
(1979) 03 CAL CK 0002
In the Calcutta High Court
Case No : Civil Rule No. 14716 (w) of 1976

Satyendra Chunder Ghose	Vs	APPELLANT
Wealth Tax Officer and Others		RESPONDENT

Date of Decision : 14-03-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 16A, 17

Citation : (1980) 126 ITR 102

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : Sanjoy Bhattacharya and Aparna Dutta, for the Appellant; A.K. Sengupta and P.N. Mitra, for the Respondent

Judgement

Bimal Chandra Basak, J.—In this application under Article 226 of the Constitution of India, the petitioner is praying for an appropriate writ directed against letters dated 29th March, 1976, being "G" to the petition, and 31st August, 1976, being annex. "J", to the petition, issued by respondent No. 2, i.e., the Assistant Valuation Officer, and the purported reference alleged to have been made by respondent No. 4, i.e., the WTO, " K " Ward, for determining the fair market value of the property at 16/2, Raja Santosh Road, Calcutta.

2. The facts of this case so far as they are relevant for the purpose of determination of the case herein are as follows :

According to the petitioner, he constructed a house on a portion of 16/1, Raja Santosh Road, which has been numbered as 16/2, Raja Santosh Road (hereinafter referred to as the " said house property "), in the year 1961-62, at a cost of Rs. 1,48,706. In the assessment year 1963-64, the WTO, District III(4), " E " Ward, Calcutta, accepted the said cost of construction. The petitioner states that immediately on completion of the said building, i.e., from 1st December, 1962, the said house property was let out on a contractual basis to one Dr. C. Otto and Co. Ltd. (afterwards changed to Otto India Private Ltd.) on a monthly rent of Rs, 2,000 on a lease basis. The first deed of lease, which was registered,

was operative from 1962 to 1969 and then again renewed by a further registered lease for 5 years, i.e., from 1969 to 1974.

3. It was again sought to be renewed for another 5 years from December, 1974, on the same rent of Rs. 2,000 per month as before but the lease in respect thereof was not registered as on the last occasion. The said tenant, M/s, Otto India Private Ltd., is still a tenant at a monthly rent of Rs. 2,000. Although the cost of construction was accepted by the aforesaid WTO in the assessment year 1963-64, the WTO, in the assessment of the said house property for the assessment year 1964-65, took the valuation of the self-same house property at 16/2, Raja Santosh Road, at Rs. 4,00,708 by adopting the land and building method of valuation.

4. Being aggrieved by the said order of assessment, the petitioner preferred an appeal before the AAC, Wealth-tax, Range "H", Calcutta. Before the AAC, Wealth-tax, the contention of the petitioner was that the fair market value of the property in question should be arrived at by multiplying the rental of Rs. 16,597 by 12.5 times, as was the opinion given in the approved valuer's report submitted by the petitioner before the assessing authority. The AAC by his order dated 8th July, 1968, held that the land and building method was not appropriate for arriving at the valuation and, by applying the rental method, determined the value of the said building at Rs. 2,82,000. The AAC did not agree that the multiplier of 12.5 would be correct and considering the year of construction fixed the multiplier to be 17 times. .

5. Against the valuation determined by the AAC at Rs. 2,82,000 by taking 17 times the rental of Rs. 16,597, the WTO as also the petitioner preferred appeals before the Income Tax Appellate Tribunal which held that the land and building method of valuation could not have any sensible support for valuing tenanted property. Considering the year of construction and other circumstances, the Tribunal dismissed the appeal of the WTO and also of the assessee and confirmed the order made by the AAC of Wealth-tax. The Tribunal also considered that 17 items and not 12.5 times was the just multiplier in regard to the valuation of the said property. Again in the assessment for the assessment years 1966-67 and 1967-68, the petitioner agitated the question of valuation on rental basis by applying the multiplier at 12.5 instead of 17 before the AAC of Wealth-tax, " G " Range, Calcutta, who by his order dated 21st August, 1972, rejected the contention of the petitioner and, following the earlier order of the AAC and the Tribunal, determined the valuation at Rs. 2,82,000 taking 17 times of the net rental. The petitioner states that the assessment of wealth-tax in respect of the aforesaid house property on the basis of valuation at Rs, 2,82,000 has been completed for the assessment years 1963-64 to 1974-75 by the WTO, "E" Ward, Cal-II(1), before the file was transferred to " K " Ward, Comp. Dist. I, Calcutta. The petitioner states and contends that such transfer was effected without any notice to the petitioner and in contravention of the provisions of Section 8 of the W.T. Act. The petitioner states that the petitioner has, also submitted his return

for the assessment years 1975-76 and 1976-77 and the valuation of the said property was shown on the same basis, i.e., 17 times of the net annual rent, as finally determined by the Tribunal, but no assessment has yet been made. The petitioner states that from the years 1962 to 1976 there has been no change in the said monthly rent of Rs. 2,000 nor has the said property undergone any change. The said property was under two leases as aforesaid with an option for renewal of years. The last deed of lease was stamped and signed by the petitioner but not registered as the said tenant declined to be on lease basis and they preferred to remain as monthly tenant from 1975 onwards. Thereafter, all of a sudden, to his utter surprise the petitioner received a purported notice bearing No. I/I.T.O./AVO/U-IV/75-76/817 dated 29th March, 1976, from respondent No. 2, the Assistant Valuation Officer, U-IV, Calcutta. By the said purported notice the petitioner was informed that an alleged reference had been made to the Valuation Cell by the WTO, " K " Ward, Comp. I-P-7, Chowringhee Square, Calcutta-700069, for determining the detailed estimate of cost of construction and fair market value of the property at premises No. 16/2, Raja Santosh Road, for the relevant assessment years for the purpose of wealth-tax. The petitioner was, therefore, requested to see the said respondent No. 2 along with the sanctioned plan of the building, structural drawing, books of accounts, vouchers, rent statement, corporation tax demands and bills and such other documents which the petitioner might like to produce. On receipt of the said notice, the petitioner immediately called upon respondent No. 2, at his office. According to the petitioner, the valuation was also duly confirmed by the two appellate authorities, like the AAC and the Appellate Tribunal. According to the petitioner even the WTOs dealing with the petitioner's case in Dist. III, until the file was transferred to respondent No. 4, was following the said valuation as made by the said AAC and Appellate Tribunal, i.e., 17 times of the net annual rent. According to the petitioner, there was no reason why the said finality of the said assessment should be investigated without any valid reopening of the matters. The petitioner requested the said Assistant Valuation Officer to apprise the petitioner why such a notice was served on the petitioner. The petitioner's complaint is that he was not given to understand why such a notice was served on the petitioner all of a sudden, but was only asked to comply with the notice and to attend the office of respondent No. 2 with all the papers as mentioned in the said notice. According to the petitioner, he could not collect within such a short period all the relevant papers because some of the papers, notices, orders, vouchers, valuation reports, etc., as mentioned in the said notice dated March 29, 1976, were lying with the petitioner's lawyer. After collecting the said papers the petitioner replied to the said notices by his letter dated 19th May, 1976, annexing all the necessary documents, as required by the said respondent No. 2 in the said notice dated 29th March, 1976, In the meantime, another letter dated 5th May, 1976, was received from the respondent No. 2 by the petitioner whereby the petitioner was asked to submit the documents and records and to arrange inspection of the properties. The petitioner was also asked to attend the office of the said respondent No. 2 positively on May 12, 1976, between 11-30 to

12-30 hours with all the relevant records. Thereafter, again the petitioner received on September 6, 1976, another notice bearing No. 2 (W.T.)/AVO/U-IV/75-76/1189 dated 31st August, 1976, from the said respondent No. 2. By the said notice it was stated that the determination of the fair market value of the property at premises No. 16/2, Raja Santosh Road, Calcutta, as on 31-3-68, 31-3-69, 31-3-70, 31-3-71, 31-3-72, 31-3-73, 31-3-74, 31-3-75 and 31-3-76, for the purpose of wealth-tax, was alleged to have been referred to his office by the WTO, " K " Ward, Comp. Dist. 1, Calcutta-700069. It was also stated that the property was inspected by the said respondent No. 2 on 2nd June, 1976. It was also alleged that the said respondent No. 2 had perused the relevant document as produced before the respondent No. 2 and considering the relevant circumstances of the case, the respondent No. 2 freshly estimated the fair market value of the said property at Rs. 3,39,000 on 31-3-68, Rs. 3,55,300 on 31-3-69, Rs. 3,64,000 on 31-3-70, Rs. 3,92,700 on 31-3-71, Rs. 4,45,600 on 31-3-72, Rs. 4,96,300 on 31-3-73, Rs. 5,56,500 on 31-3-74, Rs. 6,07,200 on 31-3-75 and Rs. 6,62,200 on 31-3-76. The petitioner was also called upon to file his objection in writing on or before 10th September, 1976, and the said notice and/or letter was to be treated as a notice u/s 16A(4) of the W.T. Act, 1957, with up to date amendments.

6. Mr. Sanjoy Bhattacharya, appearing in support of this rule, has drawn my attention to Section 16A which is set out herein below :

" 16A. (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;

(b) in any other case, if the Wealth-tax Officer is of opinion-

(i) that the fair market value of the asset, exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature" of the asset and other relevant circumstances, it is necessary so to do.

(2) For the purpose of estimating the value of any asset in pursuance of a reference under Sub-section (1), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessee u/s 14 or section 15, he

shall pass an order in writing to that effect and send a copy of his order to the Wealth-tax Officer and to the assessee.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee u/s 14 or section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections.

(5) On the date specified in the notice under Sub-section (4), or as soon thereafter as may be, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the Wealth-tax Officer and to the assessee.

(6) On receipt of the order under Sub-section (3) or Sub-section (5) from the Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer."

7. Mr. Bhattacharya has firstly submitted that the WTO has no jurisdiction to send for valuation of property or make a reference for valuation of property excepting for the purpose of the W.T. Act (hereinafter referred to as the "said Act"). He has next submitted that the reference in any event cannot be made in respect of years where the assessment is already completed. He has submitted that in any event no useful purpose would be served in respect of the years for which on the self-same principles of valuation the assessment had taken place. The next submission of Mr. Bhattacharya is that assuming but not admitting the reference is valid, in the instant case, the valuation report cannot be sustained because such report has been made on the basis of a principle which was deprecated by the Tribunal and which is against the law laid down by the courts.

8. In support of his submissions, Mr. Bhattacharya has drawn my attention to Section 16A and submitted that so far as the periods other than 1975-76 and 1976-77 are concerned, the assessment is already complete and final and it has not been reopened u/s 17. The power to make a reference u/s 16A can be exercised by the WTO "for the purpose of making an assessment ". When that assessment is already complete and it has not been reopened, there is no question of making any such reference. Regarding the next broad submissions, Mr. Bhattacharya has submitted that the Valuation Officer in his notice u/s 16A(4) has followed the "land and building" method superadded by "reversion in

future" method. This has been deprecated by various decisions of this court. What he should have done is to follow the rental method as laid down by the courts and the Tribunal. For the aforesaid reasons, Mr. Bhattacharya has submitted that the reference and the notices pursuant thereto must be struck down.

9. In this connection, Mr. Bhattacharya has drawn my attention to the averments made in para. 12 of the affidavit-in-opposition affirmed by Shyamlal Dhan Ghoshal wherein it is stated as follows :

" (a) The Special Survey Squad consisting of the Valuation Officer of the Income Tax department and the staff of the Income Tax Officer inspected the property at No. 16/2, Raja Santosh Roy Road, Calcutta, on 29th August, 1975. The said survey squad estimated the cost of construction of the said building at Rs. 1,90,000 as against the cost disclosed by the assessee at Rs. 1,46,341. Thus, the fair market value of the said property exceeded the value of the said assets as claimed by the assessee by more than 15%.

(b) The said property is situated in a posh locality where only the well-to-do people reside. On the land at No. 16/2, Raja Santosh Roy Road, Calcutta, a two storeyed building with R.C.C. roof and out-house and garage with a mazanine floor were constructed. There is a big lawn on the western side of the building and the entire building with lawn is bounded by a compound wall and gates. The total land is 18 cottahs 5 chhataks and the construction consists of a modern residential building a single unit with attached bath and W. C. in each floor. The foundation provides for construction of one more storey and the plinth area of the building in the ground floor is 3,215 sq. ft., in the first floor 3,195 sq. ft. and the garage and the mazanine floor is 420 sq. ft.

(c) In the premises aforesaid I was prima facie satisfied that the fair market value of the asset in question exceeded the value of the asset as claimed by the assessee by more than 15% and having regard to the nature of the said and the other relevant facts and circumstances as stated hereinbefore I was of opinion that for the purpose of making proper assessments for the assessment years 1968-69 to 1976-77, the fair market value of the said assets should be determined by the Valuation Officer. I accordingly referred the matter of valuation of the said property at No. 16/2, Raja Santosh Roy Road, Calcutta, to respondent No. 2.

(d) By a letter dated 31st August, 1976, the Valuation Officer proposed the following figures to be the fair market value of the said property at No. 16/2, Raja Santosh Roy Road, Calcutta, and allowed the assessee an opportunity to state his objection, if any, on 10th September, 1976, to the said proposed valuation:

Fair market value, as proposed to be estimated Date of Valuation

Rs.

6,62,200 31-3-76

6.07,200 31-3-75

5,56,500 31-3-74

4,96,300 31-3-73

4,45,600 31-3-72

3,92,700 31-3-71

3,64,400 31-3-70

3,55,300 31-3-69

3,39,900 31-3-68

(e) The assessee did not file any objection to the said proposed valuation on 10th September, 1976. He, however, sent a letter dated 8th September, 1976, praying for three months" time for filing his " objection. The Valuation Officer informed the assessee that if the assessee was desirous of having the details of calculations with regard to the proposed valuation, he might depute any Valuation Officer. The assessee did not avail of the said opportunity. By a letter dated 12th November, 1976, the assessee, inter alia, challenged the jurisdiction of the WTO to make the said reference"

10. Mr. Sengupta, appearing on behalf of the respondent, has submitted that this reference u/s 16A was made by the WTO for the purpose of considering whether there should be a reopening of assessment u/s 17. He has admitted before me that excepting in respect of the years 1975-76 and 1976-77, the assessment in respect of all other years referred to in the impugned notice are complete and final and they have not been reopened. Mr. Sengupta has submitted that a reference u/s 16A is possible because making an assessment includes making a reassessment in view of Section 2(ca) of the Act. In any event, Mr. Sengupta has submitted that in respect of the years 1975-76 and 1976-77, definitely the assessment is not complete and accordingly the action u/s 16A cannot be challenged on this ground. On the question of the method to be followed, Mr. Sengupta has submitted that the petitioner has come at a stage where no final opinion has been expressed either by the WTO or by the Valuation Officer. What has merely happened is that on the basis of a reference u/s 16A notices have been issued. In justification of such issue of notice u/s 16A(4), the reasons have been set out. It is open to the petitioner to satisfy the Valuation Officer that his reasonings are wrong and that the valuation must be made on the basis of the rental method. Accordingly, he has submitted that in any event in respect of the assessment years 1975-76 and 1976-77, no such objection of the petitioners should be entertained at this stage.

11. On the question of the jurisdiction of the WTO to refer the matter for valuation to the Valuation Officer, I must accept the contention of Mr.

Bhattacharya. The language of Section 16A is "for the purpose of making an assessment". This would no doubt include reassessment but this contemplates a case where an assessment is not complete or final. It contemplates a case where no assessment has been made. It would also include a case where even after the assessment has become final, the matter has been reopened u/s 17 because that would also be a case of "for the purpose of making an assessment". It will not certainly include a case where the assessment is complete and such assessment has not been reopened u/s 17. I cannot accept the contention of Mr. Sengupta that this would also include a case where though the assessment is final and though the matter has not been reopened, yet the power is being exercised only in order to find out whether the assessment should be reopened u/s 17 or not. It is not necessary for me to decide whether any enquiry can be made for the purpose of deciding as to whether to reopen a case u/s 17 or not. But for that purpose without reopening a case u/s 17, a reference cannot be made u/s 16A. This position would also be made clear from Sub-section (6) of Section 16A. The scheme of the Act is that there is a reference u/s 16A by the WTO to the Valuation Officer. Thereafter, under Sub-section (2), the Valuation Officer issues a notice for production of documents, etc. Then two courses are open to the Valuation Officer. The Valuation Officer may either come to the opinion that the valuation has been correctly declared and in that case he shall pass an order in writing to that effect and send a copy of his order to the WTO and to the assessee. But when he does not form any such opinion that it has been correctly declared, then the course open to him is laid down in Sub-sections (4) and (5). For this purpose, another notice is to be given by the Valuation Officer when he forms the opinion, inter alia, that the value of the asset is higher than the value declared in the return. At this stage, there is no final formation of opinion. After the procedure in Sub-sections (4) and (5) has been followed and order has been passed under Sub-section (4), this order has got to be sent to the WTO and to the assessee. Upon receipt of such valuation it is the duty of the WTO to complete the assessment in conformity with the estimate of the Valuation Officer. Sub-section (6) itself makes it clear that the purpose of making a reference u/s 16A(1) is in order to enable the WTO to complete the assessment. Therefore, it is clear that such a power of reference can be exercised only when the assessment is not complete. In a case, where the assessment is complete and it has not been reopened, this power u/s 16A cannot be exercised by the WTO. In the facts of this case excepting for the periods 1975-76 and 1976-77, the assessment is complete and it has not been reopened. Accordingly, the WTO has no jurisdiction to make any reference u/s 16A in respect of these years. However, this objection would not apply in respect of the assessment years 1975-76 and 1976-77, in respect of which the assessment is not complete.

12. On the next question, as to what is the correct principle to be followed in respect of such valuation, various decisions have been cited before me including the following :

CONTROLLER OF ESTATE DUTY, WEST BENGAL Vs. RADHA DEVI JALAN., , Debi

Prosad Poddar Vs. Commissioner of Wealth Tax, , J.N. Bose Vs. Commissioner of Wealth Tax, , Commissioner of Income Tax Vs. Smt. Ashima Sinha, , Commissioner of Income Tax Vs. Panchanan Das, . In these cases principles have been laid down by the courts as to the method which is to be followed in valuing the property which is rented.

13. I have already held that excepting in connection with assessment years 1975-76 and 1976-77, the WTO had no authority or jurisdiction to make any reference u/s 16A. So far as the other two years are concerned, in my opinion, it would not be fit and proper on the part of this court to express any final opinion on this point at this stage. I have held the reference to be valid so far as these two years are concerned. For the very same reason, notices u/s 16A(2) also remain valid, so far as these two years are concerned. So far as notice u/s 16A(4) is concerned, in my opinion, at this stage these cannot be challenged on the grounds urged on behalf of the petitioner so far as these two years are concerned. The Valuation Officer cannot exercise his power under Sub-section (4) until and unless he is of the opinion, inter alia, that the value of the asset is higher than the value declared in the return made by the assessee u/s 14 or Section 15. If the Valuation Officer is of such an opinion, then he shall serve a notice on the assessee intimating the value which he proposes to estimate and give an opportunity to the assessee to state his objections. This is precisely what has been done in this case. In my opinion, no principle has been laid down finally by the Valuation Officer. He has not and cannot at this stage finally come to any conclusion or form his opinion. He has merely given the reasons why a notice is being served as required by Sub-section (4). It would be open on the part of the petitioner to submit his objection as to why the principles sought to be followed by the Valuation Officer is wrong. Obviously, personal hearing has not yet taken place. Either by way of objection or further objection or by such hearing, it would be open to the petitioner to contend that the Valuation Officer is proceeding on a wrong basis and that in the facts of this case he should strictly follow the rental method and nothing else. Whatever is laid down by the courts as law, it is obviously binding on the Valuation Officer. The Valuation Officer would also be bound by any decision of the Tribunal or any other authority whose decision is binding on him. I may point out in this connection that some of the decisions relied upon have been given subsequent to the date of the impugned notice. At the present moment, in my opinion, it cannot be contended that the Valuation Officer has made up his mind or that he has finally formed any opinion which ignores any law laid down in connection thereto.

14. In that view of the matter, I pass the following order.

15. This application is allowed and the rule is made absolute to the following extent. I hold that so far as the assessment years 1968-69, 1969-70, 1970-71, 1971-72, 1972-73, 1973-74 and 1974-75 are concerned, the reference by the WTO u/s 16A(1) is invalid and without jurisdiction. Obviously, the notices u/s 16A(2) and 16A(4) by the Valuation Officer so far as these assessment years are

concerned, are also invalid and without jurisdiction. I further hold that the order of reference u/s 16A(1), so far as it relates to the assessment years 1975-76 and 1976-77, is valid and within the jurisdiction of the WTO and accordingly the notices under Sections 16A(2) and 16A(4) issued by the Valuation Officer for these years are also valid and within jurisdiction. There will be a writ of certiorari quashing the order of reference u/s 16A(1) so far as the years 1968-69, 1969-70, 1970-71, 1971-72, 1972-73, 1973-74 and 1974-75 are concerned. There will be a writ of prohibition directing the respondents not to proceed or any further proceed with the reference u/s 16A(1) and the notices u/s 16A(2) and Section 16A(4) of the Act so far as the assessment years 1968-69, 1969-70, 1970-71, 1971-72, 1973-74 and 1974-75 are concerned. So far as the assessment years 1975-76 and 1976-77 are concerned, the Valuation Officer is directed to proceed in accordance with law. I make it clear that he shall act in accordance with law including any law laid down by this court or any other court or Tribunal or authority whose decision or direction is binding on him.

16. The rule is disposed of accordingly. Interim order, if any, is vacated. There will be no order as to costs.