
(1979) 07 KAR CK 0004

In the Karnataka High Court

Case No : TRC No's. 94 of 1975 and 20 of 1976

V.C. Ramachandran

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 16-07-1979

Acts Referred:

Citation : (1979) 2 TAXMAN 451

Hon'ble Judges : M.K. Srinivasa Iyenger, J;M. Rama Jois, J

Bench : Division Bench

Advocate : A.N. Jayaram, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Rama Jois, J.—Whether the market value of a residential building under self-occupation of the owner-assessee for purposes of levying wealth-tax under the Wealth-tax Act, should have been ascertained under capitalisation of annual rental value method, and not by adopting the land and building method, is the precise question of law arising for consideration in these two references made by the ITAT, in respect of the assessment years 1970-71 and 1971-72 pertaining to the same assessee u/s 26(1) of the Wealth-tax Act (hereinafter referred to as "the Act"). The assessee owns several house properties in the city of Bangalore. One of them is occupied by the assessee. It is No. 5, Richmond Road, Bangalore. The area of the site is 23,280 sq. ft. The built area is, 3,845 sq. ft. For the five assessment years, from 1965-66 to 1969-70, the assessee had furnished a report from a registered valuer as to the valuation of that property. The value of the building was given at Rs. 83,907. The valuer valued the site at Rs. 5.25 per sq. ft. But he had taken into account only the actual built area. The WTO accepted" the valuation of the building and also the rate per sq. ft. for the site. He, however, found no justification to exclude the unbuilt area of the site. Taking the valuation of the unbuilt area, he also assessed the market value of the building at Rs. 2,06,127. The assessment for five years was finalised together. On appeal by the assessee, this valuation was confirmed by the AAC. This order

was not challenged further by the assessee. For the assessment year 1970-71, the assessee furnished the value of the building at Rs. 1,00,000 and submitted that capitalisation of annual rental value method was applicable even to the self-occupied house in view of decision of this Court in Commissioner of Wealth Tax, Mysore Vs. V.C. Ramachandran, in which case the assessee himself was the party. Similarly for the assessment year 1971-72 also, the assessee furnished valuation of the building of Rs. 1,00,000, but furnished the annual rental value at Rs. 2,500. For both the assessment years, the WTO held that the value of the building as fixed by the AAC for the previous five assessment years should be adopted and assessed the tax accordingly. The assessee preferred appeals before the AAC. On the wrong assumption that capitalisation of annual rental value method had been adopted for the earlier five assessment years, he directed that the same method should be adopted for the assessment years 1970-71 and 1971-72 also. The WTO preferred appeals against the AAC's orders to the ITAT. The Tribunal, by a common order, allowed the appeals holding that the adoption of land and building method was justified on the facts and in the circumstances of the case and rejected the plea of the assessee that market value should have been ascertained only by capitalisation of rental value method. Thereafter, at the instance of the assessee, the following-question of law is referred for our opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the valuation of the self-occupied property was correctly made by the income tax Officer on the land and building method ?

2. Though the wording of the question indicates that the assessee is questioning the correctness of the market value of the building as ascertained by the land and building method, the real controversy between the assessee and the Revenue is as to the correctness of adopting the land and building method of valuation, to the self-occupied house, instead of capitalisation of annual rental value method as pleaded by the assessee. Therefore, we proceed to answer the reference, taking the real controversy between the assessee and the Revenue into consideration.

3. Shri A.N. Jayaram, the learned counsel for the assessee, submitted that the Revenue should have ascertained the market value of the self-occupied building by the capitalisation of annual rental value by multiplying the same twenty times (hereinafter referred to as the "rental value method"), as had been done in respect of other buildings of the assessee located in the vicinity which are under occupation of tenants. He argued that having regard to the provision of the Rent Control Act, even the premises now occupied by the assessee, if let out, could not fetch more than the fair rent which could be fixed under that Act and, therefore, there was no reason why the same basis should not have been adopted in respect of self-occupied building. He submitted that the adoption of land and building method was not justified.

4. Shri S.R. Rajasekhara Murthy, the learned counsel for the Revenue, submitted that self-occupied building stands on a different footing as the owner can sell the

building to any willing purchaser and give vacant possession, whereas it may not be possible to give vacant possession of tenant-occupied building in view of the restrictions on evictions of tenants by the Karnataka Rent Control Act, 1961. He also submitted that in the present case, there was only one method of valuation furnished by the assessee which was accepted by the Revenue for five assessment years from 1965-66 to 1969-70, i.e., land and building method and, therefore, the adoption of the same value for the assessment years 1970-71 and 1971-72 was justified and cannot be questioned by the assessee.

5. In this case, the question for consideration is not as to whether the adoption of rental value method to the rented buildings of the assessee was correct, but the question is as to whether the rental value method should also have been adopted to the self-occupied building of the assessee. However, we may observe that, for purposes of ascertaining market value, the tenant-occupied buildings, in certain circumstances, may stand on a different footing than the self-occupied buildings, in view of the restriction on the eviction of tenants under the Rent Control Act and an adverse effect it has on the price which might be offered by a willing purchaser. Therefore, we confine ourselves to find out as to whether the adoption of land and building method for ascertaining the market value of the self-occupied building in these cases was justified.

6. Section 7(1) of the Act which prescribes the method of ascertaining market value reads:

Value of assets how to be determined: (1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax officer it would fetch if sold in the open market on the valuation date.

In view of the wordings of section 7(1) of the Act, when the property liable to wealth-tax under the Act is an immovable property, the market value of such property has to be estimated in each case. This is obviously for the reason that there could be no ruling market price for immovable properties, as in the case of ordinary articles of commerce. Therefore, the market value of a building, like the one with which we are concerned in this case, would be the possible price it would fetch, if the assessee were to sell the property to a willing purchaser. This necessarily means that the market value, for purposes of section 7 of the Act, has to be estimated approximately, as the actual price would not be known unless the property is sold. But such an estimation has to be on the basis of well settled principles and the market value estimated must be a reasonable one and cannot be arbitrary. The market value of each land and building varies from the other. It depends upon a variety of factors, such as: (1) the size, the nature and the quality of construction; (2) the locality in which the building is situated including its environment; and (3) the open space available apart from the built area, i.e., as to whether there is further scope for utilisation of land in more beneficial and profitable manner and several other advantageous or disadvantageous factors found to exist in a given case. It also depends on the

fact as to whether it is tenant-occupied and, if so, the rent which is being paid and whether the enhancement of rent and eviction of tenant is statutorily controlled, because the restriction on enhancement of rent and on the securing of vacant possession certainly deter a willing purchaser from offering a better price. Therefore, in order to estimate the value of buildings, the two well known methods of ascertaining market value of building which have come into existence are the rental value method and the land and building method. Some times an average of the two valuations is also adopted. But which of the three methods is appropriate in a given case must always depend upon the facts and circumstances of that case.

7. In order to ascertain the market value of immovable properties, there are well settled guidelines laid down in several decisions of the Supreme Court, while dealing with the question of ascertaining market value for purposes of payment of compensation for the land acquired u/s 23 of the Land Acquisition Act, and in other cases of compulsory acquisition of property for public purposes. The principles on the basis of which market value of an immovable property could be ascertained for the purpose of awarding compensation to the owner on the compulsory acquisition of property by the State under the Land Acquisition Act, has been laid down by the Supreme Court in *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, *State of Kerala Vs. P.P. Hassan Koya*, and *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, . They may be summarised as follows:

1. METHOD OF VALUATION

- i. Information available through bona fide sale deeds executed to effect the sale of lands in the vicinity and the comparable benefits and advantages which they possess.
- ii. Capitalisation of rental value, actually received or likely to be received, by taking the rent which a similar property located in the neighbourhood is fetching, by multiplying it 20 times as is usually done or at such multiple having due regard to the prevailing rate of interest on gilt-edged security. This method is more appropriate in the case of buildings used for business purposes. A number of years" of purchase of the actual or immediate by prospective profits of the lands acquired.
- iii. Opinion of experts.

2. These methods, however, do not preclude the taking of any other special circumstances to arrive at an estimate of market value.

3. Even two or all of the methods may be taken into account in arriving at a reasonable value.

In the case of *R.C. Cooper v. Union of India* [1970] 40 Comp. Case 325 the Supreme Court, while dealing with the question of payment of compensation on compulsory acquisition of property under the Banking Companies Acquisition Act,

reiterated the principles laid down in the three earlier decisions referred to above in para 103 and laid down a few more principles. They are:

- i. The method of capitalisation of rental value with an appropriate multiplier is a satisfactory method of valuation of lands and buildings, if only the land has been put to full use legally permissible and economically justifiable and the income is commercial and not a controlled return or a return depreciated on account of several circumstances [vide para 104].
- ii. If the property is not put to full use or the return is not commercial, capitalisation of rental value pegged down statutorily by the provision of Rent Control Legislation, yields misleading result and cannot be considered as fair value of the property [vide paras 104 and 113].
- iii. Vacant premises have considerably larger value than business premises which are occupied by tenants [vide para 113].

These principles laid down by the Supreme Court, in respect of ascertaining the market value of immovable properties, apply equally for the purpose of ascertaining market value of the immovable properties as required u/s 7 of the Act.

8. The aforesaid principles have been applied to the valuation of buildings for the purpose of the Act or under Estate Duty Act by the High Court in the following decisions:

1. In the case of *K. Bhoomiamma v. CED* [1978] 115 1TR 703, a Division Bench of the Karnataka High Court upheld the valuation of a building for the purposes of computation of estate duty at the price for which it was purchased by the deceased, three years before his death, rejecting the plea of the accountable person that as the building was let out after purchase, rental method of valuation should be adopted, which would have come to less than half the price for which the property was actually purchased.

2. In the case of *J.N. Bose Vs. Commissioner of Wealth Tax*, the Calcutta High Court held that in respect of immovable property there being no fixed market price, ascertainment of the market value involves some amount of guess work, but it must be intelligible, based on certain objective factors having a rational nexus to the valuation, and out of several methods of value, the one which is most suitable with reference to the facts and circumstances of the concerned case should be adopted. Further it was observed that unless there are circumstances requiring the change of valuation, valuation accepted for earlier years should be adopted for the subsequent years also. On the facts of that case, the Court held that valuation accepted for the earlier assessment years on the basis of valuation report furnished by expert valuer, ought to have been continued and there were no circumstances to change the value by adopting rental method, which yielded a higher value in that case.

3. In the case of *Debi Prosad Poddar Vs. Commissioner of Wealth Tax*, the

Calcutta High Court expressed views similar to those as expressed in the case of J.N. Bose (supra). But on the facts of that case it was held that as the land could not be sold without demolishing an old building standing on it, and as the building could not be demolished without rejecting the tenants, and as tenants could not be ejected in view of the rent restriction law, valuation of property on rental method was proper though such value was less than the price actually paid, as the intention of the assessee to put up multi-storeyed building after purchase was frustrated.

4. In the case of CED v. Bijoy Kumar Khandelwal [1977] 108 ITR 864, the Gauhati High Court upheld the valuation of a building, which was partly let out for non-residential purposes and partly occupied by the deceased for his residence, made by the income tax Appellate Tribunal on rental method for purposes of computation of estate duty having regard to the law imposing restriction on recovery of rent, rejecting the plea of the Revenue that land and building method should have been adopted. This view was taken relying on the decision of the Supreme Court in Adinaryana Setty's case (supra) and Tribeni Devi's case (supra) and holding that rental method adopted by the Tribunal in that case was the appropriate one having regard to the facts and circumstances of that case.

5. In the case of WENGER AND CO. AND OTHERS Vs. DISTRICT VALUATION OFFICER, NEW DELHI AND OTHERS., the building property of the assessee situate at Connaught Place area of New Delhi was partly tenanted and partly self-occupied. For purpose of levying wealth-tax, the valuation officer valued the tenant-occupied portions on the basis of capitalising rental value. In respect of self-occupied portions, he fixed the value of the building on the basis of prevailing rates for sale of commercial flats in the same locality and the value of the site on the basis of price paid in respect of sale of an adjacent property. The legality of this valuation was questioned by the owner in a writ petition. The Delhi High Court rejected the plea of the petitioner therein that the self-occupied portions also should have been valued by adopting rental value method and upheld the land and building method adopted for ascertaining the market value of portions of the building.

6. This Court in the earlier case of V.K. Ramachandran (supra) held that market value has to be ascertained by the Court in each case with due regard to the conditions of the time and factors which affect transactions between a willing seller and an intending buyer and in any case the decision at best is to be regarded as approximate and not mathematically accurate estimate.

7. In the case of S. Neelaveni v. CIT (TRC 48 of 1977 and dated 26-6-1979) decided by us, we held that adoption of the average of the value ascertained by the rental method and land and building method was appropriate. In that case, the assessee was owning two buildings in the city of Bangalore, one was self-occupied and the other was permitted to be occupied by students gratuitously. There was great disparity in the valuations of the building furnished by the

expert valuer, who had furnished the valuation both under the rental method and land and building method, but had suggested the adoption of rental method on the ground that it is more reasonable in view of the provisions of the Rent Control Act. The assessing authority had rejected the plea of the assessee and adopted the land and building method of valuation. On appeal, the AAC was of the opinion that in view of the great disparity in the valuation, adoption of average value of both the methods for both the buildings was just and proper. On appeal to the Tribunal by the WTO, the Tribunal upheld the adoption of average value in respect of the building under permissive occupation of the students but insofar as it related to the self-occupied building, reversed the order of the AAC and directed the levy of wealth-tax on the basis of its value made according to land and building method solely for the reason that it was self-occupied and also holding that rental value method has no application to self-occupied building. On a reference made to the High Court u/s 26(1) of the Wealth-tax Act, we took the view that there was no difference between the self-occupied building and the building in which students were allowed to stay free of payment by the assessee and, therefore, the reasons which impelled the AAC to take the average value of both the methods for the building under permissive occupation of students being the same as in respect of the self-occupied building also, the Tribunal having accepted the average value in respect of the former was not justified in rejecting the same method in respect of the latter solely on the ground that it was self-occupied. He also held that it would not be correct to say that the rental value method has no application at all in determining the valuation of the self-occupied residential house.

9. As regards the methods required to be adopted in ascertaining the market value of a building, the substance of all the aforesaid decisions may be summarised as follows:

1. Rental value method : The rental value method of ascertaining the market value of a building is as follows:

- i. By ascertaining rental value of a building either on the basis of the rental value fixed by the local authority concerned or by taking the rent paid when occupied by tenants, or on the basis of rent paid in respect of comparable buildings in the vicinity or on the basis of opinion of expert valuer.
- ii. Capitalisation of annual rental value so ascertained by an appropriate multiplier.

2. Land and building method: Market value of a house property under this method could be ascertained as follows:

- i. on the basis of the information about the price paid in bona fide purchases of comparable properties located in the neighbourhood when available, or
- ii. on the basis of price paid to the same property, if it was purchased, or
- iii. by securing the report of an expert valuer made having due regard to all

relevant factors.

3. Average method : By taking an average of the value arrived at by the aforesaid two methods in case of great disparity in the valuation arrived at by the two methods if only it is not possible to say that any one such valuation is approximately correct.

4. Which of the three methods should be adopted in a given case depends on the facts and circumstances of that case.

10. Bearing in mind the above principles, we shall now proceed to consider as to whether the Tribunal was, in the facts and circumstances of this case, justified in adopting the valuation by land and building method arrived at on the basis of expert opinion instead of adoption of rental value method, as pleaded by the assessee. The undisputed facts of the case are that the building is self-occupied and not given on rent. The land is not fully utilised in that out of the total area of the site which comes to 23,280 sq. ft., only 3,845 sq. ft. is occupied by the building. The same building was valued on the basis of the report furnished by an expert valuer at Rs. 2,06,127 for the five assessment years from 1965-66 to 1969-70. The said decision has not been challenged by the assessee. Moreover, the assessee did not furnish the valuation of the building on the basis of rental value method except asserting that rental value method should be adopted by furnishing the value of the building at Rs. 1,00,000. In fact, the only valuation figure furnished by the assessee himself and adopted by the Tribunal is the one furnished by the expert valuer which was according to the land and building method. The Tribunal, relying on the principles laid down in Cooper's case (supra), held that as the land is not fully developed and utilized and major portion of the site is left vacant, adoption of rental value method by comparing the rent received in respect of similar buildings which is a controlled return in view of the Rent Control Act, would give a misleading valuation in respect of the building in question which is self-occupied and adopted the same valuation at which the assessment was made in the preceding five years. In the circumstances, in our opinion, it can hardly be said that the Tribunal was not justified in accepting the valuation given by an expert valuer on the basis of land and building method, which valuation was furnished by the assessee himself.

11. The learned counsel for the assessee, however, placed reliance on the decision of this Court in the earlier case of the assessee [CWT v. V.C. Ramachandaran (supra)] relevant portion of which reads:

...A well recognised basis of valuation of buildings in urban areas in the rent normally realised by these when these are leased out to others and the rent expected to be got if these are in occupation of the owners. The valuation of a land with building thereon by valuing the land and the building separately and adding the value of the one to the other does not furnish a reliable estimate of the property.

We do not think that the aforesaid decision intended to lay down, as an

invariable rule, that in respect of self-occupied buildings, capitalisation of rental method should be adopted as the basis for ascertaining the market value of the property. Moreover, in the said case the only matter for consideration was the valuation of buildings of the assessee in the possession of tenants yielding only the fixed rental income. It was held that in respect of rented buildings, capitalisation of annual rental value, by an appropriate multiplier, was the correct method. Therefore, the observation on which the assessee relies, is not the ratio of that decision. Moreover, the said observation that in respect of self-occupied buildings also rental value method for ascertaining the market value should be adopted is contrary to the principles of valuation laid down by the Supreme Court in Cooper's case (supra) (at paragraphs 104 and 113) on which the Tribunal has rightly relied.

12. The learned counsel for the assessee next submitted that if there are two valuations of the same property arrived at by two different methods, the one which is favourable to the assessee should be accepted. In support of this submission, he relied on the decision of the Punjab and Haryana High Court in Jaswant Rai Vs. Commissioner of Wealth-tax, In the said decision, the High Court extended the principle laid down by the Supreme Court in The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., to the effect that in interpreting the provisions of taxing statutes, if two interpretations are possible, the one which is favourable to the taxpayer should be accepted and held that in cases where there are two valuations of the same property, the one which is in favour of the assessee should be accepted. With utmost respect to their Lordships, we are unable to agree with the aforesaid view. In our opinion that principle applicable for the interpretation of taxing statute cannot be imparted and applied to the valuation of property in a given case, which constitutes a question of fact. If there are more than one valuation of the same property, the one which is reasonable and nearest to the correct market value, having due regard to all the relevant facts and circumstances of the case, alone should be accepted. Therefore, in such a case if the higher valuation as between several valuations appears to be a reasonable one, the same has got to be accepted. We are unable to accede to the submission that in cases where the value of the property is ascertained under more than one method, the lowest should be accepted. In the result, we answer the question referred for our opinion as follows:

On the facts and in the circumstances of these cases, the Tribunal was right in law in holding that the valuation of the self-occupied property of the assessee, ascertained by adopting the land and building method, should be taken as the valuation of that property for assessing the tax liability under the Wealth-tax Act.