read separately or would be read together are matter which remain for the Valuation Officer to consider. Until it is done no pronouncement upon the same is called for. If Mr. Murarkas submission that only 6 1/2 per cent. interest rate is applicable is correct then the assessee was prejudiced even by Dr. Nain's report and he will have a chance of perhaps correcting it, if he so chooses, before the Valuation Officer. In this view of the matter, I am unable to hold that the matter of formation of opinion regarding reference for valuation on the part of the Wealth-tax Officer was vitiated in any manner. Seeing that nine per cent. was already returned as per the valuation of the registered valuer, the Wealth-tax Officer could well take into account a possible ten per cent. rate for this valuation on the ground of the circulated draft amendment rules which he wrongly thought to have actually effected the amendment, and he could thus on this bona fide belief of the market value being higher than the registered valuers report refer the matter to the Valuation Officer.

Mr. Murarka also relied upon the cases of J.N. Bose Vs. Commissioner of Wealth Tax, and he relied upon a passage at page 88 for the proposition that unless there has been certain substantial changes in the facts of the case or the situation or present position of the property, the valuation that was being proceeded upon should be proceeded upon in the subsequent assessment years also. He said that the valuation of the new valuer, that is Dr. Nain, had been accepted for the assessment year 1982-83 up to the assessment year 1985-86. In issue in this case are the pending assessments for the assessment years 1986-87 to 1988-89. There is nothing in law for the Wealth-tax Officer to entertain a plea that the market value has gone up in a particular current assessment year to more than the value that was given in the registered valuers report which had so long been accepted. In fact, if the Wealth-tax officer does bona fide entertain a belief that the market value for a particular assessment year is higher than the value given in the registered valuers report then he would be failing in this duty in not assessing the wealth-tax on that enhanced basis as section 7(1) of the Wealth-tax Act clearly states that the Wealth-tax Officer is to value and assess on the basis of the open market valuation. In the instant case, I have already given the reasons why the Wealth-tax Officer could have referred the matter properly to the Valuation Officer and as such, there is a reason for departure from the previous years; if the Wealth-tax Officer did not think of these relevant matters in earlier years, that does not mean that he is debarred in law from taking these relevant matters into consideration in any subsequent future time.

Under these circumstances, the application fails and is dismissed. The copy of the affidavit in opposition is not traceable in the records before me and accordingly a photostat copy handed over by Mr. Shome shall be countersigned by the court officer and kept on the record.

It is made clear that whatever has been said in this matter has been said only with regard to the propriety of the exercise of jurisdiction by the Wealth-tax

Officer in the matter of reference of the valuation to the Valuation Officer. The Valuation Officer shall be completely free to accept or not to accept the report of Dr. Ashoke Nain and the Valuation Officer shall deal with all other contentions of the assessee as well as of the Department as may be put forward by them and the valuation matter shall be thus disposed of in accordance with law and all the points in that regard are kept open.

A prayer for stay has been made and opposed. I do not think that this case calls for a stay as only the process of assessment is now being made free.