

Hamilton and Co. (P.) Ltd. Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Sep-28-1993

Reported in : (1994)48ITD534(Kol.)

Judge : N Pachua, R Easwar

Appellant : Hamilton and Co. (P.) Ltd.

Respondent : Assistant Commissioner of

Judgement :

1. WTA Nos. 450 to 452 (Cal.) of 1991 relate to the assessment years 1984-85, 1985-86 and 1986-87. These appeals are by the assessee. WTA Nos. 413 to 415 (Cal.) of 1991 are appeals by the department for the same years. WTA No. 123 (Cal.) of 1992 is an appeal by the department for the assessment year 1987-88. Since all the appeals were heard together, they are disposed of by a common order.

2. The assessee is a private limited company. It is the owner of a building at Mo. 1A Connaught Place, New Delhi, the land upon which the building stands is held by the assessee on a perpetual lease.

3. In the present appeals we are concerned with the valuation of the aforesaid property. The property is a commercial property. It was let out since 1944. The tenants are stated to use the property for their offices. The assessee became liable to wealth-tax by virtue of Section 40 of the Finance Act, 1983 from the

assessment year 1984-85. In the wealth-tax returns the assessee disclosed the value of the property at Rs. 5,13,044. The value is based on the rental capitalisation method.

The rent has been taken by the assessee on the basis of the Delhi Rent Control Act. It is called the "standard rent" under the said Act. The standard rent has been arrived at Rs. 46,174 in respect of the total area of 39307 sq.ft. in accordance with the principles prescribed by the Delhi Rent Control Act. Applying 9% rate of capitalisation the assessee adopted a multiplier of 100/9. The computation of the standard rent was not disputed by the WTO. However, he took the view that the actual rent from the property should be taken as the basis for valuing the property on rent capitalisation method. He had no quarrel with the assessee regarding the fact that the rent capitalisation method was the proper method. He noticed that the assessee received gross rent of Rs. 14.66 lakhs for the assessment year 1984-85, Rs. 15.05 lakhs for the assessment year 1985-86 and Rs. 15.58 lakhs for the assessment year 1986-87. Taking the figures of gross rent as the basis and after deducting the municipal taxes, 1/6th for repairs, insurance, ground rent and collection charges he arrived at the net maintainable rent and applying 8% rate of capitalisation he adopted a multiplier of 12.5% and valued the property at Rs. 1,33,70,700 for the assessment year 1984-85, Rs. 1,34,54,700 for the assessment year 1985-86 and Rs. 1,39,90,500 for the assessment year 1986-87.

4. On appeal, the CIT (Appeals) upheld the view of the WTO that under Section 7(1) of the WT Act the market value of the property as on the valuation date has to be found out and while finding out such market value the standard rent cannot be taken as the market rent and it was only the actual rent received by the assessee that should be taken as reflective of the market rent. In this view he upheld the view of the WTO that the actual rent should form the basis of the estimate of the market value. However, following the judgment of the Calcutta High Court in *Aditya Narain Roy v. CWT* [1990] 183 ITR 175 he reduced the multiplier to 81/2 as against 121/2 adopted by the WTO. The market value of the property was thus reduced partly by the the CIT (Appeals).

5. While the assessee is aggrieved by the adoption of the actual rent as the basis for valuing the property under the rent capitalisation method, the department is in appeal against the reduction of the multiplier from 121/2 adopted by the WTO to 81/2.

6. We have heard the rival submissions. We have also looked into the facts. We have perused the authorities cited on behalf of both the sides.

7. On a consideration of the above, we are of the view that the contention of the assessee that the standard rent under the Delhi Rent Control Act alone has to be the basis of estimating the market value of the property under the rent capitalisation method has to be accepted.

under Section 7(1) of the IT Act, the value of any asset, other than cash, shall be estimated to be the price which in the opinion of the Assessing Officer it would fetch if sold in the open market on the valuation date. This procedure is subject to the rules made in this behalf. The Id. D.R. submitted that the property has to be valued in accordance with Rule 1BB of the WT Rules. When we turn to Rule 1BB, we find that it is applicable only to a house which is wholly or mainly used for residential purposes. This condition rules out the applicability of the rule to the property in question before us. It is common ground that the property held by the assessee is a commercial property having been let out to tenants who are using the property as their office. The question, therefore, is whether we can ignore the actual rent received by the assessee and estimate the market value of the property by taking the standard rent under the Delhi Rent Control Act as the basis. In *Ahmed G.H. Ariff v. CWT* [1970] 76 ITR 471 the Supreme Court held that the provisions of Section 7(1) of the WT Act do not contemplate an actual sale or the actual state of the market, but only enjoins that it should be assumed that there is an open market and the property can be sold in such a market. In *Lynall*, In re 1[1970] 75 ITR 564 the Court of Appeal in England held that though the hypothetical sale should be built upon a foundation of reality as far as possible, it is even more important that it should not defeat the intention of the section by laying undue emphasis or undue concern for reality in what is essentially a hypothetical situation. These decisions lay down the principle that what is

contemplated under Section 7(1) of the WT Act is essentially a hypothetical situation. If that is so, the hypothetical rent alone can be taken as the basis of the estimate of the property on the rental capitalisation method. The actual rent will have to be ignored. The hypothetical rent is the standard rent that is determined by applying the principles laid down in the Rent Control Act. In arriving at the hypothetical sale envisaged by the WT Act we cannot shut our eyes to the law of the land. The Supreme Court in *Corpn. of Calcutta v. Smt. Padma Debi* AIR 1962 SC 151 has cautioned that the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent. The Calcutta High Court has pointed out in *CED v. Radha Devi Jalan* [1968] 67 ITR 761 that an open market conceived by the statutory provision does not include "black market" which term was used by the Court to denote commercial transactions entered into between the parties in brazen defiance of law.

8. An enquiry has to, therefore, be necessarily made as to what is the hypothetical rent receivable in respect of the property. The hypothetical rent necessarily involves the idea of a hypothetical tenant. We have to always bear in mind that the actual realities must, as far as possible, be kept away from the estimate of the market value since Section 7(1) is essentially aimed at a hypothetical situation. In *Dewan Daulat Rai Kapoor v. NDMC* [1980] 122 ITR 700, the Supreme Court was concerned with the question of determining the annual value of a building at which it may expected to be let from year to year, under the Delhi Rent Control Act. The house tax or the municipal tax was to be based on the annual value. The Court decided that even if the landlord was lawfully entitled to receive the contractual rent from the tenant, such contractual rent could not form the basis of the ratable value of the building because the reasonable expectation of the landlord to receive rent from a hypothetical tenant could not exceed the standard rent determinable in accordance with the principles of the Rent Control Act. The standard rent thus fixed was held to be the upper limit which a landlord may expect to receive from a hypothetical tenant. This decision was reiterated in *Mrs. Sheila Kaushish v. CIT* [1981] 131 ITR 435 (SC) and in *Amolak Ram Khosla v. CIT* [1981] 131 ITR 589 (SC). In *Dr. Balbir Singh v. M.C.D.* [1985] 152 ITR 388, the Supreme Court explained the judgment in *Dewan Daulat Rai Kapoor's* case (supra) and stated

that the standard rent arrived at on the basis of the principles laid down in the Rent Control Act was the upper limit of the rent which the landlord may expect to receive from a hypothetical tenant. The basis of the aforesaid judgments is that one cannot expect to get more than what the law allows. The law prescribes that the standard rent is the upper limit and, therefore, a hypothetical landlord letting out his property to a hypothetical tenant can expect to receive not more than the standard rent. This hypothetical situation has to be worked into the provisions of Section 7(1) of the WT Act when it comes to the question of estimating the market value of the property as on the valuation date on the hypothesis that the property is sold in the open market on that date. The realities of the situation have no place in such a hypothetical sale as held by the decisions cited in the earlier part of our order.

9. We cannot accept as correct the submission of the Id. D.R. that the ratio of the above Supreme Court decisions is not applicable since the Legislature had amended the provisions of the Income-tax Act with effect from 1-4-1976 and also because rule 1BB, even as originally introduced with effect from 1-4-1979, contained a provision that if the actual rent is more than the standard rent the actual rent alone should be taken as the basis. We are not here concerned with the provisions of Section 23(1) of the IT Act. After the amendment made with effect from 1-4-1976, the actual rent if it is more than the standard rent has to be taken for assessment, no doubt. The amendment was specifically introduced to nullify the effect of the Supreme Court judgments cited above. We are not concerned with the income-tax assessments now. As far as rule 1BB of the WT Rules is concerned, we have already seen that the property in question being a commercial property, the said rule is not applicable. Therefore, the fact that the rule contains provisions enabling the WTO to take the actual rent, if it is more than the standard rent, as the basis of valuation is neither here nor there.

10. Mr. Bajoria referred to the judgment of the Calcutta High Court in *Kishorilal Dhandhanial v. CWT* [1992] 197 ITR 595. In that case the High Court held that the ratio decidendi of the judgments of the Supreme Court referred to above was that the annual value of the property should in no case exceed what the regulatory legislation for tenancy of premises determines as standard rent or as fair rent.

Though in that case, the actual rent received by the assessee was less than the rent prevalent in neighbouring areas and was held by the Tribunal not to reflect the fair rent, the principle laid down by the High Court is that in all such cases when a comparison is made between the actual rent and the fair rent, the comparison should be made with the fair rent or the standard rent determined under the relevant rent control law. We understand the judgment as laying down the proposition that in no case the annual value can exceed the standard rent or fair rent determined on the basis of the relevant rent control legislation. In that case the High Court ultimately directed the Tribunal to find out the fair rent in accordance with the provisions of the West Bengal Premises Tenancy Act. This decision certainly supports the assessee's case before us. We cannot accept the contention of the Id. D.R. that since the facts in that case were different from the assessee's case, the decision cannot be availed of by the assessee. As we have seen, though the facts were different the principles laid down by the High Court are clearly applicable to the present case.

11. The judgment of the Delhi High Court in CWT v. Sheila Kaushish [1989] 180 ITR 362 can also be said to support the assessee's case Indirectly, though rendered in the context of Section 27(3) of the WT Act.

12. For the aforesaid reasons we are of the view that the WTO was not justified in adopting the actual rent received by the assessee as the basis for estimating the value of the property on the basis of the rent capitalisation method. The CIT (Appeals) was equally in error in upholding the WTO's view. We vacate their orders on this point and direct the WTO to estimate the value of the property on the basis of the standard rent determined in accordance with the principles of the Delhi Rent Control Act. As already stated, the assessee had filed the working of the standard rent as per the said Act before the WTO. The same has not been questioned. The WTO will have to therefore value the property taking that figure as the basis.

13. Grounds 2 and 3 in all the appeals are to the effect that the WTO should have referred the matter to the Valuation Officer under Section 16A of the Act. At the time of hearing, Mr. Bajoria, on behalf of the assessee, stated that these grounds

are not pressed. They are, therefore, dismissed.

14. The last ground in the assessee's appeals is that there is double inclusion of the value of the land, once as part of the building and again separately as rent itself. This double inclusion apparently arises out of misconception of the facts. As disclosed by Schedule 'E' to the balance-sheet as on 31-10-1983, there is only one land held by the assessee on perpetual lease upon which the building was built. This was disclosed at Rs. 15,078 in the balance sheet. The value of the land stands automatically included in the value of the property declared by the assessee at Rs. 5,13,044 taking the standard rent as the basis. The Calcutta High Court has held in CIT v. Smt. Ashima Sinha [1979] 116 ITR 28 that when the value of the property is based on the rent capitalisation method, no separate addition can be made for the reversionary value of the land. Therefore a separate addition of Rs. 25,000 in respect of the land in addition to the value of the property in question, does not seem to be called for. This ground is allowed.

15. In the assessee's appeals the assessee has raised additional grounds by an application dated 29-7-1992. The first ground raised in the additional grounds is that the leasehold interest in land cannot be treated as an asset under Section 40(3)(v) of the Act. The contention is that the assessee is having a perpetual lease of the land and is not the absolute owner of the land and, therefore the same cannot be included in the wealth-tax assessment. It is further contended that Under Sub-clause (vi) of the aforesaid section the building also is exempt from wealth-tax since it is used by the assessee for its business. The contention that the leasehold interest in the land cannot be included in the assessment will have to be accepted having regard to the fact that what is includible under Section 40(3) of the Finance Act, 1983 in the assessment of the closely held company is the different types of assets specified in that sub-section only. The asset that should belong to the company must be the land itself and not merely a lesser interest in the land. Accordingly, this contention is upheld and we hold that the value of the leasehold interest in the land cannot be included in the assessment. This ground raised by way of additional ground does not involve any investigation into the facts because the CIT (Appeals) has recorded a clear finding in paragraph 4 of his common order that the property is situated on a plot taken on perpetual lease.

16. The contention that the building is exempt as having been used in the assessee's business cannot be straightaway accepted, though the ground raised by way of additional ground may be admitted having regard to the judgment of the Supreme Court in *Jute Corpn. of India Ltd. v. CIT* [1991] 187 ITR 688 and the Full Bench of the Bombay High Court in *Ahmedabad Electricity Co. Ltd. v. CIT* [1993] 199 ITR 351. In the judgment of the Supreme Court, the decision cited by the Id. D.R. namely *Addl CIT v. Gurjargravures (P.) Ltd.* [1978] 111 ITR 1 has been referred to and explained. The assessee has stated in the Statement of Facts filed before the first appellate authority that the building is used by the tenants for office purposes. In the additional ground however it is contended that the building is used by the assessee for the purposes of its business. Though the additional ground is admitted the factual position remains to be verified. Only if the building is found to have been used by the assessee for its business or for any of the purposes mentioned in Clause (vi) of Section 40(3) of the Finance Act, 1983, can the assessee be given exemption. We therefore direct the WTO to examine this question and adjudicate on the issue in accordance with law and after giving adequate, opportunity of being heard to the assessee.

17. The next point raised in the additional grounds is that the value of the building is insignificant and the value, if any, can only be in respect of the land which also does not belong to the assessee. We have already held that the value of the assessee's interest in the land has to be excluded from the assessment. The question whether the building does or does not have any value is a highly argumentative or debatable question. The building consists of 39307 sq. ft. which has been let out to various tenants and the actual rent received by the assessee is in the region of Rs. 15 lakhs per year. The lease of the land is also a perpetual lease. Under these circumstances it will be very difficult to hold that the value attributable to the property is not because of the building and is only because of the land. We are unable to accept that the building gets its value only because of the land and off itself it has no value. We therefore dismiss this point raised in the additional ground.

18. The last point raised in the additional ground is that the deduction should be given in respect of the amount payable to the Delhi Municipal Authorities on

account of unearned increase in the value of the land and for increased liability for municipal taxes in respect of the actual rent taken as the basis of valuation. The second deduction does not arise in view of our decision that only the standard rent can be taken as the basis of valuation. As far as the deduction for unearned increase is concerned the case of the assessee is no doubt supported by a decision of the Supreme Court in CWT v. P.N. Sikkand [1977] 107 ITR 922. However, there are no facts on record to support the claim made for the first time before us. While therefore admitting the additional ground on the basis of the judgments of the Supreme Court and the Full Bench of the Bombay High Court cited supra we would direct the ITO to examine this aspect and decide the issue in accordance with law. The assessee of course will be afforded adequate opportunity of supporting its claim before the Wealth-tax Officer.

21. In the department's appeals the only ground in all the years is that the CIT (Appeals) should not have reduced the multiplier from 12.5 to 8.5. This ground is opposed to the judgment of the Calcutta High Court in Aditya Narain Roy's case (supra) which has been followed by the CIT (Appeals). We, therefore, do not see any error in the order of the CIT (Appeals) on this point and confirm the same.

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