Jagannathdas Govindas Vs. Fifth Wealth-tax Officer

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Court : Income Tax Appellate Tribunal ITAT Madras

Decided On : Oct-26-1984

Reported in : (1985)12ITD317(Mad.)

Judge : G Cheriyan, K Thanikkachalam, J Member

Appellant : Jagannathdas Govindas

Respondent : Fifth Wealth-tax Officer

Judgement :

1. These appeals are by the assessee. They relate to the assessment years 1975-76, 1976-77 and 1977-78. The assessee was one-third co-owner of Maharani Talkies. The value returned was Rs 2,27,000 for each of the assessment years for wealth-tax purposes. The WTO enhanced the value by 15 per cent to Rs. 2,61,000 for the first two years and to Rs. 3 lakhs in the last year. The assessee appealed and contended before the AAC that such enhancement should not have been made without the matter being referred to the valuer under Section 16A of the Wealth-tax Act, 1956 ('the Act'), because the difference in value with reference to the value of the property of Maharani Talkies as a whole between that returned and that assessed would have been more than Rs. 50,000, though the value of the assessee's share between that returned and assessed was less than Rs. 50,000 in the first two years. The AAC negatived the plea and held that the mandatory reference was not called for since the prescribed limit had to be construed with reference to the value of the assessee's share alone.

2. Before us, the learned Counsel submitted that the valuation of the property as a whole has to be made in the first instance and he further stated that in terms of Section 4(1)(b) of the Act, where the assessee was a partner in a firm or a member of an AOP, the value had to be determined in the prescribed manner and that manner was set out under Rule 2 of the Wealth-tax Rules, 1957, which called for the computation of the net wealth of the firm in the first instance and that being the case, whether a reference under Section 16A was called for or not, had to be decided with reference to the value of the entire property. This plea was opposed by the learned departmental representative, who submitted that the criteria had to be determined with reference to the value of the asset to be included in each case.

3. We have considered the rival submissions. The decisions of the Madras High Court in CWT v. Vasantha [1973] 87 ITR 17 and of the Andhra Pradesh High Court in CWT v. Narendra Ranjalker [1981] 129 ITR 203 are no doubt authorities for the proposition that in terms of Rule 2, the net wealth of the firm has to be computed in the manner statutorily called for. Therefore, the point may arise where the net wealth of the firm itself has to be computed in the first instance and at that stage the provisions of

Section 16A are attracted. The criteria for making such reference has to be determined at that stage itself. The decision of the Supreme Court in the case of Juggilal Kamlapat Bankers v. WTO [1984] 145 ITR 485 is also authority for the proposition that for valuing the net wealth of a firm, a reference under Section 16A could be made. However, it is not necessary for us to pronounce on the contention of the assessee with reference to the provisions of the rule, because that rule does not apply in the present case since the assessee is only a co-owner and a co-owner is not a partner in a firm and is also not a member of an AOP as far as the facts of the present case are concerned. The asset, which the assessee in the present case has, is an undivided one-third share in the property. What is to be valued is the value of such share. Maybe that such valuation is to be made with reference to the aggregate value of the property but from such value, appropriate discounts, etc., have to be made. So what is being valued is eventually only the share of the assessee, which is undivided in a property. For the purpose of determining whether the criteria in Section 16A applies, what is to be seen is the value of the asset as returned and whether in the opinion of the WTO, the value of such asset exceeded the prescribed percentage. The asset as returned, the value of which is estimated, can only be the undivided share of the property and not the property as a whole and, therefore, in the case of the assessee co-owner, who is not a partner or member of an AOP, the criteria has to be determined with reference to the percentages prescribed having regard to the value of the assessee's share only.

Therefore, for the first two years, the WTO was not really bound to make the reference under Section 16A since the difference in the value of the share did not exceed Rs. 50,000. The learned Counsel at the hearing submitted that if we were taking this view for the first two years, he would not press the argument for the last year where the value of the share, as estimated, exceeded that returned by more than Rs. 50,000.

4. On merits, the submission of the learned Counsel was that there was no warrant for making the enhancement, as done by the WTO, which was 15 per cent in the first year and at Rs. 3 lakhs against Rs. 2.27 lakhs returned in the last year. The theatre was stated to be about 50 years old and in the interior of Washermanpet. The land value, it was submitted, may have been showing an increase, but it was contended the building was getting older. The learned departmental representative pleaded for the estimates being upheld.5. We ascertained that the building was one which had been let out on lease. The lease was for a period of 20 years and in 1975-76, there was still about 10 years to run. The income receivable in terms of the lease was, therefore, fixed. In valuing commercial properties, income yield is a criteria. With a long period still unexpired of the lease and there being no prospect of increase in the income and the theatre building being very old, we consider that there was no material to enhance the valuation of the property at 15 per cent in the first two years as done by the WTO and to Rs. 3 lakhs in the last year. We direct that the value be taken at Rs. 2,27,000, which is the value fixed in 1972 by the valuation cell.

6. Before parting with this point, we may state that the learned departmental representative made a point that in respect of another theatre, that is Alankar Theatre, where the assessee had only one-fifth share, the assessee had agreed to an increase in valuation. It was pointed out by the learned Counsel that the facts there are materially different. There the assessee was only the owner of the land and the super-structure was built by someone else. The property no doubt had been leased out but in 1976, it was finally decided by the Supreme Court that the entire property

should revert to the assessee. There was, thus, no continuing lease as in the case of Maharani Theatre. We consider that this is a very distinguishing feature and, therefore, the fact of the assessee having agreed to an increased valuation of the share in Alankar Theatre, will not stop the assessee from contending that there should be no increase in the value of the undivided share in Maharani Talkies.

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