# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## WEALTH TAX APPEAL NO. 46 OF 2002

Shri Mahendra J. Vora ... Appellant.

V/s.

Dy. Commissioner of Wealth-Tax
Special Range 52, Mumbai & Ors. ...Respondents.

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Mr. Yatin R.Shah, Advocate for the Appellant.
Mr. Sham Walve, Advocate a/w. Mr. P. A. Narayanan for the Respondents.

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**CORAM : UJJAL BHUYAN AND**
**MILIND N. JADHAV,JJ.**

**DATE : JANUARY 30, 2020.**

**PC :**

1 Heard learned counsel for the parties.

2 This Appeal has been preferred by the Assessee under section 27A of the Wealth Tax Act, 1957 (briefly “the Act”, hereinafter) against the order dated 16.08.2001 passed by the Income Tax Appellate Tribunal, Mumbai Bench "WT", Mumbai in Wealth Tax Appeal No. 54/M/1998 for the assessment year 1991 – 92.

3 On 22.07.2004, the Appeal was admitted by this court on the following substantial question of law :

> Whether the Appellate Tribunal is right in confirming the addition made on account of valuation of land made on the basis of the instance of sale occurred subsequent to the date of valuation when the impugned land was subject to Urban Land (Ceiling and Regulation) Act, 1976 as on the date of valuation ?

4 Though facts are not in dispute, a brief recital of the same is considered necessary for adjudication of the *lis*.

5 Assessee filed return of wealth for the assessment year 1991-92, declaring negative wealth of Rs. 36,428.00. Wealth Tax Officer in the assessment proceedings noticed that the assessee had indicated in the return of income that an amount of Rs. 10,34,265.00 was paid in advance in respect of a property bearing CTS No. 1288, Mahavir Nagar, Kandivali (West). Wealth Tax Officer found that in respect of the said property an amount of Rs.43,50,000/- was received as advance from M/s. Renuka Builders & Developers Pvt. Ltd.. A notice was issued to the assessee to file details regarding value of

the said property. Assessee responded to the notice and the matter was heard. By the assessment order dated 06.03.1996 issued under section 16(3) read with section 17 of the Act, the Wealth Tax Officer valued the said property at Rs.3,12,20,774.00 and after deducting the amount of Rs. 10,34,265.00 shown by the assessee as advance paid against the said property, the difference in the value of the said property amounting to Rs. 3,01,86,509.00 was added to the net wealth of the assessee.

6 Aggrieved by the above, assessee preferred Appeal before the first appellate authority i.e. Commissioner of Income Tax (Appeals)-XVIII, Bombay. By the appellate order dated 20.10.1997, the first appellate authority held that the Wealth Tax Officer had taken the correct market value and, therefore, the valuation was upheld. Accordingly, the Appeal was dismissed.

7 In further appeal by the assessee before Tribunal, Tribunal elaborately examined various aspects and vide order dated 16.08.2001 opined that the Wealth Tax Officer had rightly assessed the value of the property in the hands of the assessee and that no interference was called for in the order of the first

appellate authority. Accordingly, the appeal of the assessee was dismissed.

8 Hence, the present Appeal before us.

9 Learned counsel for the Appellant submits that the crucial date for valuation of the property is the valuation date, as defined under section 2(q) of the Act. For arriving at the proper valuation as on the valuation date, the Wealth Tax Officer cannot take into consideration the value of the property post the valuation date. Learned counsel has referred to Rule 20 of Schedule III of the Act and relies upon the decision of the Supreme Court in **Shri S. N. Wadiyar (dead) through LR** vs. **Commissioner of Wealth Tax, Karnataka** in Civil Appeal Nos. 6873- 6881 of 2005 decided on 21.09.2015 in support of his contention.

10 On the other hand, Mr. Sham Walve, learned standing counsel, Revenue for the Respondents submits that there is nothing in the Act or even in the decision of the Supreme Court, restricting or confining the Wealth Tax Officer for valuation of the property on or before the valuation date. The requirement of law is that the Wealth Tax Officer must be satisfied about

valuation of the property as on the date of the valuation for which he may take into consideration valuation of similar property immediately preceding the valuation date or immediately succeeding the valuation date. His further submission is that though the property in question was under the Urban Land (Ceiling and Regulation) Act, 1976, the same was released from land ceiling proceedings and the transaction pertaining to the land discloses that the valuation of the property was in no way inhibited or affected by the fact that the land was under ceiling proceedings.

11 Submissions made by learned counsel for the parties have been considered.

12 Section 2(q) of the Act defines “valuation date” to mean the last day of the previous year as defined in section 3 of the Income Tax Act, 1961 in relation to the year for which an assessment is made under the Act if an assessment were to be made under that Act for that year. In other words, as per the definition, “valuation date” would mean the last date of the previous year in respect of the assessment year under consideration.

13 Adverting to the present case, it is seen that the assessment year is 1991-92. Therefore, the relevant previous year would be 1990-91. The last date of the previous year, therefore, would be 31st March, 1991, which would be the valuation date.

14 Though other provisions of the Act may not be relevant, we may, however, advert to Schedule III to the Act, which is appended to the Act as a schedule to sub-section (1) of Section 7. Subsection (1) of Section 7 deals with the rules for determining the value of assets other than cash for the purposes of the Act. It says that subject to sub-section (2), the value of any asset other than cash shall be its value as on the valuation date, determined in the manner laid down in Schedule III. Sub-section (2) deals with valuation of the house belonging to the assessee, which is exclusively used by him for residential purposes for a period of 12 months immediately preceding the valuation report.

14.1. That brings us to Schedule III of the Act. Schedule III provides for Rules for determining the value of assets. Part (H) forms the residuary provisions. Rule 20 forms part of the residuary provisions which deals with valuation of assets in cases not covered by Rules 3 to 19. It says that value of any asset, other than cash and not covered by the aforesaid Rules, shall be estimated to be the price which in the opinion of the Assessing Officer would be fetched on its own if sold in the open market on the valuation date.

15 Therefore, the requirement of Rule 20(1) is that value of any asset, other than cash, shall be estimated 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. Rule 21 clarifies that while determining the market value, restrictive covenants can be ignored.

16 Having noticed the legal provisions as above, we may now advert to the assessment order.

17 Wealth Tax Officer noted in the assessment order that the assessee had admitted that advance of Rs. 43,50,000/- in respect of the property in question was received by M/s. Jayantilal Investments from M/s. Renuka Builders & Developers Pvt. Ltd., in November, 1990. Assessee (appellant) was the partner in M/s. Jayantilal Investments. An agreement was entered into on 29.11.1991 between the Appellant and 2 others on the one hand and M/s. Renuka Builders & Developers Pvt. Ltd., on the other. This agreement acknowledged

payment of Rs. 43,50,000/- by the purchaser to the vendor within two days of the execution. It further acknowledged receipt of a sum of Rs.78,75,300.00 by the vendor from the purchaser before execution of the agreement. Wealth Tax Officer took the view that if the land was valued at Rs. 10,34,265.00 no one would have advanced Rs.43,50,000/- as that amount was substantially higher than the valuation declared by the assessee.

18 Wealth Tax Officer found that when the land was ultimately sold, share of the assessee was Rs. 3,12,774/- which represented the market value of his share in the land. Therefore, the Wealth Tax Officer worked out that market value of the land would be Rs. 3,12,20,774.00.

19 In Appeal, the first appellate authority considered the agreement for sale dated 29.11.1991 and noted that the agreement duly took note of the fact that the land was under ceiling proceedings at the time of the agreement. By referring to Rule 20 of Schedule III, the first appellate authority held that the Wealth Tax Officer had rightly taken the market value into consideration and the valuation was upheld.

20 In further appeal, Tribunal in para 8 held as under :

> "8. We are of the opinion that there would not be a better guide for the WTO for adopting market value of the property than the actual sale itself occurred within a few months from the relevant date of valuation. The contention of the ld. A.R. regarding valuation as has been done in case of other co-owners, no proof or material has been placed on record. Moreover, it is open to the WTO to disregard the order passed by another officer if after proper enquiry and investigation it is evident that the basis adopted by such officer would not lead to a justifiable proper result. The ratio laid down in the decision of Jaswantrai (supra) and Rajendra Kumar Agarwal (supra) as referred by revenue are also relied upon. We have also taken into account the case law of Suumben Jhaveri (supra) as quoted by ld. A.R. and found that the facts were not identical, moreover the ratio laid down in that case also supports our view that the property had to be valued as on date a particular day on the basis of hypothetical sale and prevailing circumstances which definitely is a logical and judicial approach. In view of the reasons recorded in the aforesaid paras and under the totality of the circumstances, we are of the opinion that the W.T.O. has rightly assessed the value of the impugned property in the hands of the assessee and no interference is required in the order of the first appellate authority."

21 Thus, Tribunal observed that there could not have been a better guide for the Wealth Tax Officer for adopting the market value of the property in question than the actual sale itself which occurred within a few months from the relevant date of the valuation.

22 Insofar the present case is concerned though the actual sale might have taken place after the valuation date, substantial amount of money was paid prior to the valuation date as an advance consideration. In such circumstances, the view taken by the Tribunal cannot be faulted. A conjoint reading of section 7 and section 2(q) of the Act would indicate that the requirement of the law is that the value of any asset for the purpose of this Act shall be its value as on the valuation date. For determining the value of the asset as on the valuation date there cannot be any embargo on the Wealth Tax Officer not to take into consideration valuation of identical assets immediately preceding or succeeding the valuation date or that he has to arrive at the valuation of the asset only as per the valuation report. The decision of the Supreme Court in the case of **S. N. Wadiyar** (cited supra) is not on the proposition that valuation of an identical asset immediately succeeding the valuation date cannot be taken into consideration for determining the valuation

of the asset as on the valuation date. In paragraph 22 of the said judgment, it is stated that valuation of the asset has to be on the valuation date which has reference to the last day of the previous year. In other words, it is 31st March and immediately preceding the assessment year. The valuation of the asset arrived at as on that date is the valuation on which wealth tax is assessable. Clarifying the matter further Supreme Court held that the Wealth Tax Officer has to form an opinion about the estimated price if the assets were to be sold in the assumed market and the estimated price would be the one which an assumed willing purchaser would pay for it.

23 Viewed in the above context, we do not find any error or infirmity in the view taken by the Tribunal. Further, there is concurrent finding of the two appellate authorities below and we do not find such finding to be vitiated by any material irregularity or perversity, warranting interference in an appellate proceeding under Section 27A of the Act.

24 No substantial question of law arises in this Appeal. Appeal is accordingly dismissed.

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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