

Cwt Vs. Gopal Sutwala

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Court : Allahabad

Decided On : Oct-09-2006

Reported in : [2008]299ITR30(All)

Judge : R.K. Agrawal and ;Vikram Nath, JJ.

Appellant : Cwt

Respondent : Gopal Sutwala

Judgement :

ORDER

R.K. Agrawal, J.

1. The Income Tax Appellate Tribunal, Allahabad has referred the two questions of law under Section 27(1) of the Wealth Tax Act, 1957, hereinafter referred to as 'the Act' for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in allowing deduction of 1 /6th for repairs and 6 per cent for collection charges for working out the net Annual Letting Value of the property ?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the reversionary value of the land

does not enter into picture where the value of a property is determined by capitalising the net annual Letting Value of the property?

2. The present reference relates to the assessment years 1973-74 to 1975-76.

3. Briefly stated the facts giving rise to the present references are as follows:

The assessees who are Gopal Sutwala (Individual), Gopal Sutwala (Karta) of Hira Lal Sutwala (HUF) and Smt. Parti Devi (HUF) are co-owners in the following five properties:

1. 58/44 & 58/44A, Birhana Road, Kanpur
2. 75/4, Halsey Road, Kanpur
3. 16/16, Civil Lines, Kanpur (known as Barley House),
4. 49/23, General Ganj, Kanpur
5. 49/26, General Ganj, Kanpur.

(hereinafter referred to as property Nos. 1, 2, 3, 4, & 5 respectively)

4. The assessee had valued the above properties on the basis of the valuation report dated 10-6-1971 of the approved Valuer, Shri T.N. Gupta for the years under consideration as under:

Property No. 1

1973-74

Rs. 2,37,568

1974-75

Rs. 3,37,568

1975-76

Rs. 2,83,000

Property No. 2

1973-74

Rs. 3,48,000

1974-75

Rs. 3,48,000

1975-76

Rs. 4,26,000

Property No. 3

1973-74

Rs. 1,87,600

1974-75

Rs. 1,87,600

1975-76

Rs. 1,88,000

Property No. 4

1973-74

Rs. 40,800

1974-75

Rs. 40,800

1975-76

Rs. 51,360

Property No. 5

1973-74

Rs. 74,760

1974-75

Rs. 74,460

1975-76

Rs. 80,660

5. The Wealth Tax Officer referred the question of valuation of these properties for the assessment years 1974-75 and 1975-76 to the departmental Valuation Cell under Section 16A of the Act and on the basis of his reports, determined the value of the aforesaid properties for all the three years as under:

Property No. 1

1973-74

Rs.3,67,000

1974-75

Rs. 3,67,000

1975-76

Rs. 3,72,300

Property No. 2

1973-74

Rs. 6,62,400

1974-75

Rs. 6,62,400

1975-76

Rs. 6,64,300

Property No. 3

1973-74

Rs. 1,07,300

1974-75

Rs. 11,07,300

1975-76

Rs. 12,70,700

Property No. 4

1973-74

Rs. 1,89,100

1974-75

Rs. 1,89,100

1975-76

Rs. 2,21,800

Property No. 5

1973-74

Rs. 3,23,000

1974-75

Rs. 3,23,000

1975-76

Rs. 3,61,900

The Wealth Tax Officer assessed the assessee's share in these properties to Wealth-tax accordingly.

6. Being aggrieved, the assessee filed appeals before the Appellate Assistant Commissioner. The valuation made by the Valuation Officer was contested on the following grounds in respect of the first three properties:

(1) Deduction on account of repairs to the extent of 1 /13 only given by the Valuation Officer while working out the net ALV.

(2) Deduction given on account of collection charges to the extent of 4 percent only.

(3) Inclusion of the reversionary value of the land.

(4) The multiple adopted in respect of property No. 2 at 17.68 was on the highside.

The capitalisation method adopted by the Approved Valuation Officer was approved by the Appellate Assistant Commissioner but he held that the deduction for repairs and collection charges should be allowed at 1/6th and 6 per cent respectively as against 1/12th and 4 per cent allowed by the Valuation Officer for working out the net A.L.V. Further, the Appellate Assistant Commissioner relying upon the decision of the Calcutta High Court in the case of CIT v. Smt. Ashima Sinha : [1979]116ITR26(Cal) deleted the addition of reversionary value of the land. The multiple of 1768 adopted by the Valuation Officer in respect of property No. 2 was also reduced to 16 times. Thus, the Appellate Assistant Commissioner

determined the value of the three properties as under:

Property No. 1

1973-74

Rs.2,60,000

1974-75

Rs. 2,83,000

1975-76

Rs. 2,83,000

Property No. 2

1973-74

Rs. 4,75,000

1974-75

Rs. 5,18,720

1975-76

Rs. 5,18,720

Property No. 3

1973-74

Rs. 2,50,000

1974-75

Rs. 2,50,000

1975-76

Rs. 2,50,000

7. The department being aggrieved filed appeals against the order of the Appellate Assistant Commissioner before the Appellate Tribunal. The Appellate Tribunal held that the deduction of 1 /6th for repairs and 6 percent for collection of rent was rightly allowed by the Appellate Assistant Commissioner for working out the net A.L.V. of the properties in view of the Calcutta High Court decision in the case of Smt. Ashima Sinha (supra). The Tribunal relying upon the cases of Smt. Ashima Sinha (supra) and CIT v. Anup Kumar Kapoor : [1980]125ITR684(Cal) also held that since the market value of the properties was being arrived at by capitalising the annual letting value, no other factor, like the reversionary value of the land could enter into picture. Insofar as property Nos. 4 and 5 are concerned, the order of the Appellate Assistant Commissioner was set aside to be made afresh.

8. We have heard Sri R.K. Upadhyay, learned Standing counsel for the revenue.

9. We find that so far as the first question is concerned, the Tribunal in paragraph 7 of its order dated 17-1-1981 has dealt with the matter in the following words:

7. The first dispute between the department and the assessee is regarding the deductions to be allowed on account of repairs and the collection charges from the gross rental for the net A.L.V. to be arrived at to which a particular multiple number is to be applied for determining the fair market value of the property in question. According to the departmental valuer, the deductions on account of repairs and collection charges shall be to the extent of 1 /12th and 4 per cent respectively, while working out the net annual letting value in accordance with the instructions issued by the Central Board of Direct Taxes. According to the assessee's valuer, the said deductions should be at 1/6th and 6 per cent respectively, as has been laid down in the Income Tax Act. Such deductions, according to the learned Counsel for the assessee, Mr. Pandey, have been approved in the decision of the Calcutta High Court in CIT v. Smt. Ashima Sinha : [1979]116ITR26(Cal) . We, after deliberation, agree with the assessee in this behalf. Under the Income Tax Act, 1961, it is laid down that in determining the income to be notionally taxed under

the head 'income from property', the deductions to be allowed on account of repairs and collections charges stand at 1 /6th and upto 6 per cent respectively. Further, on going through the decision of the Calcutta High Court in the case of Ashima Sinha (supra), we find that in working out the net annual letting value the deductions on account of maintenance of repairs, management and collection charges have been allowed at 1/6th and 6 per cent of respectively of the gross rent minus the municipal taxes. That being the position, we are of the considered view that the stand taken by the learned Counsel for the assessee in this behalf merits acceptance.

10. From the reading of the aforesaid order, it appears that even the Central Board of Direct Taxes had issued a Circular for granting deduction of 1/12th towards the repairs and 4 per cent towards collection charges while determining the annual letting value. The Tribunal, however, relied upon a decision of the Calcutta High Court in the case of Smt. Ashima Sinha (supra), and allowed deduction of 1 /6th for the repairs and 6 per cent for the collection charges which is not illegal cause Rule IBB of the Wealth Tax Rules provides in which we do not find any illegality. It may be mentioned here that from 1-4-1979, rule IBB was inserted in the Wealth-tax Rules wherein the deduction of 1/6th towards repairs and 6 per cent towards collection charges had been allowed. Thus, the intention of the Central Board of Direct Taxes was to recognize the deduction of 1/6th towards repairs and 6 per cent towards collection charges. It may be mentioned here that rule IBB has been held to be retrospective in nature and as the Tribunal has decided the appeal on 17-1-1981, thus the order of the Tribunal is in conformity with the rule IBB which is retrospective in nature. Accordingly, the first question referred to us is answered in the affirmative ie., in favour of the assessee and against the revenue.

11. So far as the second question is concerned, we find that this Court in the case of CWT v. Ram Saran Kajriwal (1987) 168 ITR 485', has held that the reversionary value of the land cannot be taken into consideration where the value of the property is determined by capitalising the annual letting value.

12. Respectfully, following the aforesaid decision, we answer the second question referred to us in the affirmative i.e., in favour of the assessee and against the

revenue.

13. However, on the facts and circumstances of the case, there shall be no order as to costs.

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