

# CALCUTTA HIGH COURT

Manjushree Biswas

Vs

Commissioner of Wealth-Tax

(Dipak Kumar Sen and S K Sen, JJ.)

11.05.1987

## JUDGMENT

### **Dipak Kumar Sen, J.**

1. The material facts and proceedings leading up to this reference are, inter alia, that Smt. Manjushree Biswas, the assessee, at the material time had one-fiftieth share in premises No. 8/1, Middleton Row, Calcutta. The said premises consist of land measuring about 75 cottahs, with structures covering about 17 cottahs. At the material time, the said premises were being used for the purpose of residence, by the assessee and her co-sharers.
2. The assessee was assessed to wealth-tax for the assessment year 1977-78. In making the assessment, the Wealth-tax Officer referred the matter to the District Valuation Officer under Section 16A of the Wealth-tax Act, who estimated the value of the said premises at Rs. 59,98,000. On the basis of the said report of the District Valuation Officer, the value of the share of the assessee in the said premises was determined and her net wealth was computed accordingly.
3. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner who proceeded to determine the value of the said premises in two separate units, one being vacant land of about 55 cottahs and the other being land of about 20 cottahs with structures. The said units were valued separately and the total value of the said premises was estimated at Rs. 39,31,825.
4. Both the assessee and the Revenue came up on appeal from the order of the Appellate Assistant Commissioner before the Income-tax Appellate Tribunal. The Tribunal reduced the value of the vacant land held to be 50 cottahs to Rs. 25 lakhs and estimated the value of the other unit consisting of 25 cottahs of land and structures at the same figure as determined by the Appellate Assistant Commissioner, viz., Rs. 6,31,825. The value of the said premises was, therefore, determined by the Tribunal at Rs. 31,31,825.

5. The contention of the assessee that rule 1BB of the Wealth-tax Rules should have been applied in making the valuation was not accepted by the Tribunal which held that it was unnecessary to examine the applicability of the said rule 1BB to the facts.

6. It is on record that the Revenue made an application under Section 27(1) of the Wealth-tax Act, 1957, for a reference to this court from the said order of the Tribunal. The order of the Tribunal for the assessment year 1977-78, however, was sustained and has become final.

7. The assessee was also assessed to wealth-tax for the assessment years 1978-79, 1979-80 and 1980-81, the respective valuation dates being 31st December of the calendar years 1977, 1978 and 1979. Before the Wealth-tax Officer, it was contended on behalf of the assessee that the value of the said premises should be determined in the said assessment years by the application of Rule 1BB of the Wealth-tax Rules, 1957. The Wealth-tax Officer rejected the contention of the assessee and determined the value of the said premises at Rs. 58,46,100 by adopting the valuation made by the Wealth-tax Officer in the assessment year 1977-78 for each of the said assessment years.

8. Being aggrieved, the assessee preferred appeals from the said orders of assessment before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner found on a personal inspection that the said premises were surrounded by a high wall. The vacant land in the premises was found clearly meant to be an adjunct to the structures for beneficial enjoyment of the premises. He noted further that the difference between the unbuilt area and the built up area did not exceed 20% of the aggregate area and as such under Rule 1BB(5)(ii), there was no ground for excluding the operation of Rule 1BB in valuing the said premises. On the basis of a judgment of the Court of Small Causes, Calcutta, dated December 6, 1980, where the annual valuation of the said premises had been determined at Rs. 33,360, the Appellate Assistant Commissioner set aside the valuation of the said premises as made by the Wealth-tax Officer for the said three assessment years. The Wealth-tax Officer was directed to apply Rule 1BB for valuation of the share of the assessee in the said premises by taking the gross maintainable rent of the entire premises at Rs. 33,360 for the assessment years 1978-79 and 1979-80. For the assessment year 1980-81, on the basis of the rate bills of the Corporation of Calcutta in respect of the said premises for the period between the 4th quarter of 1978-79 and the third quarter of 1983-84, the gross maintainable value of the said premises was calculated to be Rs. 42,000 by the Appellate Assistant Commissioner who directed the Wealth-tax Officer to value the assessee's share in the said premises applying Rule 1BB on such basis.

9. Being aggrieved, the Revenue preferred appeals from the said three appellate orders of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal. It was contended on behalf of the Revenue before the Tribunal, inter alia, that the Appellate Assistant Commissioner

did not give any opportunity to the District Valuation Officer to make representation as required under Section 23(3A) of the Wealth-tax Act. The Tribunal held that such opportunity was required to be given only when, there had been a reference to the District Valuation Officer under Section 16A of the Wealth-tax Act. As in the relevant assessment years there was no reference for valuation to the District Valuation Officer under Section 16A of the Act, Section 23(3A) of the Act was not attracted.

10. It was next contended on behalf of the Revenue that Rule 1BB of the Wealth-tax Rules could not be applied for valuing the said premises as valuation had already been done by the District Valuation Officer in the earlier assessment year 1977-78 and such valuation had been followed by the Wealth-tax Officer in the subsequent assessment years.

11. It was contended on behalf of the assessee that the report of the District Valuation Officer in the said earlier assessment year was not relevant as in the assessment years involved there had been no reference under Section 16A of the Wealth-tax Act. It was contended further that the Circular of the Central Board of Direct Taxes dated September 28, 1957, to the effect that the valuation fixed in any assessment year should not be disturbed for the two succeeding assessment years except in special circumstances had been withdrawn, and, therefore, the Wealth-tax Officer should not have followed the report of the District Valuation Officer submitted in the earlier assessment year particularly when the provisions of Rule 1BB of the Wealth-tax Rules were mandatory and the Appellate Assistant Commissioner rightly applied the same.

12. The Tribunal held that though the principle of *res judicata* did not apply to tax proceedings, earlier assessments were relevant evidence in the subsequent assessments and the findings arrived at in the earlier assessment years should not normally be departed from. The Tribunal held that the withdrawal of the said Circular of the Board did not mean that the valuation made in an earlier assessment year cannot be followed in respect of the succeeding years.

13. The Tribunal noted that in the earlier assessment year 1977-78, a reference having been made- to the District Valuation Officer under Section 16A of the Wealth-tax Act, the rules framed under Section 7(1) of the Act were not applicable and, therefore, the applicability of Rule 1BB was not considered.

14. For the assessment years involved, the Tribunal held that the assessee had made no attempt to establish that there was any patent mistake in the order of the Tribunal for the assessment year 1977-78 or that any fresh facts had come to light. It was not the case of the assessee that there has been devaluation of the said premises in the assessment years subsequent to the year 1977-78. The Tribunal observed that though Rule 1BB was mandatory, where there was a reference to the District Valuation Officer, the rule had no compelling force.

15. The Tribunal held that the value of the said premises as determined by the Tribunal in the assessment year 1977-78 at Rs. 31,31,825 should be accepted for the subsequent assessment years 1978-79, 1979-80 and 1980-81.

16. On applications by the assessee under Section 27(1) of the Wealth-tax Act, 1957, the Tribunal has referred the following questions as questions of law arising out of its order for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal acted legally in setting aside the order of the Appellate Assistant Commissioner and directing that the valuation of the properties at 8/1, Middleton Row and 1/1, Camac Street, Calcutta, to be taken as was held by the Tribunal for the assessment year 1977-78 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in not applying Rule 1BB of the Wealth-tax Rules, 1957, which became operative from April 1, 1979, in respect of premises at No. 8/1, Middleton Row, Calcutta, for the assessment years 1978-79, 1979-80 and 1980-81 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in law in holding that Rule 1BB of the Wealth-tax Rules, 1957, has not been rightly applied by the Appellate Assistant Commissioner in determining the valuation of premises at No. 8/1, Middleton Row, Calcutta ?

4. Whether, on the facts and in the circumstances of the case, the valuation of the property at No. 8/1, Middleton Row, Calcutta, as determined by the Tribunal is sustainable in law ?"

17. At the hearing, learned advocate for the assessee submitted that as in the assessment years involved there had been no reference to the Valuation Officer under Section 16A of the Wealth-tax Act, 1957, the value of the said premises was required to be determined under Section 7(1) of the said Act which provides that such valuation would have to be estimated subject to the rules promulgated under the Act.

18. He submitted that Rule 1BB of the Wealth-tax Rules had come into force on April 1, 1979. The said rule laid down the procedure for valuation of a residential house and as such it was a procedural rule. The said rule would apply in all cases where valuation was pending irrespective of the date of valuation for the purpose of assessment. In the instant case, all assessments in respect of all assessment years involved were made by the Wealth-tax Officer on August 10, 1983, when the said Rule 1BB was very much in force. As a rule of procedure, it was incumbent on the Wealth-tax Officer to apply the said rule. The authorities held that the said Rule 1BB was

not applicable not on the ground that the said rule could not be given effect to retrospectively but on the ground that in an earlier assessment year, viz., 1977-78, a reference had been made to the District Valuation Officer under Section 16A of the Wealth-tax Act for valuation of the said premises and that in the said assessment year, the Valuation Officer had, in fact, determined the value of the said premises on the reference. The Tribunal had observed that the said Rule 1BB was mandatory but did not apply the same as there had been a reference to the Valuation Officer in an earlier assessment year.

19. It was submitted that the Tribunal also proceeded on the basis that subsequent to valuation in the earlier assessment year 1977-78, no fresh facts had come to light and that it was not the case of the assessee that in the assessment years involved there had been a devaluation of the said premises. Learned advocate for the assessee submitted that the approach and the conclusion of the Tribunal were erroneous inasmuch as for the assessment years involved there had been no reference by the Wealth-tax Officer under Section 16A, whereas in the earlier assessment year 1977-78, there was such a reference. It was submitted that the assessee was entitled to call upon the authorities concerned to estimate the value of said premises in accordance with law under Section 7(1) of the Wealth-tax Act which would necessitate the application of Rule 1BB.

20. In support of his contentions, learned advocate for the assessee cited the following decisions :

(a) Standard Mills Co. Ltd. v. CWT . This decision was cited for the observations of the Supreme Court on the scheme of the Wealth-tax Act which are noted hereafter as follows (pp. 473, 476):

"By Section 3, the wealth-tax is charged for every financial year commencing on and from the first day of April, 1957, on the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule....

Section 7 falls in Chapter II which deals with the charge of wealth-tax and assets subject to such charge : it is intended to provide a machinery for the determination of the value of assets."

(b) S. Mubarik Shah Naqshbandi v. CIT . In this case, a Division Bench of the Jammu and Kashmir High Court held that Section 144 of the Income-tax Act, 1961, included in Chapter XIV of the said Act, intituled "Procedure for assessment "was a procedural section.

(c) CWT v. Laxmipat Singhania . In this case, a Division Bench of the Allahabad High Court held that for valuation of unquoted shares for the purpose of assessment of wealth-tax for the assessment years 1965-66 and 1966-67, the respective valuation dates being the 31st of March of the calendar years 1965 and 1966, Rules 1C and 1D of the Wealth-tax Rules which were introduced by the Wealth-tax (Amendment) Rules, 1967, by notification dated October 6, 1967, were applicable with retrospective effect in all pending assessments even though assessments

related to the assessment years prior to the date of the coming into force of the said rules and the relevant valuation dates were also prior to that date.

(d) *CWT v. Vidyavathi Kapur*<sup>1</sup> In this case, a Division Bench of the Karnataka High Court held that the provisions of Rule 1BB of the Wealth-tax Rules, 1957, were procedural in nature and could be given effect to in respect of all pending matters.

(e) *CWT v. Shri Kasturbhai Mayabhai*<sup>2</sup> Here, a Division Bench of the Gujarat High Court, following the decision of the Karnataka High Court in the case of *Vidyavathi Kapur* [1984] 150 ITR 319, held that the provisions of Rule 1BB of the Wealth-tax Rules, 1957, which dealt with the determination of the market value of a house on the valuation date, were procedural in character and operated retrospectively.

21. Learned advocate for the assessee also relied on and cited an unreported judgment of this court dated June 18, 1987, in Matter No. 762 of 1985 in *CWT v. Smt. Pratima Roy*. I was a party to the said judgment where the decision of the Karnataka High Court in *Vidyavathi Kapur* [1984] 150 ITR 319 (Supra) was considered and also a decision of the Full Bench of this court in *Ajit Kumar Palit v. State*, . The said judgment proceeded on the basis that Rule 1BB of the Wealth-tax Rules was procedural in nature and can be applied to pending proceedings.

22. Learned advocate for the Revenue contended to the contrary. He submitted that Rule 1BB of the Wealth-tax Rules, 1957, came into effect on and from April 1, 1979. He submitted that the said rule affected substantive rights of the assessee and, therefore, could not be deemed to be a procedural rule and would not have any retrospective effect. In the instant case, the valuation date in at least two of the assessment years involved was prior to April 1, 1979, when the said Rule 1BB came into force, and, therefore, the said rule would have no application in respect of the two assessment years involved, viz., 1978-79 and 1979-80.

23. Learned advocate for the Revenue further submitted that once valuation of a particular asset was made for assessment of wealth-tax, the same should not be disturbed for at least two succeeding assessment years unless there were special reasons justifying a revision of the valuation. This was provided by the circular issued by the Central Board of Direct Taxes dated September 28, 1967, which, however, was withdrawn on and from April 5, 1974, by subsequent circulars of the Board.

24. Learned advocate for the Revenue contended further that in the instant case, the assessee was not entitled to contend that the earlier valuation of the said premises should be revised without furnishing any evidence. It was contended that yearly valuation of an asset in the nature of immovable property was not provided for in law and was, in fact, against the interests of the assessee.

25. In support of his contentions, learned advocate for the Revenue cited the following decisions :

(a) *J. N. Bose v. CWT*<sup>3</sup> This is a decision of a Division Bench of this court. In the judgment, the following observations from the judgment of Viscount Simon in *Gold Coast Selection Trust Ud. v. Humphrey*<sup>4</sup> were quoted with approval (p. 88 of 104 ITR):

"Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible."

It was further held in this case that the valuation by the Tribunal in earlier years of any asset for the purpose of the Wealth-tax Act could be departed from and altered only if there were materials to indicate that there had been either a change in the structure of property or in the interests of the assessee in the property or in the market value of the property. Where there was no evidence of any change in the nature or in the value of the property, the, Revenue would not be entitled to depart from the earlier valuation.

(b) *CWT v. Balbhadradas Bangur* . In this case, the question which was referred to this court under Section 27(1) of the Wealth-tax Act was whether the value of certain unquoted shares should be computed by capitalising their average potential yield at a certain number of years' purchase or on the basis of break-up value. The question was answered in favour of the assessee and it was held that the said shares should be valued on yield basis. It was contended on behalf of the Revenue that Rule 1D of the Wealth-tax Rules could be applicable in the case though the said rule was promulgated subsequently as the same was only a procedural rule. This contention was rejected and it was observed that the said Rule 1D was not a merely procedural rule as the valuation of the shares would affect the substantive right of the assessee. It was held further that the said Rule 1D would not be applicable in the facts of the case as the shares involved were the shares of an investment company to which the said rule did not apply. At this stage, we may note the relevant sections of the Wealth-tax Act, 1957: Section 3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule. Section 7. (1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date....

(3) Notwithstanding anything contained in Sub-section (1), where the valuation of any asset is referred by the Wealth-tax Officer to the Valuation Officer under Section 16A, the value of such

asset shall be estimated to be the price which, in the opinion of the Valuation Officer, it would fetch if sold in the open market on the valuation date, or, in the case of an asset being a house referred to in Sub-section (4), the valuation date referred to in that sub-section."

26. It is a matter of record that in the earlier assessment year 1977-78, the valuation of the said premises had been referred by the Wealth-tax Officer to the District Valuation Officer under Section 16A of the Wealth-tax Act. In the assessment years involved, there had been no such or further reference. Under the Act, the value of the said premises is required to be determined under Section 7(1) of the Act noted earlier. The said section clearly lays down that the value of any asset for the purpose of assessment would be that which in the opinion of the Wealth-tax Officer would be the estimated price thereof in the open market on the valuation date. The said opinion or estimation is, however, made subject to the rules prescribed in this behalf. Therefore, if the valuation of the asset concerned is required to be determined under Section 7(1), the rules promulgated and referred to in the section are necessarily attracted. It is nobody's case that in the assessment year involved, the operation of Section 7(1) of the Wealth-tax Act would be suspended as in an earlier year there had been a reference by the Wealth-tax Officer to the Valuation Officer under Section 16A of the Act.

27. We have already noted that the said Rule 1BB was introduced on April 1, 1979, and on the dates the wealth-tax assessments were made for the years involved, the said rule had already been promulgated. For the assessment year 1980-81, the valuation date is December 31, 1979. In that year, there cannot be any dispute that the said Rule 1BB would be applicable. In the other two assessment years, viz., 1978-79 and 1979-80, the respective valuation dates are December 31, 1977, and December 31, 1978, and the question whether Rule 1BB would have retrospective operation and would be attracted arises in the said assessment years.

28. In our view, Section 7(1) of the Wealth-tax Act is a procedural section. The heading of the said section, namely, "Value of assets how to be determined" makes the position clear. Therefore, the rules referred to in the said section are a fortiori procedural rules. With respect, we agree with the decisions of the Karnataka and Gujarat High Courts respectively in *Vidyavathi Kapur* [1984] 150 ITR 319(Supra) and *Smt. Kasturbhai Mayabhai* [1987] 164 ITR 107(Supra).

29. No doubt, it was observed by this court in *Balbhadradas Batigur* [1984] 148 ITR 149, that Rule 1D of the Wealth-tax Rules was not a merely procedural rule as valuation would affect the substantive right of the assessee. The question of retrospective operation of the said Rule 1D was not directly in issue as it was held that in any event Rule 1D was not applicable in respect of shares of an investment company, the valuation of which was a matter of controversy in the said case. Therefore, the observation regarding the retrospective operation of the said rule may be considered to be in the nature of obiter. We note that the said Rule 1D and Rule 1BB lay down

methods for determination of valuation and do not affect in any manner either the charging of tax or rates of tax to be imposed. In *Ajit Kumar Palit*, a Full Bench of this court laid down the principle that where law relating to procedure is amended, the same would operate retrospectively in proceedings initiated under the earlier law. We are also unable to accept the contention of the Revenue that the valuation of the said premises, as it was estimated in the assessment year 1977-78, should not be disturbed in the succeeding assessment years without special reasons or further evidence. It is settled law that the principle of *res judicata* does not apply in revenue matters. In any event, it appears to us that in the subsequent assessment years, there being no reference under Section 16A to the Valuation Officer, there was a fundamental difference between the said assessment years and the earlier assessment year 1977-78. For the purpose of assessment of wealth-tax, valuation of an asset has to be made in every assessment year and if in the said subsequent assessment years, the valuation is required to be made under Section 7(1) of the Act, there is no reason why the assessee cannot invoke Rule 1BB for the purpose of such valuation. Even in the Circular of the Central Board of Direct Taxes dated September 28, 1967, which was subsequently withdrawn, it was provided that the assessee would be entitled to insist on a revaluation of his asset in a subsequent assessment year and be allowed to lead evidence justifying such revaluation. In the instant case, the assessee has insisted on a revaluation not on the basis of any fresh evidence but on the basis of a statutory rule which has become applicable in the said subsequent assessment years.

30. For the above reasons, the assessee succeeds in this reference. We answer the questions referred as follows : Question No. 1 is answered in the negative ; questions Nos. 2 and 3 are answered in the negative, all in favor of the assessee. The answers are returned accordingly. We, however, make it clear that we have not adjudicated as to to what extent the said Rule 1BB would be applicable in respect of the said premises and what would be the computation of value of the said premises if the said rule is applied. The same has to be determined by the authorities below. The reference is disposed of accordingly. There will be no order as to costs.

**Shyamal Kumar Sen, J.**

31. I agree.

Cases Referred.

1[1984] 150 ITR 319 (Kar)

2[1987] 164 ITR 107 (Guj)

3[1976] 104 ITR 83

4[1948] AC 459; [1949] 17 ITR (Supp) 19 (HL)