
(2005) 03 KL CK 0036

In the High Court Of Kerala

Case No : IT Ref. No's. 270 to 273 of 1999

T.A. Abdul Khader

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Wealth Tax Act, 1957 — Section 16A, 27(3), 5(1), 7

Citation : (2005) 195 CTR 513 : (2005) 2 ILR (Ker) 771 : (2006) 280 ITR 420 : (2005) 3 KLT 445

Hon'ble Judges : K.S. Radhakrishnan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : M. Pathrose Mathai, John Ramesh and K.I. John, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

K.S. Radhakrishnan, J.—The Tribunal, Cochin Bench, in compliance with the direction of this Court in OP No. 22358 of 1997 referred certain questions of law which are consolidated as redrafted by us as follows for our consideration u/s 27(3) of the WT Act :

"Whether, on the facts and circumstances of the case, was the Tribunal justified in upholding the valuation of the building under s, 5(1) of the WT Act based on market rent or rent receivable after ignoring municipal valuation which was based on actual rent paid for the building by the tenant firm constituted by the assessee and family members as partners ?"

Assessee had preferred four appeals, WTA Nos. 357 to 360/Coch/1991, for the asst. yrs. 1983-84 to 1986-87, before the Tribunal, Cochin Bench. First ground, which is common in all the four appeals, was with regard to the valuation of multi-storeyed building belonging to the assessee at Changanacherry town. Assessee had constructed a building on a plot of 7 cents of land in the heart of Changanacherry town which consists of basement and five floors including the ground floor. On the ground floor, an area of 59.5 sq. m. is occupied by M/s Swapna Jewellery, a partnership firm, carrying on business in jewellery of which

assessee is a partner. There are two other portions on the first floor occupied by S.H. Book Depot and Choice Readymade Shop. In the return of wealth, assessee had shown value of Rs. 7,18,000 for the entire property including the value of the land at Rs. 50,000. WTO did not accept the value as returned by the assessee and he referred the matter to the District Valuation Officer (DVO) u/s 16A of the WT Act for fixing the market value as on the valuation dates of 31st March, 1983, 31st March, 1984, 31st March, 1985 and 31st March, 1986, relevant for the asst. yrs. 1983-84 to 1986-87. Valuation Officer estimated the net annual income from the property at Rs. 2,19,852 and on that basis determined the market value by rent capitalisation method using the multiplying factor of 12.4844. Market value of the property was thus arrived at Rs. 27,44,721 for all the four assessment years. Aggrieved by the valuation, the assessee took up the matter before the CWT by filing appeals which were rejected. Further appeals preferred before the Tribunal were also rejected.

2. Counsel appearing for the assessee, Sri M. Pathrose Mathai, submitted that the Tribunal was not justified in upholding assessment on the basis of the valuation made by the DVO. Counsel submitted that in respect of Swapna Jewellery rent was fixed as Rs. 1,500 per month as per the lease deed and there is no provision under which enhanced rental value can be adopted in the matter of valuation of the property. Counsel further submitted in respect of that area value should have been taken as per the municipal valuation under Sch. m. Senior standing counsel for taxes, Sri P.K. Ravindranatha Menon, submitted that there was a proper reference to Valuation Officer and he has rightly valued the asset. So far as Swapna Jewellery is concerned, area let out is 59.58 sq. m. only whereas Choice Readymade Shop is occupying 64.48 sq., m. Counsel pointed out that assessee's family members are partners of Swapna Jewellery and they are not recovering rent or rent receivable even as per Sch. III.

3. Value of assets for the purpose of WT Act has to be determined u/s 7 of the WT Act, 1957. Sec. 7 says that value of any asset other than cash, for the purpose of the Act, shall be its value as on the valuation date determined in the manner laid down in Sch. III. Sch. III deals with rules for determining the value of assets. Rule 1 says that the value of any asset, other than cash, for the purpose of the Act, shall be determined in the manner laid down in those Rules. Part B of Sch. III deals with immovable property. Rule 3 deals with valuation of immovable property. Rule 4 states that for the purpose of Rule 3, net maintainable rent in relation to an immovable property referred to in that rule, shall be the amount of gross maintainable rent as reduced by the amount of taxes levied by any local authority in respect of the property and a sum equal to fifteen per cent of the gross maintainable rent. "Gross maintainable rent" is dealt with in Rule 5, which we extract below for easy reference.

5. Gross maintainable rent how to be computed.---For the purposes of Rule 4, "gross maintainable rent", in relation to any immovable property referred to in Rule 3, means--

(i) 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;

(ii) 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.

Explanation : In this rule,--(1) "annual rent" means,--

(a) where the property is let throughout the year ending on the valuation date (hereinafter referred to as "previous year"), the actual rent received or receivable by the owner in respect of such year;

(b) where the property is let for only a part of the previous year, the amount which bears the same proportion to the amount of actual rent received or receivable by the owner for the period for which the property is let as the period of twelve months bears to the number of months (including part of a month) during which the property is let during the previous year :

Provided that in the following cases, such actual rent under Sub-clauses (a) and (b) shall be increased in the manner specified below.

(i) where the property is in the occupation of a tenant and taxes levied by any local authority in respect of the property are borne wholly or partly by the tenant, by the amount of the taxes so borne by the tenant;

(ii) where the property is in the occupation of tenant and expenditure on repairs in respect of the property is borne by the tenant, by one-ninth of the actual rent;

(iii) where the owner has accepted any amount as deposit (not being advance payment towards rent for a period of three months or less), by the amount calculated at the rate of 15 per cent per annum on the amount of deposit outstanding from month to month, for the number of months (excluding part of a month) during which such deposit was held by the owner in the previous year, and if the owner is liable to pay interest on such deposit, the increase to be made under this clause shall be limited to the sum by which the amount calculated as aforesaid exceeds the interest actually paid;

(iv) where the owner has received any amount by way of premium or otherwise as consideration for leasing of the property or any modification of the terms of the lease, by the amount obtained by dividing the premium or other amount by the number of years of the period of the lease;

(v) where the owner derives any benefit or perquisite, whether convertible into money or not, as consideration for leasing of the property or any modification of

the terms of the lease, by the value of such benefit or perquisite.

(2) "rent received or receivable" shall include all payments for the use of the property, by whatever name called, the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the property in respect of any obligation which, but for such payment would have been payable by the owner.

Counsel for the assessee contended that the assessee was receiving only Rs. 1,500 per month as per lease agreement and that was the rent receivable from Swapna Jewellery and, therefore, the assessing authority was not justified in holding that rent @ Rs. 70.25 sq. ft. so far as Swapna Jewellery is concerned. Counsel made considerable emphasis on the meaning of the expression "received or receivable". Counsel submitted that so far as Swapna Jewellery is concerned, amount received is only Rs. 1,500 for 59.5 sq. m. and hence that is the amount receivable. Counsel submitted in case of any doubt the Valuation Officer should have considered the annual value assessed by the local authority and not the rent received for the adjacent building. Counsel placed reliance on the decision in Commissioner of Income Tax Vs. Upnishad Investment P. Ltd. and Others, .

4. Rule 5(i) states that where the property is let, the amount received or receivable or the annual value assessed by the local authority is the gross maintainable rent, but the assessing authority has to adopt the rent whichever is higher. In a case where property is not let, the amount of annual rent assessed by the local authority for the purpose of levy of property tax would be the gross maintainable rent. For the building let out there is no compulsion that the authority should adopt the rent for which it is let out. The authority can assess the rent which is receivable and also the annual rental value assessed by the municipality. The legislature has advisedly used the expression "whichever, is higher", which gives an option to the assessing authority. In a given case if the assessing authority finds that rent which is claimed by the owner is not the rent receivable, the authority can always assess the rent which is receivable, or in a given case, can go for the municipal assessment. But, the choice is on the assessing authority. Assessing authority has got jurisdiction in a given case to assess the rent receivable by the owner as annual rent in case he finds the building let out on lower rent so as to escape from the provisions of the WT Act. For determining such gross maintainable rent assessing authority has got the jurisdiction to compare the rent in respect of similar buildings. Rule 5(ii) would further lend support to the above reasoning. Rule 5(ii) states that where the property is not let, the assessing authority has got the power to determine the amount which the owner can reasonably be expected to receive as annual rent had such property been let. We are of the view the same yardstick will be followed even if the building is let out, if a lower rent is shown to escape from the provisions of the WT Act. We, therefore, find no illegality in accepting the valuation report submitted by the DVO u/s 16A of the WT Act for fixing the

market value of the building.

In such circumstances, we find no illegality in taking the rent received from the nearby shop for computing such gross maintainable rent. The question is, therefore, answered in favour of the Revenue and hold that the Tribunal is justified in taking the market rent as fixed by the Valuation Officer as the rent receivable for the purpose of wealth-tax valuation