(1998) 09 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 2832 of 1990 and WMP No''s. 4303 and 4304 of 1990 8 September 1998 A.Y. 1981-82 to 1983-84

SMT. RADHA GAJAPATHI RAJU — APPELLANT

Vs

DISTRICT VALUATION OFFICER and Others — RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Citation : (1998) 150 CTR 479

Hon'ble Judges : Y. Venkatachalam, J

Bench : Division Bench

Advocate : K. Mani for the Assessee, S. V. Subramanianfor C. V. Rajan, for the Revenue, for the Appellant;

Judgement

Y. Venkatachalam, J.

Since in both these cases, the subject-matter involved and the respondents are common, both these writ petitions are disposed of by this common order with the consent of the concerned parties.

2.These writ petitions have been filed by the petitioners herein by invoking article 226 of the Constitution of India, seeking for a writ of certiorari to call for the records of the first respondent in proceedings No. DVO(Mad)WT/23/89-90 and DVO(Mad)WT/22/89-90, dated 20-1-1990, and to quash the same.

3. In support of the writ petitions, the petitioners have filed separate affidavits wherein they have narrated all the facts and circumstances that forced them to file these writ petitions and requested this court to allow these writ petitions as prayed for.

4. Per contra, on behalf of the respondents, a common counter- affidavit has been filed rebutting all the material, allegations levelled against them one after the other and ultimately requested this court to dismiss these two writ petitions for want of merits.

5. Heard the arguments advanced by the learned counsel appearing for the petitioners and also that of the learned senior counsel appearing for the department. I have also gone through the contents of the affidavits, counter-affidavit and also the order impugned together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective counsel during the course of their arguments,

6. In such circumstances of the case, the only point that arises for consideration in this case is, as to whether there are any valid grounds to allow these writ petitions or not.

7. The brief facts of the case of the petitioners herein are as follows: Both the petitioners herein are assessees on the file of the second respondents and have been regularly assessed to Income Tax and wealth-tax. They were partners in a firm known as ''Admiralty Hotel'' which owned certain lands and buildings. The property was utilised for being let out as a residential apartment as part of the business activity of the firm. Subsequently the firm was dissolved and under arrangement between the partners, there was further distribution of the property between the erstwhile partners. These transactions took place in 1984 and subsequently, prior to the said date, the petitioners herein were co-owners of the said property, The property consisted of vacant land and superstructures thereon constructed in or around 1968. The petitioners have been regularly assessed to wealth-tax. For the assessment years 1981-82 to 1983-84 their assessments were completed by orders dated 13-3-1985, and 20-3-1985, respectively. However, subsequently certain additions were made to the wealth returned by the petitioners for the said assessment years and the net wealth was determined by the Wealth Tax Officer. Thus, those assessments have become final. Their assessments for the subsequent years have also been completed by the Wealth Tax Officer. However, their assessment for the years 1981-82 to 1983-84 were set aside by the Commissioner of Wealth Tax, in exercise of his powers u/s 25 of the Wealth Tax Act. They were set aside on the ground that one of the daughters of the petitioners who were one of the partners in the firm of Admiralty Hotel, had retired in November, 1984, releasing and relinquishing with the interest in the firm and on the basis of the consideration provided to them, for such retirement, release and relinquishment, the value of their interest adopted for the purpose of assessment in the earlier assessments for the aforesaid years, appear to be low. On this basis the Commissioner set aside the assessments, and directed the Wealth Tax Officer, to redo the assessment, after fixing the market value of the petitioners'' interest in the said firm. Pursuant to the aforesaid order of the Commissioner, the Assistant Commissioner who has assumed jurisdiction of their assessments, issued notices for making fresh assessments in respect of the assessment years 1981-82, 1982-83 and 1983-84.

Under the order of the Commissioner the assessing authority was required to value the petitioners'' interest in the firm, Admiralty Hotel, and redetermine their net wealth for the assessment 1981-82 to 1983-84. Thereafter, the District Valuation Officer, called upon the petitioners to show cause why the property should not be valued as follows, in respect of the assessment years 1981-82 to 1983-84.

Rs.

As on 31st March, 1981

64,30,900

As on 31st March, 1982

78,47,900

As on 31st March, 1983

1,22,16,000

The District Valuation Officer, by an order purporting to have been passed u/s 16A(5) of the Wealth Tax Act, determined the fair market value of the aforesaid property in the manner said above. The said order was passed on 20-1-1990. According to the petitioners herein the aforesaid valuation and the order passed by the District Valuation Officer are wholly erroneous, illegal, without jurisdiction and violative of the provisions of the Wealth Tax Act. u/s 16A of the Wealth Tax Act, the assessing authority is empowered to refer the valuation of a property to the Valuation Officer. The Wealth Tax Act was amended by the District Tax Laws (Amendment) Act, 1989, with effect from 1-4-1989. Under the said amendment Schedule III was introduced by the Act, which provided for the rules for determining the value of the assets. Part B of the said rules provided for the valuation of immovable property. Under rule 3, the value of any immovable property being a building or land pertaining thereto, shall subject to the provisions of rules 4, 5, 6 7 and 8 for the purpose of section 7(1) be the amount arrived at by multiplying the net maintainable rent by the figure 12.5. Rule 5 provides for the computation of the gross maintainable rent and reads as follows:

"5. For the purpose of rule 4, "gross maintainable rent" in relation to any immovable property referred to in rule 3 means:

Where the property is let, the amount received or receivable by the owner, as annual rent or the annual value assessed by the local authority in whose area, the property is situated for the purposes of levy of property tax or any other tax on the basis of such assessment, whichever is higher.

Where the property is not let, the amount of annual rent assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax, on the basis of such assessment, or if there is no such assessment, or the property is situated outside the area of any local authority, the amount which the owner can reasonably be expected to receive as annual rent had such property been let."

The aforesaid rules, which have been brought on statute book by the Direct Tax Laws (Amendment) Act, are procedural in nature and hence would apply for all pending assessments. According to the petitioners, so far as rules for valuation are procedural in nature, the rules, as they exist on the date of valuation, should be adopted for the valuation of the properties even in respect of pending assessments. In the above circumstances, it is stated by the petitioners herein that for the purpose of valuing their interests in the partnership, the value of the property as disclosed in the balance sheet of the firm should be taken. Even assuming without conceding that a revaluation of the asset is called for, such revaluation of the asset should be in accordance with part B of Schedule III in so far as it relates to immovable property. Prior to the introduction of Schedule III, residential properties were valued in accordance with rule 1BB of the Wealth Tax Rules, which was introduced with effect from 1-4-1979. Various Courts have held that the said rule is procedural in nature and will cover even earlier assessment years and will have to be applied in pending assessments relating to earlier years, That being so, the Valuation Officer herein has adopted the value of the property in question herein on the basis of the land and building method by adopting a cost of construction as estimated by him. In the valuation report, he has estimated the value of the building on his own basis by adopting land rate separately and the cost of construction separately for the building. The valuation report clearly states in para 4.1 that the method of valuation adopted by the Valuation Officer is the land and building method. This method has been adopted notwithstanding under Schedule III, a rent capitalisation method is provided as statutorily recognised method of valuation. The rules also provide for the determination of the net maintainable rent, for evaluating the fair market value by multiplication of the net maintainable rent by the multiple factor. In view of the specific statutory provision providing for the valuation of immovable property, the land and building method adopted by the valuer is erroneous and not justified. Further, the order of the Valuation Officer is binding on the assessing officer and the only remedy available to an assessee who desires to challenge the order of the Valuation Officer is to file an appeal against the assessment after an assessment is made by the assessing officer in conformity with the order of valuation. This puts the assessee at a great disadvantage insofar as the making up of an assessment order in conformity with the order of valuation would put the assessee to great hardship and inconvenience insofar as consequent on such an assessment, the assessee would be required to pay the tax demanded notwithstanding that such an assessment or demand is based on an order of the Valuation Officer, which is not liable to be called in question and which may even be erroneous. The petitioners herein have no right of appeal against the order of the Valuation Officer notwithstanding that such order is wholly erroneous, violative of the provisions of the Act, but would still form the basis of the order of assessment and demand, which would be made by the Assisstant Commissioner of Wealth Tax. The present valuation by the Valuation Officer of the immovable property belonging to the firm on the basis of the land and building method is violative of Schedule III of the Wealth Tax Act thus vitiating the said order.

Therefore, it is prayed by the petitioners that the orders dated 20-1-1990, of the District Valuation Officer u/s 16A(5) in Order Nos. DVO(Mad)WT/23/89-90, dated 20-1-1990 and DVO(Mad)WT/22/89-90 are erroneous, illegal and opposed to the provision of the Act and are liable to be quashed.

8. Impugned orders herein are challenged by the petitioners herein on the ground that they are opposed to the specific provisions of the Wealth Tax Act being rule 3 under part B of Schedule III to the Act, that under the Direct Tax Laws (Amendment) Act, Schedule III has been introduced under the Wealth Tax Act providing for rules determining the value of assets u/s 7(1) of the Act. Rule 3 thereof prescribes the method of valuation of immovable property, building or land appurtenant thereto by multiplying the net maintainable rent by the figure 12.5. The said rule is absolute and specific and has to be invoked by valuing immovable property, that the Supreme Court and High Courts have held that the provision for valuation is a machinery provision being procedural in character and consequently the provisions existing at the time of valuation should be applied to pending cases and that the first respondent erred in ignoring the provisions of rule 3 of the III Schedule in regard to the valuation of immovable property and in adopting the land and building basis for valuing the immovable property. It is also contended by the petitioners that the Valuation Officer acting u/s 16A(5) is bound by the rules of valuation under the Act in valuing a property and cannot adopt his own method not being in consonance with basis required to be adopted under the rules, and that the order of the first respondent is erroneous, illegal and violative of the provisions of law and the principles of natural justice insofar as the valuation has been made without giving the petitioner a full and reasonable opportunity as required by law.

9. Per contra, in the counter- affidavit inter alia it was contended by the respondents that the assessment years involved in these proceedings are 1981-82 to 1983-84 and that, therefore, Schedule III of the Wealth Tax Act which has been introduced by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989 has no application to the present case, that the decisions relied on by the petitioner have no application to the facts of the present case, that the provisions contained in Schedule III to the Wealth Tax Act, 1957, are substantive provisions and they are only prospective and applicable to future assessment years after their introduction and that in the impugned orders the first respondent has fixed the market value of the property in question after considering all the materials on record on the basis of the rules and method of valuation as per the provisions in force for the said assessment years and also that the land and building method is one of the well-recognised methods of valuation of immovable properties and that it is not open to the petitioners to rely upon Schedule III of the Wealth Tax Act which has no application for the assessment years involved herein, to say that the method adopted by the first respondent was erroneous and not justified. They also state that it is open to the petitioners to challenge the valuation of the property made by the first respondent u/s 16A in the appeals against the assessment orders before the

appellate authorities under the Wealth Tax Act and that, therefore, these writ petitions have to be dismissed.

10. Having seen the entire records available in this case it is clear that the only issue that is in dispute herein is regarding the determination of the interest of the petitioners in a firm known as "Admiralty Hotel". It is true that after the completion of the original assessments under the Wealth Tax Act, for the assessement year 1981-82 to 1983-84, the Commissioner of Wealth Tax revised the assessment orders u/s 25 of the Wealth Tax Act, 1957. The Commissioner of Wealth Tax found that one of the partners of the firm Admiralty Hotel retired on 29-11-1984, from the partnership releasing her interest for a consideration of Rs. 22 lakhs. The value for the entire property on the date of release was worked out to Rs. 66 lakh. In the light of this information, the Commissioner of Wealth Tax took the view that the value of the share interest of the petitioners in the said firm adopted in the assessments was very low and that, therefore, the assessment orders were erroneous and prejudicial to the interest of the revenue. Therefore, the Commissioner of Wealth Tax directed the second respondent to redetermine the market value of the share interest of the petitioners in the said firm in accordance with law after taking into account the said release deed. The second respondent, thereafter invoked the provisions of section 16A of the Wealth Tax Act, 1957, and referred the valuation of the immovable property owned by the firm at No. 5, Norton Road, Mandaveli, Madras-28, to the first respondent on 15-2-1989. Even though such reference made by the 2nd respondent to the first respondent for valuation of the asset in question was objected to by the petitioners, this court is of the view that the same is valid and within his jurisdiction.

11. Pursuant to the reference u/s 16A the first respondent issued notice on 21-6-1989, calling for the relevant documents of the property and the petitioners replied stating that all the documents had been furnished in connection with the valuation of the property for other co-owners. It is stated in the order passed by the first respondent that he inspected the property on 27-11-1989, in the presence of the authorised representative of the petitioners. Thereafter the first respondent issued a letter on 29-1-1989, estimating the preliminary value of the said property at Rs. 64,30,900 as on 31-3-1981, Rs. 78,47,900 as on 31-3-1982, and at Rs. 1,22,16,000 as on 31-3-1983, and fixed the date for filing objection against the preliminary valuation on 15-12-1989. It is also stated in the order of the first respondent that the petitioners had acknowledged receipt of the preliminary valuation and asked for extension of time to file their objection. It is also significant to note that time was extended for filing the objection upto 7-1-1990, and it was made clea that no futher extension would be granted. But subsequenlty the petitioners had neither filed their objection nor sought for extension of time. Thereafter only the first respondent passed the impugned orders. Therefore, in the above facts and circumstances it is very clear that before passing the impugned orders, the petitioners were given proper opportunities to put forward their case, but they only did not avail the same

properly. Therefore, there is no reason for the petitioners herein to contend that the impugned orders are violative of the principles of natural justice. Such contention of the petitioners is hereby rejected.

12. Thus, now the only issue remains to be decided is whether the respondents were right in valuing the property in question under the land and building method or it has to be done under the provisions contained in Schedule III to the Wealth Tax Act, 1957, as contended by the petitioners herein. In this regard, it is contended by the respondents that the provisions contained in Schedule III to the Wealth Tax Act which has been introduced by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1-4- 1989, has no application to the present case since the said provisions are substantive provisions and they are only prospective and applicable to future assessment years after their introduction. Whereas in this regard it is categoric contention of the petitioners that the revaluation of the asset should be in accordance with part B of Schedule III insofar as it relates to immovable property and that prior to the introduction of Schedule III, residential properties were valued in accordance with rule 1BB of the Wealth Tax Rules, which was introduced with effect from 1-4-1979. According to the petitioners, the aforesaid rules, which have been brought on statute book by the Direct Tax Laws (Amendment) Act, are procedural in nature and hence would apply for all pending assessments. Therefore, it is their case that insofar as the rules for valuation are procedural in nature, the rules, as they exist on the date of valuation, should be adopted for the valuation of the properties even in respect of pending assessments. In support of their said contention, the learned counsel for the petitioner relied on the following judgments:

Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, and

CWT v. Sunder Lal Gupta (1996) 88 Taxman 15 (Raj)

In Commissioner of Wealth Tax, Meerut Vs. Sharvan Kumar Swarup and Sons, , the Supreme Court has held that rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings, ending on 1-4-1979, when the rule came into force. So also, in (1996) 88 Taxman 15 (supra) it has been clearly held as follows :

"The provisions relating to valuation of the property, contained in Schedule III, are procedural in nature and the procedural law is applicable to the pending cases also. The provisions are in the character of rules of evidence and `therefore the market value has to be determined in accordance with the provisions which are in operation at the time when the assessment is made."

Both the above judgments squarely apply to the facts of the present case and they entirely support the contention and the stand taken by the petitioners in this case. Therefore, there is every force in the contention raised by the petitioners herein that the first respondent erred in ignoring the provisions of rule 3 of the III Schedule in regard to the valuation of immovable property and in adopting the land and building basis for valuing the immovable property, and that the Valuation Officer acting u/s 16A(5) is bound by the rules of valuation under the Act in valuing a property and cannot adopt his own method not being in consonance with basis required to be adopted under the rules. Therefore, it is rightly contended by the learned counsel for petitioner that the valuation in terms of a method other than that prescribed under the rules is not in accordance with law nor permitted. Therefore, for all the aforestated reasons and in the facts and circumstances of this case, this court is of the view that the impugned orders of the first respondent are opposed to the specific provisions of the Wealth Tax Act being rule 3 under part B of Schedule III to the Act and for this reason alone the impugned orders are liable to be quashed.

13. Thus, in the light of my above elaborate discussions with regard to the various aspects of this case, I am of the clear view that the petitioners herein have clearly make out a case in their favour and that, therefore, their writ petitions succeed and deserve to be allowed as prayed for. Consequently, the impugned orders of the first respondent dated 20-1-1990, are liable to be quashed.

14. In the result, both the writ petitions are allowed as prayed for. No cost. Consequently the impugned orders of the first respondent dated 20-1-1990, are hereby quashed and the first respondent is hereby directed to pass valuation order in accordance with law and as directed by this court in this order. WMP Nos. 4303 and 4304/1990 are dismissed.