

Commissioner of Wealth-tax Vs A. Viswanathan

Court: Madras High Court

Date of Decision: Sept. 14, 2001

Citation: (2002) 256 ITR 227

Hon'ble Judges: R. Jayasimha Babu, J; A. Subbulakshmy, J

Bench: Division Bench

Advocate: Chitra Venkataraman, for the Appellant; R. Gangadaran, for the Respondent

Judgement

A. Subbulakshmy, J.

The assessee is a Hindu undivided family. It constructed a house property at M. R. C. Nagar, Santhome,

Madras. The construction was completed in February, 1984, and it was occupied by the assessee for residential purpose immediately after the

completion of the construction. For the assessment years 1984-85 to 1987-88, the assessee returned the value of the property at Rs. 14,92,964,

Rs. 2,03,123, Rs. 1,91,663 and Rs. 1,91,663, respectively. The Wealth-tax Officer took the value of the property at Rs. 35,39,844, Rs.

40,27,951, Rs. 46,19,685 and Rs. 61,98,557, respectively, in accordance with the Valuation Officer's valuation.

2. On appeal, the Commissioner (Appeals) ordered to compute the value of the property by applying Rule 1BB for the assessment year 1984-85

and directed that the same value should be repeated for the assessment years 1985-86 to 1987-88 in view of the provisions of Section 7(4) of the

Wealth-tax Act, 1957.

3. The Department preferred appeals to the Tribunal and the Tribunal confirmed the decision of the appellate authority for the assessment year

1984-85, and for the assessment years 1985-86 to 1987-88, the Tribunal, held that the assessee became the owner in February, 1984, and the

next valuation date was March 31, 1984, and so, whatever may be the price which the property would fetch if sold in the open market as on

March 31, 1984, would constitute its price for the purpose of Section 7(4) and, admittedly, the value of the house as on March 31, 1984, was

returned at Rs. 15,86,143 and thus the Tribunal held that the house could bear the price at Rs. 15,86,143 for each of the assessment years 1985-

86 to 1987-88. Thus, the Tribunal allowed the appeal by the Revenue for the assessment years 1985-86 to 1987-88 and dismissed the appeal by

the Revenue for the assessment year 1984-85. At the instance of the Revenue, the following question of law has been referred for the opinion of

this court: "Whether, on the facts and in the circumstances of the case, the Tribunal was right in overlooking that the market value of the house

property at M.R.C. Nagar, Santhome, Madras, as on March 31, 1984, has been fixed by the Valuation Officer u/s 16A at Rs. 35,39,844 and as

per the provisions of Section 7(4) this value alone should be adopted for the assessment years 1984-85 to 1987-88 ?

4. The Commissioner has ordered to compute the value of the property by applying Rule 1BB for the assessment year 1984-85 and he has also

ordered that for the subsequent years, the valuation has to be repeated in view of the provisions of Section 7(4) of the Wealth-tax Act, 1957. The

assessee's contention is that it is entitled to the benefits u/s 7(4) since it is a Hindu undivided family. The Tribunal found that for applying the

provisions of Section 7(4), two important conditions must be fulfilled, i.e., the house should be used exclusively for residential purposes and the

user must be for a full period of 12 months immediately preceding the valuation date and in this case, for the assessment year 1984-85, the

assessee did not occupy the house for 12 preceding months prior to the valuation date and, therefore, Section 7(4) does not apply for that

assessment year, however, at the same time, the house remained to be a residential quarter despite the fact that it was used only for a few months

as the residence of the Hindu undivided family. Accordingly, the Tribunal confirmed the order of the appellate authority holding that the property

should be valued as per Rule 1BB for the assessment year 1984-85.

5. The apex court in Gaj Singh v. Settlement Commission : [2001]247ITR586(SC) , following Commissioner of Wealth Tax, Meerut Vs. Sharvan

Kumar Swarup and Sons , held that in respect of valuation of immovable property, Rule 1BB is applicable even for the assessment years prior to

1979-80. So, it is evident that this immovable property was to be valued under Rule 1BB of the Wealth-tax Rules. Accordingly, we find no error

in the order passed by the Tribunal holding that the property should be valued under Rule 1BB for the assessment year 1984-85.

6. Next point to be considered is whether the same value has to be repeated for the assessment years 1985-86 to 1987-88 by extending the

benefits u/s 7(4) of the Wealth-tax Act. As per Section 7(4) of the Wealth-tax Act, notwithstanding anything contained in Sub-section (1), the

value of the house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months

immediately preceding the valuation date may, at the option of the assessee, be taken 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 next following the date on which he became the owner of the house.

7. The construction was completed in February, 1984. So, the assessee became the owner of the completed house from February, 1984. So, the

next following valuation date will be March 31, 1984. The Tribunal found that whatever may be the price which the property would fetch if sold in

the open market as on March 31, 1984, would constitute its price for the purpose of Section 7(4) and, admittedly, the value of the house as on

March 31, 1984, was returned at Rs. 15,86,143. The Wealth-tax Officer, took the value of the property as Rs. 35,39,844, Rs. 40,27,951, Rs.

46,19,685 and Rs. 61,98,557. The Tribunal found that the value of the house was Rs. 15,86,143 for each of the assessment years 1985-86 to

1987-88 as that was the market value as on March 31, 1984.

8. The legal position is that the value of the house, if sold in the open market on the valuation date next following the date on which he became the

owner of the house is the value to be fixed. So, the value for the assessment years 1985-86 to 1987-88 has been correctly fixed by the Tribunal at

Rs. 15,86,143 being the value of the house as on March 31, 1984. The Tribunal has correctly held that the value as determined under Rule 1BB

for the assessment year 1984-85 cannot be applied for the assessment years 1985-86 to 1987-88 while considering the claim of the assessee u/s

7(4) of the Wealth-tax Act.

9. Accordingly, the Tribunal set aside the impugned order of the Commissioner of Wealth-tax in respect of the assessment years 1985-86 to

1987-88 and allowed the appeals of the Revenue in respect of the assessment years 1985-86 to 1987-88 and dismissed the appeal in respect of

the assessment year 1984-85. We find no error in the order passed by the Tribunal. We answer the question against the Revenue. No costs.