

Assistant Commissioner of Wealth Vs. Dr. H.R. Virmani

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-12-2005

Reported in : (2006)99TTJ(Delhi)242

Judge : V Gandhi, N Vasudevan

Appellant : Assistant Commissioner of Wealth

Respondent : Dr. H.R. Virmani

Judgement :

1. WTA Nos. 54/Del/1998 and 55/Del/1998 are appeals filed by the Revenue while WTA Nos. 17/Del/1998 and 18/Del/1998 are appeals by the assessee and all these appeals are directed against the common order dt. 25th Nov., 1997, of CIT(A)-XVIII, New Delhi, relating to the asst.

yrs. 1991-92 and 1992-93. The grounds of appeal of the Revenue in both the appeals are identical and it read as follows : 1. That the learned CWT(A) erred in law and on facts in reducing the value of plot from Rs. 25,39,50,217 to Rs. 97,00,425.

2. That the order of learned CWT(A) be set aside and that of AO be restored.

2. The ground of appeal of the assessee which is identical in both the appeals challenges the addition of Rs. 97,00,425 sustained by the CIT(A) representing the value of an alleged open plot of land measuring 1,847.70 sq. mtrs., marked as plot "Z" by the Asstt. Valuation Officer in the map prepared by him and annexed to his

report.

3. The facts and circumstances under which the present appeals arise are as follows. The assessee is an individual. He was the owner of a property at 63, Najafgarh Road, New Delhi. This property measures 11.97 acres. The dispute in the present appeal is with regard to the valuation of this property. This property was originally in the possession of one Shri K.N. Modi who entered into possession by virtue of an agreement dt. 22nd May, 1949, with the Delhi Improvement Trust for purchase of the said property. The said Shri K.N. Modi by agreement dt. 25th Aug., 1949, transferred the right in the said land under the agreement with Delhi Improvement Trust in favour of the assessee. The assessee thereafter leased out the entire property to a company by name M/s Virmani Industries (P) Ltd. (VIPL for short) w.e.f. April, 1957, for a lease rent of Rs. 18,000 per year. The Delhi Development Authority who was a successor to Delhi Improvement Trust on 26th Aug., 1970, conveyed title in respect of the property to the assessee. The assessee again entered into a lease agreement on 6th May, 1980, with VIPL in respect of the entire property excluding an area of 4,219 sq.

yards and 5,778 sq. yards which had been compulsorily acquired by the Government. The lease to VIPL was for a period of 9 years from 6th May, 1980, on a monthly rent of Rs. 2,000. Under the lease deed, VIPL had a right to sublet, assign or otherwise part with portions of the leased premises with the permission of the lessor, i.e., the assessee and the assessee was bound to give consent in the absence of sufficient cause for refusal of permission. Even before this lease, on 6th May, 1980, VIPL had also let out portions of the property to sub-lessees from the year 1974. The lease deed also provided for extension of the lease, but there was no formal extension in writing between the assessee and VIPL.

It is not in dispute that VIPL with its own funds had constructed structures on the said plot of land and had let out the same to sub-tenants who were 36 in numbers. VIPL had offered the rental income from property as income from house property under the IT Act. The ITO sought to tax it under the head 'Income from other sources', but on appeal by the assessee, it was held that since the VIPL is the owner of the building, the income in question shall be assessed as income from

house property in the hands of the VIPL. This order of the CIT(A) was also confirmed by the Hon'ble Tribunal in ITA No. 2731/Del/1976 for asst. yr. 1982-83, dt. 28th Feb., 1989. Thus, the ownership of the building stood conclusively established as that of VIPL.

4. The assessee declared the value of the property for the purpose of wealth-tax on the basis of capitalized rental value of the property. In assessment proceedings under the WT Act for asst. yr. 1991-92 and 1992-93, the AO was of the view that VIPL is a family company and that the rents were never increased by the assessee. The WTO, therefore, was of the view that benefit of Rule 3 of Schedule III to the WT Act should not be extended to the assessee. The WTO, therefore, applied the rate of Rs. -5,250 per sq. mtr of land and adopted a value of Rs. 25,43,14,567 as against the returned value of Rs. 3,64,350. The total area of the land was 49,444.07 sq. mtrs. In the appellate proceedings before the CIT(A), it transpired that the property was in possession of the tenants even after termination of the lease and that sub-tenants were in physical possession of the property and, therefore, the tenant as well as the sub-tenants were protected under the Delhi Rent Control Act as well as the Transfer of Property Act and would be considered as tenants holding over. In the opinion of the CWT(A), these factors would be very relevant for determining the valuation of the property and he, therefore, set aside the order of the WTO to examine all these aspects before determining the value of the property. In the assessment proceedings before WTO after the order of the CWT(A), reference was made to the DVO by the WTO. The DVO informed the WTO on 27th March, 1997, that since the assessee was not co-operative it was not possible for him to file a report by 31st March, 1997. In this situation, the AO again held that the facts remained same and, therefore, the value adopted in the original assessment at Rs. 25,43,14,567 for both the assessment years deserved to be determined again. It, however, transpired that after the completion of the assessment by the WTO, the DVO by his letter dt. 6th June, 1997, informed the WTO that he had carried out physical inspection of the property and found that no part of the property was in possession of the assessee and that the entire property was in possession of the sub-tenants. The DVO also expressed his opinion that the valuation of the property has to be determined on the basis of yield method. This report of the DVO was not taken cognizance of by

the WTO as he had already completed the assessment.

5. The assessee preferred appeals before the CWT(A) and reiterated his submissions that since the property was in the occupation of tenants who continued to be protected tenants by virtue of the Delhi Rent Control, Act as well as the provisions of the Transfer of Property Act, the determination of the value on the basis of yield method was to be accepted. The assessee also brought to the notice of the CWT(A) about the report of the DVO, dt. 6th June, 1997, confirming the fact that the property was in possession of the tenants and that yield method was the proper method for valuing the property in question. On such submissions the CWT(A) held as follows.

6. The CWT(A) rejected the valuation report of the DVO, dt. 6th June, 1997, wherein he had opined that the property was still in possession of the tenant and no part of the property was in possession of the assessee, since the same had been filed after completion of the assessment by the WTO. In his opinion, the report had no evidentiary value in law. He, therefore, with a view to find correct status of the property and existence of tenants directed the DVO to inspect the property and make his report. The DVO, one Mr. R.P. Maker, submitted his report before the CWT(A). The DVO prepared a map of the property.

He found that the entire property consisted of buildings, except 3 places which were marked as "X", "Y" and "Z" measuring 191 sq. mtrs., 252 sq. mtrs and 1,847.70 sq. mtrs., respectively, which were lying vacant. In the property marked "X" and "Y", certain constructions were going on while in the property marked as "Z" was lying vacant, but was protected with a boundary wall. All the places except places marked 'X', "Y" and "Z" were reported to be in possession of tenants. The DVO, however, expressed his opinion that in respect of the property in possession of the tenants, the same has to be valued on yield basis, but he also qualified his finding by observing that the assessee was a director in VIPL and the fact that the tenants put up construction without any objection from the assessee which showed nexus between VIPL and the various sub-tenants. This fact, according to the DVO, should be taken as a factor for holding that the property was a freehold property and the value of the property should be determined by applying a rate of

Rs. 5,250 per sq. mtr. The DVO's report was forwarded by the CWT(A) to the WTO for his comments and he expressed the opinion that the conclusions of the DVO as given in his report dt. 25th Nov., 1997, should be accepted.

(a) The assessee, though was the owner of the property, VIPL had put up the construction and was the owner of the superstructure. The fact that the assessee was a director of VIPL was not enough to justify a conclusion that the transaction of lease was not genuine.

(b) That VIPL had sublet the property to 36 tenants and that those tenants were in physical possession of the property and that these tenants were entitled to protection under the Delhi Rent Control Act and were also tenants holding over by virtue of provisions of Section 116 of the Transfer of Property Act. This portion in occupation of tenants was directed to be valued by applying the yield method based on rental value of the property. With regard to vacant portions of the property marked "X" and "Y" in the plan filed by the DVO, the CWT(A) held that the sub-tenants had carried out constructions on these properties and this fact is also evident from the report of the DVO. Though this construction was unauthorized yet this fact can only go to show that even these vacant portion marked as "X" and "Y" were in the possession of sub-tenants and, therefore, they would be entitled to protection under the Rent Control Act. The valuation of this portion was also directed to be taken on the basis of rental income.

(c) With regard to open plot of land measuring 847.70 sq. mtrs.

marked as "Z" in the plan annexed to the DVO's report, the CWT(A) was of the view that this property was lying vacant. Neither the sub-tenant nor the tenant of the assessee, VIPL, had any right, title or interest in the property since the lease agreement between the assessee and VIPL had expired and this property is an open plot of land. In respect of this portion of the property, the CWT(A) was of the view that the Delhi Rent Control Act would not apply and since this property belonged to the assessee, it had to be valued separately according to the fair market value. The DVO had applied a rate of Rs. 5,250 per sq. mtr on land and this was based on the value of the property as mentioned by the Ministry of Urban Development in their letter dt. 5th Sept., 1991. Applying the aforesaid rate, the

CWT(A) directed that this piece of property be valued at Rs. 97,00,425. The CWT(A), thus, determined the value of the property by directing the AO to accept the value as returned by assessee at Rs. 3,43,550 and also directed the AO to add the value of open plot marked as "Z" at Rs. 97,00,425.

8. Aggrieved by the order of the CWT(A) in directing the AO to adopt the value as determined by the CWT(A) as against Rs. 25,39,50,217 determined by the WTO, the Revenue is in appeal before us. Aggrieved by the order of the CWT(A) in directing the open plot of land marked as "Z" in the plan of the DVO be valued at Rs. 97,00,425, the assessee has preferred the present appeals.

9. We have heard the rival submissions. The learned Departmental Representative relied on the order of the WTO. According to him, the assessee being the owner of the property in question and the tenancy with VIPL having been terminated, it was appropriate to apply the fair market value as against yield method of valuation based on rental value. The learned Counsel for the assessee, on the other hand, while relying on the order of the CWT(A) in respect of the valuation of the property excluding property marked as "Z" in the plan, of the DVO, submitted that in respect of property marked "Z" in the plan, there was nothing to show that this was in the possession and control of the assessee. According to him, the fact that the entire property has been leased out to VIPL having been accepted, there was no evidence on record to suggest that the assessee had got back possession from VIPL in respect of the area of 1,847.70 sq. mtrs. marked "Z" in the plan of the DVO. According to him, the tenant would still be entitled to be regarded as a tenant for the purpose of rent control legislation and also a tenant holding over under the Transfer of Property Act. It was also submitted during the assessment proceedings after it was set aside by the CIT(A) (that) the DVO had filed a report dt. 6th June, 1997, wherein he had clearly admitted the fact that the entire property was in possession of the tenants and no part of the property was in possession of the assessee. According to him, there was no power for the CWT(A) to have made a reference to the DVO in the course of the appellate proceedings, especially when a report of the DVO was already available on record. It was, therefore, submitted that the second report of the DVO ought to be ignored. Reliance was placed on the decision of the Hon'ble Allahabad High Court in the

case of M.C.Khunnah v. Union of India and Ors. , wherein it has been held that there was no power to the WTO to make a second reference to the Valuation Officer. Reliance was also placed on the decision of the Hon'ble Calcutta High Court in the case of CWT v. P.P. Ghosh for the proposition that when a CWT exercises powers under Section 25 for revising the order of the WTO, subsequent report of the DVO after the completion of assessment can also be taken into consideration. Relying on this judgment it was submitted that the CWT(A) ought to have relied on the first report of the DVO, dt. 6th June, 1997. Further reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT v. Shree Manjunathesware Packing Products & Camphor Works (1998) 231 ITR 53 (SC), wherein it has been held by the Hon'ble Supreme Court that for the purpose of exercising powers of revision under Section 263 of the IT Act the expression 'record' would also include record available at the time of examination by CIT. This decision, in our view, is not relevant for the purpose of the present case.

10. We have considered the rival submissions. In our view, the order of the CWT(A) insofar as it relates to the decision with regard to valuation of the property excluding the property marked as "Z" in the plan of the DVO is just and proper and calls for no interference.

Admittedly, the assessee was not in possession and enjoyment of this property. The entire property had been let out to VIPL. Though the lease deed had expired in the year 1989, VIPL continued to be in possession of the property and have been paying rents to the assessee.

Therefore, it was proper to value the property by applying the yield method based on the rental value of the property. It is not in dispute that by applying the yield method based on rental value, the value declared by the assessee at Rs. 3,43,550 was correct. We, therefore, uphold the order of the CWT(A) and dismiss the appeal by the Revenue.

As far as the appeal by the assessee is concerned, the portion marked as "Z" in the plan annexed to the report of the DVO measuring 1,847.70 sq. mtrs. was lying vacant, but was surrounded by a compound wall. The entire property had been leased out to VIPL. Even assuming a portion of it was lying vacant and surrounded

by a compound wall, it cannot be said that VIPL does not have any right or interest over this vacant piece of land as a lessee. The CWT(A) seems to have gone by the fact that the lease agreement between the assessee and VIPL had also expired in 1989 and, therefore, VIPL cannot claim any rights over this vacant piece of land. There is no basis to come to such a conclusion. As a tenant holding over, VIPL would be entitled to have all the rights as a tenant. There is no evidence on record to show that this piece of vacant land had come back to the possession of the assessee free from the leasehold rights of VIPL. The fact that the Delhi Rent Control Act would not apply to a vacant land is not enough to come to the conclusion that the assessee was in possession of this piece of land.

As already stated, as a tenant holding over, VIPL was entitled to be in possession of this vacant land also. Since there was nothing on record to show that the assessee was in possession of this piece of land, free from any leasehold rights of VIPL, it cannot be said that this piece of land has to be valued by adopting the fair market value. This piece of land would also continue to be a land which is in possession of the lessees and, therefore, its value has to be based on yield method on the rental value. Since the valuation of the entire property had been done by the assessee at Rs. 3,43,550, the same ought to have been accepted the addition of Rs. 97,00,425, made by the CWT(A), in our view, cannot be sustained. Consequently, the same is directed to be deleted. The appeals of the assessee are allowed.

11. In the result, the appeals of the Revenue are dismissed, while the appeals of the assessee are allowed.

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