Sudesh Chandra Talwar Vs. Commissioner of Wealth-tax

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Court : Kolkata

Decided On : Mar-05-1981

Reported in : (1982)26CTR(Cal)310,[1982]137ITR483(Cal)

Judge : Sabyasachi Mukharji and ;Sudhindra Mohan Guha, JJ.

Acts : Wealth Tax Act, 1957 - Section 7

Appeal No. : Matter Nos. 655, 656, 657, 670, 671 and 672 of 1977

Appellant : Sudesh Chandra Talwar

Respondent : Commissioner of Wealth-tax

Advocate for Def. : Ajit Sengupta and ;B.K. Naha, Advs.

Advocate for Pet/Ap. : D. Pal and ;Manisha Seal, Advs.

Judgement :

Sabyasachi Mukharji, J.

1. In this reference under Section 27(3) of the W.T. Act, 1957, the following questions have been referred to this court :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in the instant case the land-cum-building method was the most appropriate method of valuation ?

2. If the answer to question No. 1 be in the negative, whether the correct method of valuation would be rental method based on the actual rent received from the property ?'

2. In order to appreciate the questions it would be relevant to refer to certain facts. The assessment years involved are 1964-65, 1965-66, 1966-67, 1967-68, 1968-69 and 1969-70 for which the respective valuation dates were 31-3-64, 31-3-65, 31-3-66, 31-3-67, 31-3-68 and 31-3-69. The question of valuation of the property at premises No. 8, Dover Park, Calcutta, on the respective valuation dates was involved in the appeals before the Tribunal leading to the present reference. The said property is a trust property. It was purchased on the 30th March, 1964, for Rs. 1,20,000 by the trustees for the benefit of the minor beneficiary. It may be mentioned that the trustees were the two major sons of the tenant of the premises and one at the relevant time was a solicitor of this court. The beneficiaries of the trust are the minor children of the settlor. The said property consists of a two-storeyed building and open land measuring 17 cottahs and 8 chattaks. The building consists of 7 rooms with a garage and a servant's quarters attached to it. The assessee's father was living in the said building as a tenant at a monthly rent of Rs. 434 when it was purchased by the trustees and he continued to live therein at the same monthly rent after it was purchased. Inasmuch as certain controversy has arisen as to whether the rent was fair or not, it is appropriate, in our opinion, to refer to the order of the AAC wherein he observed, inter alia, as follows :

'The property was purchased for Rs. 1,20,000 in March, 1964. The appellant's father, Sri Shive Charan Laul Talwar, was a tenant in this house for over 20 years at a monthly rent of Rs. 434. This property had 17 cottahs of land and a two-storeyed building consisting of 7 rooms, garage, servants' quarters, etc.'

3. The Tribunal also in its appellate order observed as follows :

'It appears that the assessee's father was living in the premises as a tenant at a monthly rent of Rs. 434 and he continued to live in the premises as a tenant on a monthly rent even after it was purchased by the trustees for the benefit of the minor. The area of the said premises, according to the approved valuer's report, is 17 cottahs 6 chattaks. The building is two-storeyed and consists of 7 rooms and it

has a lawn, a garage and servants' quarters attached to it.'

4. The situation of the property is admittedly in a good residential area of the city. The assessee got the property valued by an approved valuer. The said valuer valued the land at Rs. 86,875 by applying the rate of Rs. 5,000 per cottah. Making an allowance of 10 per cent. for largeness of the area he determined its value at Rs. 78,000. He valued the building at Rs. 71,000 after allowing a depreciation of 30 per cent. After deducting 7 per cent. simple interest towards deferred development the approved valuer valued the entire property as on each of the valuation dates at Rs. 1,10,000 by applying the land-cum-building method. The WTO proceeded to make his own valuation by adopting the rental method. Having regard to the situation of the property, the size of the building and the amenities it commended, the WTO was of the opinion that the property should fetch a rent of not less than Rs. 2,000 per month and that the rent of Rs. 434 p.m. being paid by the father of the assessee was ridiculously low and did not represent the real rental value of the said property. After making a deduction on account of municipal taxes, collection charges, etc., he determined the maintainable rent of the said property at Rs. 19,000 and capitalised it by applying the multiple of 16. In this way he estimated the fair market value of the said property as on each of the valuation dates aforesaid at Rs. 3,04,000.

5. Aggrieved by the said valuation for the years under consideration the assessee wentup in appeal before the AAC of Wealth-tax who proceeded to value the property by adopting the land-cum-building method as was done by the assessee's valuer instead of the rental method that was adopted by the WTO. At the same time the AAC, however, considered that the rate of Rs. 5,000 per cottah adopted by the assessee's valuer was too low and not at all consistent with the market value of the lands prevailing in the locality. He further held that even on a conservative estimate the value of the land in the area under consideration should not be less than Rs. 15,000 per cottah after allowing a deduction of 10% for the largeness of the area. The AAC valued the property in question, that is, 17 cottahs 6 chattacks, at Rs. 2,34,563. At the same time, he accepted the value of the building adopted by the assessee's valuer at Rs. 71,464. Though the value of the property in question on land-cum-building method came to about Rs. 3,06,027, the

AAC estimated the value of the property in question at Rs. 2,75,000 on each of the aforesaid relevant valuation dates for the years under consideration against the value of Rs. 3,04,000 estimated by the WTO and Rs. 1,10,000 disclosed by the assessee. Aggrieved by the order of the AAC of Wealth-tax, both the assessee and the Revenue preferred two different sets of appeals before the Tribunal. The Tribunal disposed of all those sets of appeals by a common order. On a consideration of the rival contentions, the Tribunal observed as follows:

'13. We have given due consideration to these rival submissions. The rental method of valuation cannot be adopted in this case for more reasons than one. Firstly, the assessee's own valuer has discarded it on the ground that the rental of Rs. 434 per month which the assessee's father is said to be paying for the property to the trustees of the property is ridiculously low and the assessee himself returned the value of the property on the basis of the valuer's report. Secondly, though the property is situate in Calcutta, there is no evidence on record as regards the duration of the lease as to when the building was constructed and whether the tenant in occupation of the property, i.e., the assessee's father, is entitled to the protection of the Rent Control Act. Thirdly, it has now been explained by their Lordships of the Calcutta High Court in their latest decision in J.N. Bose v. CWT : [1976]104ITR83(Cal) , that what method of valuation would be more suitable than the other would depend upon the particular features of the property. Having regard to the peculiar features of the case, we hold that the land-cum-building method adopted by the assessee's valuer as well as the AAC is the most appropriate method of valuation to be adopted in this case.

14. But the valuation made by the assessee's valuer and that made by the AAC suffer from the same infirmity. So far as the building is concerned, there is no dispute. The AAC accepted the value given to the building by the valuer. The dispute is mainly with regard to the value of the land. The valuer has not given any data in support of the rate of Rs. 5,000 per cottah adopted by him. Nor has the AAC given any data in support of the rate of Rs. 15,500 per cottah adopted by him. We are unable to agree with the contention of the learned departmental representative that the rate adopted by the AAC is based upon his local knowledge and, therefore, it should be accepted in preference to that of the

approved valuer. As against this contention, the other side may very well contend that the rate per cottah adopted by the approved valuer is based upon his local knowledge. The value of the land prevailing on the relevant valuation date is a matter to be decided with reference to the prices for which lands in the neighbourhood were sold near about the dates of valuation. This information can be obtained either from the Registrar's office or from the persons who purchased or sold lands in the neighbourhood of the property in question near about the relevant dates of valuation. As the question of the valuation of the land was not decided by the AAC on the basis of relevant material and as we do not find any basis for the rate of Rs. 15,000 per cottah adopted by the AAC we set aside his decision, restore the appeal to his file and direct him to dispose of them afresh in the light of the above observations.'

6. Upon these, the questions, as indicated above, have been referred to this court. There is no dispute in this case, from the narration of facts, that the entirety of the premises was let out. There is also no dispute that the premises was let out at least for 20 years prior to the relevant dates. It was let out on the same rent as on the respective valuation dates. The premises in question was let out to the father of the assessee. There has been no change in the property, that is to say, there is 17 cottahs of land and it consists of 7 rooms, servants' quarters, as we have mentioned before. Now, the question is : in respect of the premises of this nature what would be the proper procedure of valuation, i.e., what would be the market price on the respective valuation dates or what, in the opinion of the WTO, such a property should fetch in the open market on the respective valuation dates

7. This question has been examined in several decisions. We may first refer to the decision of this court in the case of CED v. Radha Devi Jalan : [1968]67ITR761(Cal) where, in the context of the valuation of land and building, subject to the Rent Control Act, under the E.D. Act, this court observed that in the case of buildings which were in the possession of tenants and the tenants could not either be evicted or the rent payable by them enhanced except in accordance with the provisions of the Rent Control Act, the only appropriate method of valuation was to capitalise the annual rent by a certain number of years. The method of valuing the land and the building separately and adding up the values

would be improper in such cases because that would ignore the impact of the Rent Control Act on the value of the land and building. If there had been no rent restriction law in operation, the Controller could make a fair and objective estimate of the rent which that property might have fetched if a willing lessor wanted to let out the property to a willing lessee but if the property was subject to rent restriction Acts, in estimating the rent at which the property was being occupied on being let out, the Controller was bound to take into account the restriction imposed by the Rent Control Act to arrive at the figure of fair rent accordingly. In the instant case before us, that the premises is let out is not disputed. A point was sought to be made that what were the terms of the lease have not been clearly ascertained by the Tribunal. It was not necessary. Either it was under the lease or it was on a monthly tenancy basis. If it was on a monthly tenancy basis, even then the restriction of the rent laws would be equally applicable and the tenant could normally not be evicted except on specified grounds, and the same, more or less, would be the position under a lease. That is not disputed before us. It was not the case of either the Revenue or the assessee that there was a case of lease before the authorities below, nor is it the case before us. How could the rent be enhanced except in a specified manner These principles were again considered by this court in the context of the W.T. Act in the case of J.N. Boss v. CWT : [1976]104ITR83(Cal) , where we had observed that the following principles emerged from the decided cases with regard to the valuation of a property for the purpose of the W.T. Act : (a) in respect of an immovable property, there was no fixed market, such as for shares or for other commodities like sugar, cloth, etc.; (b) there must be a certain amount of guess, but the guess must be an intelligent one based on certain objective factors which have a rational nexus with the valuation; and (c) there are different methods--that which would be suitable for a particular property must depend upon the particular features of the property ; of those methods one should be preferred which could provide more objective data for reliance. More or less, similar principle was reiterated in the decision in the case of Debi Prosad Poddar v. CWT : [1977]109ITR760(Cal) , where we had held that, (1) attempt must be made to find out the price which the immovable property would fetch on the valuation date, imagining a willing buyer to purchase the property from a willing seller; (2) in respect of immovable property, there was no fixed market

such as market for share or for other commodities like sugar, cloth, etc. In order to arrive at a valuation in respect of the property, there must necessarily be a certain element of guess. But the guess must be based on certain facts and according to certain principles which would in the facts and circumstances of each case be as fair as possible to the Revenue as well as to the assessee in trying to imagine reasonably and intelligibly the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date; (3) such a determination, therefore, involved adopting certain methods in determining the valuation and there were different kinds of methods, as mentioned in the circulars of the Board of Revenue and the principles enunciated in the several decisions ; (4) which one of the various methods would be suitable for a particular case must depend on the nature of the property, the location of the property, the purposes for which the property was used and several other objective factors, viz., when the valuation was made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it was necessary to determine which one of the various methods would be most suitable to reach as accurately as possible the valuation on the valuation date; (5) Another factor that had to be borne in mind was that such a method should be preferred which had more objective reliable data than mere subjective opinions. If there was any objective reliable evidence of any transaction of sale of the land or property, similar in quality or of the same type and at approximately the same time, that would provide a more reliable method to follow. It is not necessary to discuss the actual facts of that case.

8. In the case of CIT v. Smt. Ashima Sinha : [1979]116ITR26(Cal) , the Division Bench of this court was concerned with the question of valuation in the context of Section 269C of the I.T. Act, 1961. There the Division Bench observed that if a statutory control was imposed on a commodity restricting the price or transfer or distribution of the same then the commodities ceased to be a commercial commodity as understood in common parlance and these became a controlled commodity and its effective value was its controlled value and not an imaginary commercial value. There, discussing the facts of the case, the court observed that where the land was fully developed by buildings erected thereon, when the

property was let out at rent and the rent had been proved and was likely to be maintained for years to come, then the yield or the rental method of valuation should be applied to determine the market value of the premises. More or less, a similar view was expressed in another decision by the same Division Bench in the case of CIT v. Panchanan Das : [1979]116ITR272(Cal) . There also the Division Bench reiterated that where the land was fully developed by buildings erected thereon, when the property was let out at rent from which the fair rent could be ascertained and when the rent had been proved and was likely to be maintained for years to come then the rental method of valuation should be applied to determine the market value of the property. On behalf of the Revenue it was emphasised that in the last two cases, the court had laid stress on the fact that the land was fully developed and the fair rent was ascertained. It was submitted that in the instant case admittedly a portion of the 17 cottahs of land was vacant. Therefore, the land was not fully developed. While it is true that the land was not fully developed, it has to be borne in mind, because of the findings of the AAC as well as of the Tribunal, that the entirety of the premises, meaning thereby the building with the land, had been let out. Therefore, the purchaser of the property would have to purchase the property with the tenant who was the tenant not only of the building but also of the land. Therefore, the difficulties in evicting the tenant, which were envisaged in the valuation of this property, would still be there as the property was let out to the tenant with a vacant land which formed part of the tenancy. Secondly, it was suggested that the rent must be a fair rent. In this case, it has been found by the Tribunal, that the assessee's father was the tenant of the premises for 20 years before the purchase of the property and the rent had been the same. Therefore, taking that background into account and the restriction imposed in increasing the rent, it cannot be said that the rent was unfair or low or that it could not be considered to be the standard rent in the light of the rent restriction laws. In this background the facts of the case will have to be judged.

9. In the case of Subhkaran Chowdhury v. IAC : [1979]118ITR777(Cal) , sitting singly in a different context of Section 269C of the I.T. Act, 1961, I had to consider this question where I reiterated the aforesaid principles. It is not necessary to deal with the facts in any greater detail.

10. So far as the rent aspect is concerned, the question has been examined of course in a different context, by the Supreme Court in the case of Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee : [1980]122ITR700(SC) . There, the Supreme Court reiterated that in relation to a building within the jurisdiction of the New Delhi Municipal Committee or the Corporation of Delhi, even if the standard rent had not been fixed by the Controller under the Delhi Rent Control Act, 1958, the landlord could not reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under that Act. That would be so equally whether the building had been let out to a tenant who had lost his right to apply for a fixation of the standard rent or the building was occupied by the owner himself. Therefore, in all such cases, the annual value of the building for purposes of house tax, whether under Section 3(1)(b) of the Punjab Municipal Act, 1911, or under Section 116 of the Delhi Municipal Corporation Act, 1957, was limited to the measure of the standard rent determinable on the principles laid down in the Rent Control Act and it could not exceed the standard rent. The Supreme Court observed at pp. 715-716 of the report as follows :

'Now, it is true that in the present cases the period of limitation for making an application for fixation of the standard rent had expired long prior to the commencement of the assessment years and in each of the cases, the tenant was precluded by Section 12 from making an application for fixation of the standard rent with the result that the landlord was lawfully entitled to continue to receive the contractual rent from the tenant without any let or hindrance. But from this fact-situation which prevailed in each of the cases, it does not follow that the landlord could, therefore, reasonably expect to receive the same amount of rent from a hypothetical tenant. The existing tenant may be barred from making an application for fixation of the standard rent and may, therefore, be liable to pay the contractual rent to the landlord, but the hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and he would be entitled to make an application for fixation of the standard rent at any time within two years of the hypothetical letting and the limit of the standard rent determinable under the Act would, therefore, inevitably enter into the bargain and circumscribe the rate of rent at which the building could reasonably be expected to let. This position becomes absolutely clear if we take a

situation where the tenant goes out and the building comes to be self-occupiedby the owner. It is obvious that in the case of a self-occupied building, the annual value would be limited by the measure of standard rent determinable under the Act, for it can reasonably be presumed that no hypothetical tenant would ordinarily agree to pay more rent than what he could be made liable to pay under the Act. The anomalous situation which would thus arise, on the contention of the revenue, would be that, whilst the tenant is occupying the building, the measure of the annual value would be the contractual rent, but if the tenant vacates and the building is self-occupied, the annual value would be restricted to the standard rent determinable under the Act. It is difficult to see how the annual value of the building could vary according as it is tenanted or self-occupied. The circumstance that in each of the present cases the tenant was debarred by the period of limitation from making an application for fixation of the standard rent and the landlord was consequently entitled to continue to receive the contractual rent cannot, therefore, affect the applicability of the decisions in the Life Insurance Corporation's case, : [1971]1SCR249 , and the Guntur Municipal Council's case, : [1971]2SCR423 , and it must be held that the annual value of the building in each of these cases was limited by the measure of the standard rent determinable under the Act.'

11. In the light of the facts which we have discussed above, we are, therefore, of the opinion that the proper method would be the rental method in the facts of this case. On behalf of the Revenue, it was emphasised that the land and building is also a method of valuation and according to the valuer's report, which the assessee himself had submitted, the rental method was not the proper method. Under the W.T. Act, Section 7, it is the duty of the WTO to form his opinion as to what would be the market value of the property on the relevant date. The submission of the valuer's report either one way or the other cannot be determinative of the value which a property will be supposed to fetch in an open market on the relevant valuation date, as has been aptly observed;

'In any event, even if the valuer was an expert, he is not a witness of fact but a mere witness of an opinion. That opinion, therefore, cannot bind the court or the Tribunal or the income-tax authorities.' (See the observation of Chief Justice P.B.

Mukharji, in the case of Mahmudabad Properties (P.] Ltd. v. CIT : [1972]85ITR500(Cal)).

12. In the light of the aforesaid facts, we would answer question No. 1 in the negative and in favour of the assessee. In that view of the matter, so far as question No. 2 is concerned, we would say that the rental method based on actual rent received from the property subject to variation permissible under the rent restriction laws would be the proper method. This question is also answered in favour of the assessee.

13. The parties will pay and bear their own costs.

Sudhindra Mohan Guha , J.

14. I agree.