(1990) 03 BOM CK 0077

In the Bombay High Court

Case No : WT APPEAL No''s. 980, 990 AND 997 AND 1029 TO 1037 (BOM.) OF 1989

SMT. DARSHNA A. MEHTA — APPELLANT

Vs

ASSISTANT COMMISSIONER OF WEALTH-TAX. — RESPONDENT

Date of Decision : 30-03-1990

Acts Referred:

Wealth Tax Act, 1957 — Section 25(2)

Citation : (1990) 33 ITD 670

Hon'ble Judges : Garg, A.M.

Bench : Division Bench

Judgement

Garg, AM - These eighteen appeals by different assessees are against the orders of the Commissioner of Wealth-tax passed u/s 25(2) of the Wealth-tax Act, 1957. Since they raise common disputes, all the appeals are being disposed of by this consolidated order for the sake of convenience.

2. The grounds pressed before us are that the CWT has erred in setting aside the assessment orders and directing the WTO to decide the valuation of the property at Kamla Samir, Malabar Hill, Bombay, after giving fresh opportunity to the assessees and to further decide afresh as to whether the provisions of rule 1BB were applicable keeping in view the provisions of sub-rule (5) thereof, and to determine the value of the property accordingly, namely : (i) if Rule 1BB is not applicable, its valuation independent of rule 1BB, and (ii) if rule 1BB was applicable, to value the property on the basis of standard rent as arrived at the net return of 6% on land investment and 9% on construction.

3. The learned counsel for the assessees, relying upon the order of the Tribunal in WTA Nos. 122 to 129/Bom/1989, dated 12-2-1990 for assessment year 1983-84, submitted that the provisions of rule 1BB were applicable to the property and, there were no such fact and circumstances warranting the opinion that it was not practical to apply the provisions of the rule to the property under consideration. He also referred to the order of the Tribunal in the case of Arun R.

Patel v. IAC [1988] 35 TTJ (Bom) 13 and also the judgment of the Bombay High Court in the case of M.V. Sonavala Vs. Commissioner of Income Tax, and that of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Prabhabati Bansali, for the proposition that municipal value was the gross maintainable rent. The learned Departmental Representative, on the other hand, supporting the orders of the CWT, submitted that the construction of the property was such that no flat therein could be said to be independent so as to be occupied by persons who are strangers to each other. In any case, it was further submitted, the standard rent alone would be gross maintainable rent in view of the judgments of the Supreme Court in the case of Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi, and Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, .

4. We have heard the parties and considered their rival contentions. The description of the property, as stated in paragraph 11 of the impugned orders, is that Kamla Samir is a residential building constructed on a plot of land admeasuring 3,361 sq. meters located in the posh area of Malabar Hill. The land was stated to have been purchased by an Indenture of Assignment dated 22-2-1978 for a sum of Rs. 64 lakhs and is by way of leasehold for a term of fifty years with a provision for renewal and the lease rent is only Rs. 5.06 per year. It is further stated that the building consists of ground floor and four upper floors having aggregate built up area of about 32,317 sq. ft. in two blocks. There are in all ten flats with two flats on each floor and each flat consists of an entrance hall, drawing and dining room, bed rooms with attached toilets, kitchen, store room and utility and servants room and passages. The distribution of the ten flats on various floors is stated to be that Flat Nos. 1 and 3 are on the ground floor, flat Nos. 2 and 4 on the first floor, flat Nos. 5 and 7 on the second floor, flat Nos. 6 and 8 on the third floor, and flat Nos. 9 and 10 on the fourth floor. The CWT has further observed that there are two main staircases in the building one for the use of flat Nos. 1, 2, 5 and 6 leading to flat No. 9 on the top floor, and the other staircase is for the use of flat Nos. 3, 4, 7 and 8 leading to flat No. 10 on the fourth floor. It is further stated that in addition, there are internal staircases between flat Nos. 1 and 2; 3 and 4; 5 and 6; and 7 and 8. Common staircases in both the wings give access to common area and the mezzanine floor which is located between 1st and 2nd floors. The entire buildings is owned and occupied by the Mehta family members. Within the larger Mehta family, the distribution of various flats amongst the smaller family units is : flat Nos. 1 and 2 with Shri M. M. Mehta and family; flat Nos. 3 and 4 with Shri G. M. Mehta and family; flat Nos. 5 and 6 with Shri A. M. Mehta and family; and flat Nos. 7 and 8 with Shri N. M. Mehta and family. The CWT has also observed that certain portions of the building are meant for common use by all the sub-groups. Such portions consist of recreation hall, pooja room, music room and connected facilities like toilets, etc. He also observed that another common facility is flat Nos. 9 and 10 on the fourth floor which are being used as accommodation for guests. While flat No. 9 has 3 bed rooms, flat No. 10 has only one bed room with an open terrace

garden. Terrace gardens have also been provided on top of flat Nos. 2 and 4 at the second floor level. It is further stated that terrace garden has also been provided between the two blocks on top of the mezzanine floor. All these gardens are stated to be for common use of the various persons residing in the building.

5. On the basis of the aforesaid description of the building, the CWT was of the opinion that the building was such as could not be occupied by person who are strangers to each other and it was meant only for the members of the family and that the ten flats were not independent in themselves. We do not find any force in this finding of the CWT. This conclusion is not supported by any cogent or convincing reasons. The emphasis appears to be on the common facilities like staircases, recreation hall, pooja room, music room, terrace gardens, accommodation for guests, etc. The common facilities and/or amenities existing in the present case, in our opinion, could not be termed as an impracticability in determining the value of a particular flat owned by a person. Common facilities are always there in multi-storeyed buildings. We, therefore, do not see any justification for the CWT for setting aside the assessments on this aspect of the matter. The property being a residential property, it has to be valued as per the provisions of rule 1BB as held by the Tribunal in their order for assessment year 1983-84, referred to above.

6. The next question which arises for our consideration is concerning the directions of the CWT regarding the gross maintainable rent on the basis of the standard rent under the Bombay Rent Control Act, 1947. Gross maintainable rent is defined in rule 1BB as under :

"Gross maintainable rent, in relation to a house, means -

(i) the sum for which the house can reasonably be expected let from year to year or

(ii) where the house is let and the annual rent received or receivable by the owner is in excess of the sum referred to in sub-clause (i), the amount so received or receivable....."

Similar definition is given in section 154(1) of the Bombay Municipal Corporation Act for determining the rateable value as under :

"In order to fix the rateable value of any building of land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowance for repair of any other account whatever."

7. Almost similar language is used in section 23 of the Income Tax Act, for determining the annual value. For the sake of convenience, the same is reproduced hereunder :

"For the purpose of section 22 the annual value of any property shall be deemed to be -

(a) the sum for which the property might reasonably be expected to let from year to year, or

(b) while the property is let and the annual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable....."

8. While determining the rateable value under the Delhi Municipal Corporation Act, the Supreme Court in the case of Dewan Daulat Rai Kapur (supra), and Mrs. Sheila Kaushishs case (supra), held that the annual value had to be determined under the Municipal Act/income tax Act on the basis of the standard rent. The gross maintainable rent, therefore, had to be the value a willing tenant offers to a land-lord in the open market but in view of the restrictions under the Rent Control Act, the rent determinable thereunder is the maximum rent which could be expected reasonably from a person. The ratable value determined under the Municipal Act normally represents the reasonable rent provided the same is within the parameters of the Rent Control Act. If the rent determined under the Municipal Act is not in accordance with the Rent Control Act, it may not represent an accurate assessment of the reasonable rent.

9. We do not find any merit in the contention of the assessee that the municipal value has necessarily to be taken as the gross maintainable rent as per the decision of the Calcutta High Court in the case of Prabhabati Bansali (supra) and that of the Tribunal in Arun R. Patel (supra). In these cases, it has been specifically stated that there may, however, be cases in which the annual value fixed under the Municipal law may be unacceptable to the Income Tax authorities for good reasons and that they have not laid down any general principle that the Income Tax authorities must adopt the municipal value as being correct. Normally the value, it was observed, should be accepted, but if there is an undervaluation, it is certainly open to the ITO to fix the value on his own on the basis of the accepted reasonable rent. These cases, therefore, are not of much assistance to the assessees.

10. Before the Bombay High Court in the case of M. V. Sonavala (supra), the dispute was whether the annual letting value u/s 23 of the Income Tax Act should be taken at actual receipt of compensation as against the municipal rateable value and not as against the standard rent. The Court held that one could not be equated with the other in the following words :

"However, the questions posed to us are not whether the annual value of the property for the purpose of section 23(1) (a) should be taken at the actual compensation received or on the basis of standard rent. The question is whether the annual value should be taken at the amount which is the actual compensation received or at the amount fixed as municipal rateable value. Obviously, municipal rateable value cannot be equated to standard rent."

The decision of the Calcutta High Court in the case of Prabhabati Bansali (supra) was followed by the Bombay High Court in the aforesaid case, and the following directions came to be issued :

"... that the annual value of different properties will now be determined by the Tribunal on accordance with the directions set our above."

It would be useful to extract the following paragraph from the aforesaid judgment of the Bombay High Court, dealing with the Calcutta High Court decision in Prabhabati Bansalis case (supra).

"In this context, it may be desirable to refer to the Calcutta High Courts decision in the case of Commissioner of Income Tax Vs. Prabhabati Bansali, . One of the questions involved in that case was whether the Tribunal was justified in directing the Income Tax Officer to redetermine the annual value of the property u/s 23(1) afresh with reference to its rateable value as determined by the municipal corporation. The question was answered in the affirmative and the court held that the income from house property had to be computed on the basis of the sum for which the property might reasonably be let from year to year and the annual municipal value."

11. The assessees reliance on the order of the Tribunal in WTA Nos. 122 to 129/ Bom/1989 (supra) is also of no help on this point as in that case, nothing was brought to the notice of the Tribunal that the municipal valuation was lower than the standard rent. The CWT in the present case found that the municipal rateable value is fixed at Rs. 1,68,080 for the entire building. It works out to only 1.09% on the disclosed investment of the assessees which was too low a percentage than that being adopted by the High Court under the Bombay Rent Control Act, 1947. He brought on the record the rates fixed for determining the standard rent under the Bombay Rent Control Act by extracting the following passage from Kulkarnis book on The Bombay Rents Hotel and Lodging House Rates Control Act, 1947, 1988 Edition, p. 48 :

"The High Court and the subordinate courts have been fixing the standard rent at an amount which gives net return to the landlord at the rate of 6% of the land value and 8 2/3 or 9% on the investment made on construction of the building."

12. We may also state here that the Tribunal had also taken notice of the aforesaid rates in the case of ITO v. S. Trilochan Singh Sahney [1985] 11 ITD 472 in the following words :

"13. Since, in the present case, the property has not been let out, no question would arise of fixation of standard rent. However, one has hypothetically to consider that such a question as having been arisen in the course of assessment for the year 1977-78, as the ITO has to ascertain under the provisions of section 23(1) (a), the sum for which the property might reasonably be expected to let from year to year. Now, considering the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, commentary by J. H. Dalal, fourth revised edition, one sees as under :

In respect of premises erected after September, 1940, the appeal court of the Bombay Small Causes Court (Sorab D. Talati v. Joseph Michem, Appeal No. 101 of 1949 : Lalkaka Ch. J. and Barodawalla, J. (decided on 15-12-1949) laid down the principles as under :

(1) With respect to a building built after 1-9-1940, the only fair criterion that the court must adopt must be based on the reasonable return to the landlord on his investment.

(2) Reasonable rate of net return on the investment allowed was 5 1/2 per cent per annum on the cost of the building and 4 1/2 per cent per annum on the value of the land. To the net return were added the outgoings such as municipal rates and taxes, 1/2 per cent for repairs, 1/8 per cent for insurance, 61 per cent for depreciation on 90 per cent of the cost of construction of the building. On the whole, for buildings in Bombay City, the gross return allowed were 8 2/3 per cent per annum on the cost of the building and 6 per cent per annum on the value of the land. The aforesaid outgoings were based on the assumption that the life of the building would be 60 years. If the life of the building is ascertained to be 40 years, 87 per cent more may be allowed for depreciation and if the life of the building is ascertained to be 80 years, 36 per cent less may be allowed for depreciation. If there are additional amenities of life, electricity and water or the landlord renders other services to the tenants, a reasonable return therefore should be added to the outgoings." (p. 219).

The learned authors observed as under :

"The aforesaid discussion is sufficient to show that the appeal court of the Bombay Small Causes Court in that case (Sorab D. Talati v. Joseph Michem, Appeal No. 101 of 1949; Lalkaka Ch. J. and Barodawalla J. (decided on 15-12-1949) erred in quantifying the particular rates for return on the investment and the outgoings and in laying down a general principle that the rent which includes the outgoings and return on a general principle that the rent which includes and return on the investment in excess of the particular rates is excessive. This has been recognised by the appeal court of the Bombay Small Causes Court in other cases. In one, case, looking to the insecure nature of the tenure, i. e. a monthly lease and semipermanent nature of the construction (i. e. having been erected with secondhand materials), the court permitted 1 per cent allowance for repairs, 0.125 per cent for insurance and 8.723 per cent for depreciation on 90 per cent of the cost of construction (Nathalal Mohanlal v. Bai Sitabai Desai, Appeal No. 169 of 1950).

In respect of the buildings erected after November, 1951, the court has in view of the rise in the rate of interest of gilt edged securities and of the bank rate since November, 1951 allowed a higher return than that of 4 1/2 per cent on land value and 5 1/2 per cent on the cost of construction (S. B. Jaiswal v. K. Jagmohandas, R. A. N. Nos. 1668 of 1953, decided on 21-11-1954 and Somabai

V. Patel v. Ishwaribhai P. Daftari, R. A. N. Nos. 138 to 143 of 1954, decided on 18-7-1955). The said rate rose to 3 1/2 per cent in November, 1951 and thereafter to 4 per cent in the middle of 1953 and to 4.13 per cent in the middle of 1954." (p. 222).

It may further be stated that for increase in rent for additional construction, the court has been given power u/s 9 of the Bombay Rent Control Act, 1947 to increase the rent even up to 15 per cent of the cost of improvement. Similarly u/s. 5(1) (b) (iiia), it is up to 15% of investment in land and building. In these circumstances, the CWT was justified in holding that the municipal value of the entire building at Rs. 1,68,080 which was only 1.09 per cent, was too low and, it should be taken on the basis of the standard rent determined under the Bombay Rent Control Act.

13. As regards the computation of standard rent, the CWT had directed to adopt the net return of 6 per cent on land and 9 per cent on the cost of construction. On this point, we leave it open to the assessees to bring necessary material on record justifying a lower rate in the fresh proceedings taken up pursuant to section 25(2) order of CWT and direct the WTO to afford adequate opportunity of being heard to the assessees and to consider the material brought on record justifying the lower standard rent to be adopted as gross maintainable rent.

14. With the aforesaid direction, all the appeals shall be treated as partly allowed for statistical purposes.