

IN THE HIGH COURT OF DELHI AT NEW DELHI

18.05.2009

Present: Ms Prem Lata Bansal, Mr Sanjeev Rajpal and Ms Anshul Sharma,

Advocates for the Appellant.

Mr B. Gupta, Advocate for the Respondent.

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ITA No. 774/2007 URMILA BAWA

The facts raised in this appeal before us are set out by the ITAT in the

following paragraphs:-

?We have carefully considered the facts and the rival submissions.

It is clear

on the basis of the valuation reports perused by us that all the three valuers

are agreed that the land at the material time was agricultural land and they are

also agreed that it has huge potential for development since it is surrounded by

lands which have already been subjected to development. It is, therefore, a

reasonable inference that it was only a matter of time that the subject land

would also be developed as residential use after obtaining the necessary

approvals from the concerned authorities. It is significant that the land was

sold to an uncle of the assessee who was in the business of property

development. The indications are clear that the land was no longer to be

treated as agricultural land in the real sense but was looked upon by everyone

concerned as a land fit for development. In this situation, the estimate of the

fair market value as on 1.04.1981 cannot ignore the ground realities and due

weightage should be given to them. On this basis, if we approach the three

valuation reports, we find that the report of the DVO does not take due notice of the ground realities thought he has also taken note of the fact that the land is surrounded by the residential area. However, beyond a mere remark to that effect in para 3.5 of the report, it does not appear to us that he has given due weight and importance to the fact that the land was ripe for development and would have in a short time be subjected to real estate development. The sale instance given by him as on 18.12.1982 is that of a flat which may

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not be very relevant. The sale instance of 29.10.1984 gives a value of Rs 34/- per sq. ft. However, he has not given any valid reasons as to why the sale instance of a part of the adjacent property as on 24.03.1981 (plot nos. 1124 to 1127) cannot be considered to be comparable. This land is of 7,995 sq. yds. which is of reasonable size. This land was sold by late Shriman Bawa Maharaj Singhji to a partnership firm by name M/s Shri Ashish. the agreement of sale dated 24.03.1981 has been filed at pages 71 to 93 of the paper book. We are concerned with the estimate of the fair market value as on 1.4.1981 and this is very close to the date of the sale instance. Nothing has been said by the DVO in respect of this sale instance except merely saying that it is not substantiated by any evidence nor submitted for examination before him. He has also stated that the sale instance has been highly valued and cannot be compared with assessee's land. We are unable to agree with the DVO. The entire land of about 1,75,000 sq. yds. fell to the share of late Shriman Bawa

Maharaj Singhji

and on his death on 24.8.1982, his children succeeded to the land.

There was

also a family settlement on 15.1.1992 under which land admeasuring 19,133 sq.

yds. in plot nos. 1199, 1120, 1201 etc., plot no. 1169 measuring 1,384 sq. yds.

in all and a 44% share in 1,365 sq. yds. of land fell to the share of the assessee and Bawa Abhai Singh, each having 50% share. If a part of the entire

holdings of late Shriman Bawa Maharaj Singhji, when sold on 24.3.1981, could

fetch a price of Rs 828/- per sq. yd., we do not see why this sale instance

cannot form the basis of the estimate of the fair market value of the assessee's

land as on 1.4.1981. We are afraid that the DVO has not attached due importance

and weight to this sale instance and has brushed it aside unreasonably.

Even if it is assumed that the land should be valued as an agricultural

land, the assessee has sought to submit a report from one A.P. Jayaram, who is a

government registered valuer of agricultural lands and farms, before the

CIT(Appeals) vide letter (dated nil), a copy of which is placed at pages 55-57

of the paper book. The CIT(Appeals) does not appear to have dealt with this

report, and there is no reference to the same in his order. This is a detailed report as noticed by us earlier

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and therein the estimate of the fair market value of the land as agricultural

land has been taken at Rs 1,24,00,000 as on 1.4.1981. This valuer has adopted

the average of the income capitalization method and the sale

instance method and the sale instances relied upon by him are the same as those relied upon by the registered valuer whose report was considered by the DVO. In our view, therefore, there is no justification for adopting the fair market value of the land as on 1.4.1981 at Rs 19,96,000/- being 50% of the estimated value of Rs 39.92 lacs as per the DVO. Taking into consideration all the circumstances and the factors stated elaborately in the two valuation reports filed by the assessee and having regard to the huge potential of the land for being converted into residential use and being fully aware of the fact that as on 1.4.981, the land has not been officially converted into non-agricultural use, we are of the view that a reasonable estimate of the fair market value would be that estimated by the registered valuer at Rs 1,42,53,000/- on the basis of the sale instance dated 24.3.1981 of a part of the lands originally owned by late Shriman Bawa Maharaj Singhji. No strong grounds have been made out by the income tax authorities or the DVO as to why this figure cannot be adopted as a fair estimate of the value. The assessee's valuation being supported by the aforesaid report, we hold that the same requires to be accepted and the computation of the capital gains may be made on that basis.?

Our attention is drawn to the two decisions of the Division Bench, namely, Commissioner of Wealth Tax vs Himalaya Trading Co. (1987) 168 ITR 586(Del) as well as Commissioner of Wealth Tax vs R.S. Chaudhry (1990) 184 ITR 611(Del), in which it has been opined that questions regarding method of valuation is purely

a question of fact and if the Tribunal has favoured a valuation which

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applied a well recognized method of valuation the matter ought not to be

interfered with at the higher fora.

No substantial question of law arises for consideration.

Dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

MAY 18, 2009

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