

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF JUNE, 2001

PRESENT

THE HON'BLE MR JUSTICE ASHOK BHAN

AND

THE HON'BLE MR JUSTICE CHIDANANDA ULLAL

W.T.A NO.30/2000

Between:

The Deputy Commissioner
of Income-Tax, Special
Range-3, Central Revenue
Building, Queens Road,
Bangalore.

:Appellant

(By Sri E.R.Indra Kumar, Advocate)

And:

Hajee Abdul Sattar Sait,
5/1, Residency Road,
Bangalore.

:Respondent

(Sri G.Sarangan, Sr.Council for
Sri.S.Parthasarathi, Advocate)

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Counsel for the appellant has filed this WTA
u/s 27A of the Wealth-Tax Act 1957 praying that
for the reasons stated therein this Court be
pleased to:

- a) Whether on the facts and
circumstances of the case, the
appellate Tribunal is correct in law
in deciding the issue relating to
valuation of the respondent's

immovable property situated at Ali Askar Road, Bangalore for the assessment year 1987-88, when the tribunal by its earlier order dt.7-4-98, relating to the same assessment year 1987-88 in the assessee's case has rendered its decision on the issue of valuation of the said property and etc.

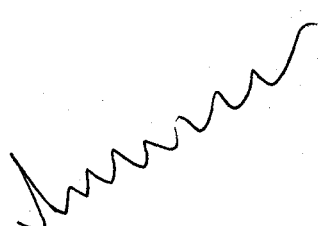
This WTA coming on for admission this day, ASHOK BHAN J., delivered the following :

JUDGMENT

This appeal has been preferred under Section 27-A of the Wealth Tax Act 1957, (for short, 'the Act'). It is directed against the appellate order passed by the Income tax Appellate Tribunal, Bangalore, (for short, the Tribunal'), in the respondent assessee's case in respect of Wealth Tax Assessment for the assessment year 1987-88. The appeal is confined against the order of the Tribunal in so far as it relates to the point involved in WTA No.127(Bang)/1992 only.

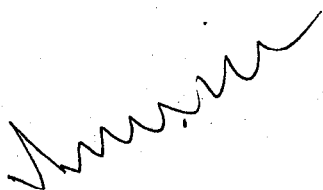
2. Facts occasioning the filing of this appeal briefly stated are:

In relation to the assessment year 1987-88 relevant for the valuation date ending on



31st March 1987, the Wealth Tax Officer passed the assessment order under Section 16(3) of the Act. While concluding the assessment, the Wealth Tax Officer determined the value of the immovable property of the assessee situated at No.3/1-2, Ali Askar road, Bangalore, at Rs.1,37,66,663=00.

3. Aggrieved by the said order of assessment, the assessee preferred an appeal before the jurisdictional Appellate Commissioner of Income-tax assailing the valuation of the aforesaid immovable property as made by the Assessing Authority. Apart from the said ground the assessee had also assailed the order of assessment on certain other grounds as well. In so far as the ground relating to valuation of immovable property at Ali Askar road is concerned, the Appellate Commissioner held that the matter regarding valuation of the said property had been referred to the District valuation Officer (for short, DVO) who had sent a detailed valuation report on 11-11-1991



estimating the fair market value of the portion of the property comprising of 3,450.60 Sq.m of open land at Rs.49,01,200=00. The Appellate Commissioner eventually directed the Assessing Authority to adopt the value of the open land at Rs.49,01,200/- as estimated by the District Valuation Officer, Bangalore.

4.Revenue preferred an appeal against the said Appellate Order before the Tribunal. Tribunal by its order dated 7-4-1988 dismissed the revenue's appeal by passing the following order:

"This is a departmental appeal against the order of the CIT(A). In the W.T.assessments, the WTO had adopted the value of a piece of land located at Aliasker Road, Bangalore at the rate of Rs.500/- per Sq.ft., stated to be based on information obtained from the Appropriate authority of the Income-tax department. This was contested before the CWT(A). The CWT(A) however referred the matter to the departmental valuation cell and got a valuation report prepared by that cell in accordance with which the value of the property should be taken

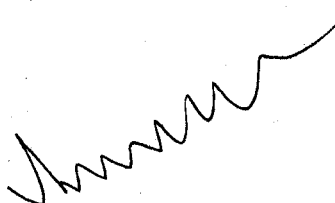
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at Rs.49,01,200/-. Accordingly, the CWT(A) directed the A.O to accept this valuation.

We fail to understand, when the CWT(A) has directed the A.O to adopt the valuation as made by the Departmental Valuation Officer, what grouse the department can have against such valuation. The appeal thus seems to be, totally a frivolous one. Hence, we dismiss the departmental appeal."

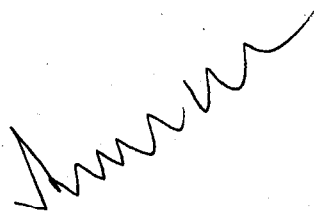
5. Assessee had also preferred an appeal against the appellate order of the Commissioner being WTA 127(Bang)/1992 before the Tribunal. Assessee had also preferred appeals for the other years namely assessment years 1988-89 to 1991-92 being WTA.Nos.181 to 184(Bang)/1993. The appeals were disposed of by a common order. As indicated earlier, the revenue has directed the present appeal against the order passed by the Tribunal in WTA 127(Bang)/1992 only.

6. Assessing Officer valued the property at Rs.1,37,66,663/- on the land and building method by the Assessing Officer. On the objection taken by the assessee that the



valuation should have been referred to the valuation cell, under Section 16A of the Act; CWT(A) referred the matter to DVO. DVO sent a detailed report estimating the Fair Market Value of the property at Rs.49,01,200/-. For the year under consideration the notice under section 16A(4) of the Act was issued by the DVO on 29th of September 1991. So the case was still pending. Applying the law laid down by the Supreme Court in CWT VS. SHARVAN KUMAR SWARUP & SONS [(1994) 210 ITR 886], Tribunal has directed the Assessing Officer to value the property by applying Schedule III of the Act. Supreme Court in the said case has held that Rule 1BB of the Wealth Tax Act, 1957, would part take the character of a rule of evidence. The Rule was procedural and not substantive and therefore applicable to all proceedings pending as on April 1, 1979 when the rule came into force. It was held:

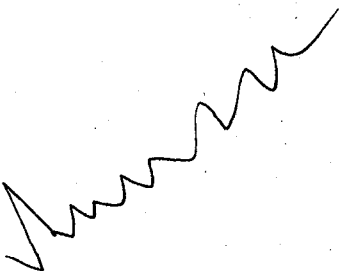
We may now turn to the scope and content of rule 1BB. The said rule merely provides a choice amongst well-known and well-settled modes of valuation. Even in the absence of rule 1BB it would not have been



objectionable, nor would there be any legal impediment, to adopt the mode of valuation embodied in rule 1 BB, namely, the method of capitalisation of income on a number of years' purchase value. The rule was intended to impart uniformity in valuations and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar.

Rule 1 BB thus partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognised and accepted methods. Even if a law raises a presumption and renders the presumption irrebuttable it is yet in the domain of the law of evidence. In *Izhar Ahmad Khan's* case, AIR 1962 SC 1052, it was pointed out by this court (at page 1062):

"It would be noticed that as in the case of a rebuttable presumption, so in the case of an irrebuttable presumption, the rule purports to assist the judicial mind in appreciating the existence of facts. In one case, the probative value is statutorily strengthened but yet left open to rebuttal, in the other case, it is statutorily strengthened and placed beyond the pale of rebuttal. Considered from this point of view, it seems rather difficult to accept the theory that whereas a rebuttable presumption is within the domain of the law of evidence, an irrebuttable



presumption is outside the domain of that law and forms part of the substantive law."

On a consideration of the matter, we are persuaded to the view that rule 1BB is essentially a rule of evidence as to the choice of one of the well-accepted methods of valuation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate valuations resulting from application of different methods of valuation respecting properties of a similar nature and character. The view taken by the High Courts, in our opinion, cannot be said to be erroneous.

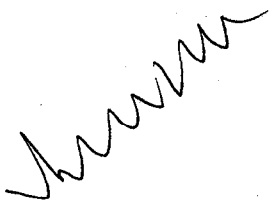
7.A Division bench of this Court in
COMMISSION OF WEALTH TAX VS. S.D.NARAYANASA
(244 ITR 593) held:

Schedule III introduced in the Wealth-tax Act, 1957, with effect from April 1, 1989, is procedural and not substantive and all matters which were pending on April 1, 1989, are covered by the said Schedule. The market value in all such cases has to be determined in accordance with Schedule III.

8. Counsel appearing for the revenue argued that since the Tribunal had dismissed the appeal filed by the revenue determining the value of the property at Rs.49,01,200/-.

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It was not open to the Tribunal to direct the DVO to value the property by applying Schedule III in the appeal filed by the assessee. We do not find substance in this submission. Revenue in its appeal had challenged the order of CWT(A) to the extent it went against the department. It could not deprive the assessee to challenge the said valuation in its appeal. The order passed in the appeal filed by the revenue would not operate as Res judicata in the appeal filed by the assessee as the point involved in both the appeal is different and distinct. The point regarding the applicability of Schedule III to the Wealth Tax Act and Rule 1BB had not been examined by the Tribunal in the appeal filed by the revenue. On merits we find that the order passed by the Tribunal is in accordance with the law laid down by the Supreme Court as well as the Division bench of this court referred to above. As the matter stands concluded by the decision of the Supreme Court as well as the Division



Bench of this court; referable questions of law do not arise from the order of the Tribunal. Dismissed.

Sd/- JUDGE

Sd/- JUDGE

sbb/-