



CORRECTED

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3836 OF 2011

BIMAL KISHORE PALIWAL & ORS. ... APPELLANTS

VERSUS

COMMISSIONER OF WEALTH TAX ... RESPONDENT

WITH

CIVIL APPEAL NO.3837 OF 2011

RENUKA AGARWAL ... APPELLANT

VERSUS

COMMISSIONER OF WEALTH TAX ... RESPONDENT

WITH

CIVIL APPEAL NO.3838 OF 2011

MASTER RAHUL ... APPELLANT

VERSUS

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CIVIL APPEAL NO.3839 OF 2011

SURENDRA KUMAR ... APPELLANT

VERSUS

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CIVIL APPEAL NO.3840 OF 2011

JITENDRA KUMAR (HUF) ... APPELLANT

VERSUS

COMMISSIONER OF WEALTH TAX ... RESPONDENT

WITH

CIVIL APPEAL NO.3841 OF 2011

SHYAMLAL(D) BY LRS. ... APPELLANT

VERSUS

COMMISSIONER OF WEALTH TAX ... RESPONDENT

J U D G M E N T

ASHOK BHUSHAN, J.

All these appeals raising common questions of law have been heard together and are being decided by this common judgment. The High Court vide its separate judgments dated 21.10.2005 decided six Wealth Tax References aggrieved by which, the assesseees have come up in the appeal. All the assesseees are partners in a firm M/s. G.D. & Sons. One of the assets of the partnership Firm is a Cinema building known as "Alpana Cinema" situate at Model Town, New Delhi. The question which was referred to the High Court for answer relates to the correct method of the valuation of the property that is

Alpana Cinema for assessment under Wealth Tax Act. Reference of facts and proceedings in C.A. NO.3836 of 2011 shall be sufficient to decide all these appeals.

2. M/s. G.D. & Sons of which firm the appellants are partners, purchased land and building in semi-constructed condition on 04.06.1965 for a sum of Rs.8,00,000/-. The construction was completed and Cinema Theatre, Alpana started running in the premises. The Alpana Cinema property was valued by assessment books of accounts. On pending assessment of Wealth Tax of one of the partners, the Wealth Tax Officer made a reference for valuation of the Alpana Cinema to Department Valuation Officer, New Delhi by Reference dated 29.04.1976. Valuation Officer after inspecting the site submitted its report dated 26.04.1977 valuing the property for assessment year 1970-71, 1971-72, 1972-73, 1973-74 and 1974-75. Notices under Section 17 of the Wealth Tax Act, 1957 were issued to the appellants on 30.03.1979. Assessees got the property valued by an approved Valuer adopting income capitalisation method. The

assessment order was passed by the Wealth Tax Officer in March, 1983 making assessment for the period from 1970-71 to 1974-75. The assessment was completed as per percentage of the right of different assesseees which they have in the Firm. The Assessing Officer relied on the Valuation Report submitted by the Departmental Valuer. The assessee aggrieved by the assessment order filed appeal before the Appellate Assistant Commissioner of Wealth Tax. The Appellate Authority by its detailed order dated 23.01.1986 affirmed the assessment made by the Assessing Officer on the basis of valuation by land and building method. The income capitalisation method as was relied on by the assessee was not approved.

3. The aggrieved by the different assessment orders the assesseees filed Wealth Tax Appeal before the Income Tax Appellate Tribunal (ITAT), Delhi Bench, Delhi. The ITAT accepted the case of the assessee to the effect that the proper basis for valuing the Cinema building would be capitalisation of the income. The ITAT held that since the building could

be used only for film exhibition and it cannot be used for any other purpose the method of its valuation has to be necessarily different from the one normally adopted in the case of buildings which are capable of being used as commercial buildings. The Revenue aggrieved by the Tribunal's order filed reference application through Department. Although, initially the same was rejected by the Tribunal, on the direction of the High Court following two questions were referred to the High Court for decision:

"1. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal was right in law for the purpose of Section 7(1) of the Wealth Tax Act in determining the assessee's interest in the partnership firm by adopting the fair market value of the assets in question namely, the cinema building on the income mobilization basis instead of land and building method adopted by Wealth Tax Officer?

2. If the answer to the above question is in the negative and against the assessee then what ought to be the correct fair market value of assets in question?"

4. The High Court vide its judgment and order dated 21.10.2005 answered the questions in favour of Revenue and against the assessee. The High Court held that Wealth Tax Officer was justified in adopting the land and building method. The High Court held that yield/rent capitalisation method would not be correct method of valuation of the property in question. The High Court relied on its decision in **Wealth Tax Reference 39 of 1985, Commissioner of Wealth Tax (Central) Kanpur vs. Bankey Lal and others** decided on the same day, i.e., 21.10.2005. The assessee aggrieved by the judgment of the High Court dated 21.10.2005 has come up in the appeal. As noted above, in all Wealth Tax References question was answered in favour of the Revenue.

5. We have heard Shri Rohit Amit Sthalekar, learned counsel for the appellants and learned counsel for the Department.

6. Shri Sthalekar, learned counsel for the appellants submits that Section 7(2)(a) of the Wealth Tax Act begins with *non obstante* clause which is

stand alone provision prescribing the income capitalisation method for assessing value of the assets of a running business which was applied by the ITAT. He further submits that the High Court did not controvert findings of the fact returned by the Tribunal. The Tribunal being final fact finding authority, the High Court ought not to have interfered with the order of the Tribunal. Each case is to be decided on its own facts and the valuation of the property is a question of fact which having been correctly determined by the ITAT, the High Court erred in interfering with the said judgment. It is further submitted by the learned counsel for the appellant that in case there are more than one method of valuing the property, the valuation which is in favour of the assessee has to be adopted which is a well settled rule of statutory interpretation.

7. Learned counsel for the Department refuting the submission of the learned counsel for the appellants contends that Wealth Tax Officer has rightly followed land and building method for assessing the

property. He submits that the provision of Section 7(1)(a) is an enabling provision which gives discretion to the Wealth Tax Officer to apply the income capitalisation method in case of running business, if he so decides. It is submitted that it is not mandatory for the Wealth Tax Officer to apply income capitalisation method in all cases. It is submitted that Cinema building was in the ownership and possession of the assessee which without being any encumbrances could have easily obtained the best price in the open market and in such cases the land and building method is appropriate method to be adopted for valuing the property.

8. Learned counsel for the parties have relied on various judgments which shall be referred while considering their respective submissions.

9. We need to first notice the provisions of Section 7 which fall for consideration in the present case. Section 7 of the Wealth Tax Act, 1957 as it stood at the relevant time reads as follows:

"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 dated.

(2) Notwithstanding anything contained in sub-section(1)-

(a) Where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth Tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustment therein as may be prescribed.

(b) Where the assessee carrying on the business is a company not resident in India and a computation in accordance with clause(a) cannot be made by reason of the absence of any separate balance-sheet drawn up for the affairs of such business in India the Wealth Tax Officer may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as

aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year.

- (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 16-A, 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."*

10. The normal rule for valuing an asset for the purposes of Wealth Tax Act is the estimated price which in the opinion of Wealth Tax Officer, the asset would fetch if sold in the open market. Sub-section (2) begins with *non obstante* clause. Sub-clause (a) of sub-section (2) provides that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth Tax Officer may, instead of determining separately the value of each asset held by the assessee in such

business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustment therein as may be prescribed.

11. Further sub-section (3) again begins with *non obstante* clause providing that where the valuation of any asset is referred 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.

12. Under Section 16A Wealth Tax Officer can make a reference to Valuation Officer for any asset for valuation. Section 16A sub-clause (1) is as follows:

"16A Reference to Valuation Officer.

(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, where under the provisions of section 7 read with the rules made under this Act or, as the case may be, the rules made in Schedule III, the market value of any asset is to be taken into account in such assessment, the Assessing Officer may refer the valuation of any asset to a Valuation

Officer

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Assessing Officer is of opinion

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do."

13. Present is a case where Assessing Officer has made a reference for Alpana Cinema on 29.04.1976. It has also come on the record that the order of reference to the Valuation Officer was challenged by the assessee by filing a writ petition in Delhi High Court. The Appellate Authority in its order had noted about the challenge to the reference made to the

Valuation Officer by the Assessing Officer. There is nothing on record that the Delhi High Court interfered with order of Assessing Officer referring the Departmental Valuer to value the Alpna Cinema.

14. It is true that sub-section (2) of Section 7 begins with *non obstante* clause which enables the Wealth Tax Officer to determine the net value of the assets of the business as a whole instead of determining separately the value of each asset held by the assessee in such business. The language of sub-section (2) provides overriding power to the Wealth Tax Officer to adopt and determine the net value of the business having regard to the balance-sheet of such business. The enabling power has been given to Wealth Tax Officer to override the normal rule of valuation of the properties that is the value which it may fetch in open market, Wealth Tax Officer can adopt in a case where he may think it fit to adopt such methodology. The appellants' submission is that the provision of Section 7(2)(a) is a stand alone provision and is to be applied in all cases where

assessee is carrying on a business. We do not agree with the above submission.

15. Overriding power has been provided to override the normal method of valuation of property as given by sub-section 7(1) to arm the Wealth Tax Officer to adopt the method of valuation as given in sub-section (2)(a). The purpose and object of giving overriding power is not to fetter the discretion. The Wealth Tax Officer is not obliged to mandatorily adopt the method provided in Section 7(2)(a) in all cases where assessee is carrying on a business. The language of sub-section (2)(a) does not indicate that the provisions mandate the Wealth Tax Officer to adopt the method in all cases of running business. Section 7 of the Act has also come for interpretation before this Court in large number of cases. It is useful to refer to some of the cases. In **Commissioner of Wealth Tax, Calcutta vs. Tungabadra Industries Ltd., Calcutta, 1969 (2) SCC 528**, this Court had occasion to consider Section 7 of the Act. In the aforesaid case the following question came for consideration

before the Court:

"Whether on the facts and in the circumstances of the case, for the purpose of determining the net value of the assets of the assessee under Section 7(2) of the Wealth-tax Act, 1957 the Tribunal was right in directing that the written down value of the fixed assets of the assessee should be adopted as the value thereof, instead of their balance-sheet value?"

16. In paragraph 5 while considering Section 7 following was observed:

"5.....In our opinion there is justification for this argument. Under sub-section(1) of Section 7 of the Act the Wealth-tax Officer is authorised to estimate for the purpose of determining the value of any asset, the price which it would fetch, if sold in the open market on the valuation date. But this rule in the case of a running business may often be inconvenient and may not yield a true estimate of the net value of the total assets of the business. The Legislature has, therefore, provided in sub-section(2) (a) that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may determine the net value of the assets of the business as a whole, having regard to the balance-sheet of such business as on the valuation date and make such adjustments therein as the circumstances of the case may

require....."

17. Learned counsel for the appellants has placed reliance on **State of Kerala vs. P.P. Hassan Koya, AIR 1968 SC 1201**. The above case was a case of valuation of property in reference to Land Acquisition Act, 1894. In the aforesaid case following observation was made in paragraphs 6 and 7:

"6.....An instance of a sale which is proximate in time to the date of the notification under Section 4(1) of the Land Acquisition Act in respect of land similarly situate and with similar advantages and which is proved to be a transaction between a willing vendor and a willing purchaser would form a reliable guide for determining the market value. The value which a willing vendor might reasonably expect to receive from a willing purchaser in respect of a house generally depends upon a variety of circumstances including the nature of the construction, its age situation, the amenities available, its special advantages and a host of other circumstances. When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification under Section 4. Therefore the method which is generally resorted to in determining the value of the land with buildings especially those used for

business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land and the buildings.

7. That method was rightly adopted by the trial court and the High Court. The unit under acquisition is used for business purposes and has a prominent situation in the town of Calicut. There was clear evidence about the rental of the building, and the trial court proceeded to capitalize the net annual rental, having regard to the rate of return of 13 1/2 per cent from gilt-edged securities, by multiplying it by 35 times. The High Court has slightly reduced the multiple."

18. The above observation made by the Court was general observation not in the context of Section 7 of the Act. The method of valuing the building property on the basis of rent capitalisation is no doubt provided in various statutes especially in the cases of rent fixation. The above observation does not help the appellants in the present case.

19. More appropriate judgment of this Court which is on the facts of the present case is the judgment in ***Juggilal Kamlatpat Bankers and another vs. Wealth-Tax Officer, Special Circle, C-Ward, Kanpur and others, 1984 (145) ITR 485.*** In the above, case this Court had

occasion to consider and interpret the provisions of Section 7. The Wealth Tax Officer had made a reference to Valuation Officer for valuing certain buildings belonging to the appellant Firm. The appellant by means of writ petition challenged the reference made by the Assessing Officer to the Departmental Valuer for valuing the property. Two of the submissions which were made before the High Court as quoted in the judgment are as below:

".....(3)the interest of appellant No.2 in appellant No.1-firm had to be valued in accordance with r.2 of the W.T.Rules, 1957, and hence s.16A of the Act had no application; (4) the valuation of the concerned buildings forming part of the assets of the business of appellant No.1-firm had to be determined in accordance with the commercial principles under s.7(2)(a) and not under s.7(1) of the Act, and"

20. The High Court considered the submissions of the parties and by rejecting the above two submissions held following:

".....With regard to the third and fourth contentions the High Court held that r.2, s.7 and s.16A(1)(b) (ii) had to be read harmoniously and

r.2 did not exclude the application of ss.7 and 16A for valuing an asset of a partner in a partnership firm and that notwithstanding the non obstante clause contained in s.7(2) it was an enabling provision giving a discretion to the WTO either to value the assets of a business as a whole or valuing each asset thereof separately and in that behalf the WTO had the power to refer such valuation to the Valuation Officer under s.16A....."

21. Before this Court the appellants had raised two submissions. The second submission as noticed by this Court itself at page 490 of the judgment is as follows:

".....Secondly, counsel has urged that assuming that appellant No.2's interest(as a karta of his HUF) in appellant No.1's firm is exigible to the wealth-tax under the Act, the valuation of such interest being governed by s.7(2)(a) of the Act read with r.2A of the Wealth-tax Rules, 1957, it is not open to the WTO to refer the valuation of specific house properties belonging to the firm to the Valuation Officers under s.16A of the Act; in fact, according to him, the valuation of the assets of the partnership business of appellant No.1 as a whole having regard to its balance-sheets for the concerned years ought to have been undertaken by the WTO and as such the book values of the house properties as appearing in the balance-sheets ought to have been accepted by him and,

therefore, the reference made by the WTO to Valuation Officers as well as the notices issued by the latter, being incompetent and unjustified in law, are liable to be quashed. For the reasons which we shall presently indicate neither of the contentions has any substance and both are liable to be rejected....."

22. This Court after considering the above submission as well as provisions of the Act including Section 7 of Wealth Tax Act, 1957 laid down following at page 495:

".....On a fair reading of the aforesaid provisions it will appear clear that the primary method of determining the value of assets for the purposes of the Act is the one indicated in s.7(1), inasmuch as it provides that the value of any assets, other than cash, for the purposes of this Act shall be estimated to be its market price on the valuation date. Then comes sub-s. (2) which provides that in the case of a business for which accounts are maintained by the assessee regularly the WTO may, instead of determining separately the valuation of each asset held by the assessee in such business, determine the net value of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustment therein as may be prescribed. It is true that sub-s.(2)

commences with a non obstante clause, but even so, the provision itself is an enabling one conferring discretion on the WTO to determine the net value of the assets of the business as a whole having regard to its balance sheets as on the valuation date, instead of proceeding under sub-s. (1). In other words, it is optional for the WTO to resort to either of the methods even in the case where the net value of the business carried on by the assessee is to be determined....."

23. Further it was laid down by this Court that "this is apart from the position that the resort to Section 7(2) itself is discretionary and optional, the provision being an enabling one". This Court thus has categorically laid down that resort to Section 7(2) (a) is discretionary and enabling provision to Wealth Tax Officer to adopt the method as laid down in Section 7(2)(a) for a running business but the above enabling power cannot be held as obligation or shackles on right of Assessing Officer to adopt an appropriate method. In the present case reference was made to the Departmental Valuer by Assessing Officer under Section 7(3). Thus there is a conscious

decision of the Assessing Officer to obtain the report from the Departmental Valuer. The above conscious decision itself contains the decision of Assessing Officer not to resort to Section 7(2)(a). The Valuation report of Departmental Valuer has been received which has been relied by the Assessing Officer for assessing the assessee in the relevant year. We, thus, do not find any error in the order of the Assessing Officer in adopting the land and building method by making a reference to Departmental Valuer to value the property on the said method. The Appellate Authority has considered in paragraph 17 of the judgment the objection of assessee against the land and building method and repelled the same by the following reasons:

"17.i) The other objection which has been vehemently stressed is against the valuation of Alpana Theatre by applying land and building method. In this connection, it may not be an unwarranted repetition to state that Alpana Cinema was purchased by the firm M/S G.D. & Sons in semi finished condition from M/s Gill and Bros. Asaf Ali Road, New Delhi and thereafter it has been

uninterruptedly used by the firm for film exhibition. What has, therefore, to be appreciated is that the property in question has been used by the owners without any adverse riders which enjoin a property if it is let out. It has thus to be taken into account that the firm owning this theatre had no encumbrances in case it decided to dispose it off at any moment. This factor is of great consequence while arriving at fair Market value. At one point, it has also been agitated by the appellant that the land over which the Cinema building is situated could not be used for any purpose other than as Cinema Building, hence it was not proper for the Valuation Officer to consider it as an open piece of land and value it likewise. This objection if of no avail because the appellant's claim beaten from the very reasoning he has given. To make the matter more than clear, it may be remarked that it is a privilege to get a licence for film exhibition on an urban land. Such land use is only conducive to raise the value and does not in any way depreciate its value as has been wrongly assumed by the appellant."

24. Learned counsel for the appellants submits that reasons given by ITAT for holding that income capitalisation method is a more appropriate method has not been adverted to by the High Court. We have

perused the order of the Tribunal. The Tribunal has observed that once it is accepted that the property is useable only as Cinema building then its method of valuation has to be necessarily different from the one normally adopted in the case of buildings which are capable of being used for other commercial purposes. The mere fact that the building is only for the use of Cinema exhibition does not in any manner diminish the marketable price. At the relevant period uses of building as running Cinema were no less valuable. The finding has been returned by the Appellate Authority that it has not been further challenged that the building was self-occupied and in possession of assessee with no encumbrances.

25. It is true that the High Court in so many words had not adverted to the reasons given by the ITAT. However, the High Court has expressed opinion that Wealth Tax Officer was justified in adopting the land and building method. One of the reasons given by the High Court is that if there is loss in the business or in other words there is negative income, it cannot

be possible to say that the property in question has no marketable value. Learned counsel for the appellants has submitted that in the relevant year the income was earned.

26. It is relevant to point out that the Appellate Authority in its judgment has observed that there was loss shown by assessee himself in the year 1969-70. In paragraph 17 sub-paragraph (iv) following has been observed by the Appellate Authority:

"iv)....Even in the case of the appellant there is a returned loss of Rs.1,16,845/- in the first assessment year i.e. 1969-70. Thus if income capitalisation method is applied in such cases where the assessee may have unfortunately suffered losses in the initial years, the valuation of an asset will workout to a negative figure. This will be certainly a situation far from reality and not in any way the intention of the legislature while directing in Section 7 of the W.T. Act for taking the fair market value of an asset."

27. The above circumstances taken by the High Court cannot be said to be irrelevant which apprehensions were duly found proved by the facts as noticed by the Appellate Authority.

28. Learned counsel for the appellants has further submitted that in the event there are more than one methods of valuation of an asset of an assessee, the method under which the valuation is in favour of assessee has to be accepted. He has relied on the judgment of this Court in **The Commissioner of Income Tax, West Bengal, Calcutta vs. M/s. Vegetables Products Ltd., (1973) 1 SCC 442**. This Court in paragraph 6 of the judgment has laid down the following:

"6. There is no doubt that the acceptance of one or the other interpretation sought to be placed on Section 271(1)(a)(i) by the parties would lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the Legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. This is a well accepted rule of construction recognised by this Court in several of its decisions. Hence all that we have

to see is, what is the true effect of the language employed in Section 271(1) (a)(i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."

29. The proposition which was laid down by this Court was that if two reasonable constructions of taxing statute are possible, that construction which favours the assessee must be adopted. The above proposition cannot be read to mean that under two methods of valuation if the value which is favourable to assessee should be adopted. Here in the present case, the provisions of Section 7 are neither ambiguous nor lead to two constructions. The construction of Section 7 is clear as has already been elaborately considered by this Court in the judgment of this Court in ***Juggilal Kamlapat Bankers (supra)***.

30. The Wealth Tax Officer having referred the Departmental Valuer to value the property, in consequent to which reference for valuation report having already been received on 26.07.1977 which has

relied in the assessment. Objections to the valuation report were considered by the Appellate Authority and having been rejected, we do not find any fault with the assessment made by the Wealth Tax Officer. We are of the view that the High Court did not commit any error in interfering with the order of ITAT.

31. In view of the foregoing discussions all the appeals are dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

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4. The High Court vide its judgment and order dated 21.10.2005 answered the questions in favour of Revenue and against the assessee. The High Court held that Wealth Tax Officer was justified in adopting the land and building method. The High Court held that yield/rent capitalisation method would not be correct method of valuation of the property in question. The High Court relied on its decision in **Wealth Tax Reference 39 of 1985, Commissioner of Wealth Tax (Central) Kanpur vs. Bankey Lal and others** decided on the same day, i.e., 21.10.2005. The assessee aggrieved by the judgment of the High Court dated 21.10.2005 has come up in the appeal. As noted above, in all Wealth Tax References question was answered in favour of the Revenue.

5. We have heard Shri Rohit Amit Sthalekar, learned counsel for the appellants and learned counsel for the Department.

6. Shri Sthalekar, learned counsel for the appellants submits that Section 7(2)(a) of the Wealth Tax Act begins with *non obstante* clause which is

stand alone provision prescribing the income capitalisation method for assessing value of the assets of a running business which was applied by the ITAT. He further submits that the High Court did not controvert findings of the fact returned by the Tribunal. The Tribunal being final fact finding authority, the High Court ought not to have interfered with the order of the Tribunal. Each case is to be decided on its own facts and the valuation of the property is a question of fact which having been correctly determined by the ITAT, the High Court erred in interfering with the said judgment. It is further submitted by the learned counsel for the appellant that in case there are more than one method of valuing the property, the valuation which is in favour of the assessee has to be adopted which is a well settled rule of statutory interpretation.

7. Learned counsel for the Department refuting the submission of the learned counsel for the appellants contends that Wealth Tax Officer has rightly followed land and building method for assessing the

property. He submits that the provision of Section 7(1)(a) is an enabling provision which gives discretion to the Wealth Tax Officer to apply the income capitalisation method in case of running business, if he so decides. It is submitted that it is not mandatory for the Wealth Tax Officer to apply income capitalisation method in all cases. It is submitted that Cinema building was in the ownership and possession of the assessee which without being any encumbrances could have easily obtained the best price in the open market and in such cases the land and building method is appropriate method to be adopted for valuing the property.

8. Learned counsel for the parties have relied on various judgments which shall be referred while considering their respective submissions.

9. We need to first notice the provisions of Section 7 which fall for consideration in the present case. Section 7 of the Wealth Tax Act, 1957 as it stood at the relevant time reads as follows:

"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 dated.

(2) Notwithstanding anything contained in sub-section(1)-

(c) Where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth Tax Officer may, instead of determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustment therein as may be prescribed.

(d) Where the assessee carrying on the business is a company not resident in India and a computation in accordance with clause(a) cannot be made by reason of the absence of any separate balance-sheet drawn up for the affairs of such business in India the Wealth Tax Officer may take the net value of the assets of the business in India to be that proportion of the net value of the assets of the business as a whole wherever carried on determined as

aforesaid as the income arising from the business in India during the year ending with the valuation date bears to the aggregate income from the business wherever arising during that year.

- (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 16-A, 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."*

10. The normal rule for valuing an asset for the purposes of Wealth Tax Act is the estimated price which in the opinion of Wealth Tax Officer, the asset would fetch if sold in the open market. Sub-section (2) begins with *non obstante* clause. Sub-clause (a) of sub-section (2) provides that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth Tax Officer may, instead of determining separately the value of each asset held by the assessee in such

business, determine the net value of the assets of the business as a whole having regard to the balance-sheet of such business as on the valuation date and making such adjustment therein as may be prescribed.

11. Further sub-section (3) again begins with *non obstante* clause providing that where the valuation of any asset is referred 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.

12. Under Section 16A Wealth Tax Officer can make a reference to Valuation Officer for any asset for valuation. Section 16A sub-clause (1) is as follows:

"16A Reference to Valuation Officer.

(1) For the purpose of making an assessment (including an assessment in respect of any assessment year commencing before the date of coming into force of this section) under this Act, where under the provisions of section 7 read with the rules made under this Act or, as the case may be, the rules made in Schedule III, the market value of any asset is to be taken into account in such assessment, the Assessing Officer may refer the valuation of any asset to a Valuation

Officer

(a) in a case where the value of the asset as returned is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Assessing Officer is of opinion

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do."

13. Present is a case where Assessing Officer has made a reference for Alpana Cinema on 29.04.1976. It has also come on the record that the order of reference to the Valuation Officer was challenged by the assessee by filing a writ petition in Delhi High Court. The Appellate Authority in its order had noted about the challenge to the reference made to the Valuation Officer by the Assessing Officer. There is nothing on record that the Delhi High Court interfered with order of Assessing Officer referring the Departmental Valuer to value the Alpana Cinema.

14. It is true that sub-section (2) of Section 7 begins with *non obstante* clause which enables the Wealth Tax Officer to determine the net value of the assets of the business as a whole instead of determining separately the value of each asset held by the assessee in such business. The language of sub-section (2) which provides overriding power to

the Wealth Tax Officer to adopt and determining the net value of the business having regard to the balance-sheet of such business. The enabling power has been given to Wealth Tax Officer to override the normal rule of valuation of the properties that is the value which it may fetch in open market, Wealth Tax Officer can adopt in a case where he may think it fit to adopt such methodology. The appellants' submission is that the provision of Section 7(2)(a) is a stand alone provision and is to be applied in all cases where assessee is carrying on a business. We do not agree with the above submission.

15. Overriding power has been provided to override the normal method of valuation of property as given by sub-section 7(1) to arm the Wealth Tax Officer to adopt the method of valuation as given in sub-section (2)(a). The purpose and object of giving overriding power is not to fetter the discretion. The Wealth Tax Officer is not obliged to mandatorily adopt the method provided in Section 7(2)(a) in all cases where assessee is carrying on a business. The language of

sub-section (2)(a) does not indicate that the provisions mandate the Wealth Tax Officer to adopt the method in all cases of running business. Section 7 of the Act has also come for interpretation before this Court in large number of cases. It is useful to refer to some of the cases. In **Commissioner of Wealth Tax, Calcutta vs. Tungabhadra Industries Ltd., Calcutta, 1969 (2) SCC 528**, this Court had occasion to consider Section 7 of the Act. In the aforesaid case the following question came for consideration before the Court:

"Whether on the facts and in the circumstances of the case, for the purpose of determining the net value of the assets of the assessee under Section 7(2) of the Wealth-tax Act, 1957 the Tribunal was right in directing that the written down value of the fixed assets of the assessee should be adopted as the value thereof, instead of their balance-sheet value?"

16. In paragraph 5 while considering Section 7 following was observed:

"5.....In our opinion there is justification for this argument. Under sub-section(1) of Section 7 of the Act the Wealth-tax Officer is

authorised to estimate for the purpose of determining the value of any asset, the price which it would fetch, if sold in the open market on the valuation date. But this rule in the case of a running business may often be inconvenient and may not yield a true estimate of the net value of the total assets of the business. The Legislature has, therefore, provided in sub-section(2) (a) that where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may determine the net value of the assets of the business as a whole, having regard to the balance-sheet of such business as on the valuation date and make such adjustments therein as the circumstances of the case may require.....”

17. Learned counsel for the appellants has placed reliance on **State of Kerala vs. P.P. Hassan Koya, AIR 1968 SC 1201**. The above case was a case of valuation of property in reference to Land Acquisition Act, 1894. In the aforesaid case following observation was made in paragraphs 6 and 7:

“6.....An instance of a sale which is proximate in time to the date of the notification under Section 4(1) of the Land Acquisition Act in respect of land similarly situate and with similar advantages and which is proved to be a transaction between a willing

vendor and a willing purchaser would form a reliable guide for determining the market value. The value which a willing vendor might reasonably expect to receive from a willing purchaser in respect of a house generally depends upon a variety of circumstances including the nature of the construction, its age situation, the amenities available, its special advantages and a host of other circumstances. When the property sold is land with building, it is often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the date of the notification under Section 4. Therefore the method which is generally resorted to in determining the value of the land with buildings especially those used for business purposes, is the method of capitalization of return actually received or which might reasonably be received from the land and the buildings.

7. That method was rightly adopted by the trial court and the High Court. The unit under acquisition is used for business purposes and has a prominent situation in the town of Calicut. There was clear evidence about the rental of the building, and the trial court proceeded to capitalize the net annual rental, having regard to the rate of return of 13 1/2 per cent from gilt-edged securities, by multiplying it by 35 times. The High Court has slightly reduced the multiple."

18. The above observation made by the Court was general observation not in the context of Section 7

of the Act. The method of valuing the building property on the basis of rent capitalisation is no doubt provided in various statutes especially in the cases of rent fixation. The above observation does not help the appellants in the present case.

19. More appropriate judgment of this Court which is on the facts of the present case is the judgment in ***Juggilal Kamalpat Bankers and another vs. Wealth-Tax Officer, Special Circle, C-Ward, Kanpur and others, 1984 (145) ITR 485.*** In the above, case this Court had occasion to consider and interpret the provisions of Section 7. The Wealth Tax Officer had made a reference to Valuation Officer for valuing certain buildings belonging to the appellant Firm. The appellant by means of writ petition challenged the reference made by the Assessing Officer to the Departmental Valuer for valuing the property. Two of the submissions which were made before the High Court as quoted in the judgment are as below:

".....(3)the interest of appellant No.2 in appellant No.1-firm had to be valued in accordance with r.2 of the W.T.Rules, 1957, and hence s.16A of

the Act had no application; (4) the valuation of the concerned buildings forming part of the assets of the business of appellant No.1-firm had to be determined in accordance with the commercial principles under s.7(2)(a) and not under s.7(1) of the Act, and"

20. The High Court considered the submissions of the parties and by rejecting the above two submissions held following:

".....With regard to the third and fourth contentions the High Court held that r.2, s.7 and s.16A(1)(b) (ii) had to be read harmoniously and r.2 did not exclude the application of ss.7 and 16A for valuing an asset of a partner in a partnership firm and that notwithstanding the non obstante clause contained in s.7(2) it was an enabling provision giving a discretion to the WTO either to value the assets of a business as a whole or valuing each asset thereof separately and in that behalf the WTO had the power to refer such valuation to the Valuation Officer under s.16A....."

21. Before this Court the appellants had raised two submissions. The second submission as noticed by this Court itself at page 490 of the judgment is as follows:

".....Secondly, counsel has urged that assuming that appellant No.2's

interest(as a karta of his HUF) in appellant No.1's firm is exigible to the wealth-tax under the Act, the valuation of such interest being governed by s.7(2)(a) of the Act read with r.2A of the Wealth-tax Rules, 1957, it is not open to the WTO to refer the valuation of specific house properties belonging to the firm to the Valuation Officers under s.16A of the Act; in fact, according to him, the valuation of the assets of the partnership business of appellant No.1 as a whole having regard to its balance-sheets for the concerned years ought to have been undertaken by the WTO and as such the book values of the house properties as appearing in the balance-sheets ought to have been accepted by him and, therefore, the reference made by the WTO to Valuation Officers as well as the notices issued by the latter, being incompetent and unjustified in law, are liable to be quashed. For the reasons which we shall presently indicate neither of the contentions has any substance and both are liable to be rejected....."

22. This Court after considering the above submission as well as provisions of the Act including Section 7 of Wealth Tax Act, 1957 laid down following at page 495:

".....On a fair reading of the aforesaid provisions it will appear clear that the primary method of

determining the value of assets for the purposes of the Act is the one indicated in s.7(1), inasmuch as it provides that the value of any assets, other than cash, for the purposes of this Act shall be estimated to be its market price on the valuation date. Then comes sub-s. (2) which provides that in the case of a business for which accounts are maintained by the assessee regularly the WTO may, instead of determining separately the valuation of each asset held by the assessee in such business, determine the net value of the business as a whole having regard to the balance sheet of such business as on the valuation date and making such adjustment therein as may be prescribed. It is true that sub-s.(2) commences with a non obstante clause, but even so, the provision itself is an enabling one conferring discretion on the WTO to determine the net value of the assets of the business as a whole having regard to its balance sheets as on the valuation date, instead of proceeding under sub-s. (1). In other words, it is optional for the WTO to resort to either of the methods even in the case where the net value of the business carried on by the assessee is to be determined....."

23. Further it was laid down by this Court that "this is apart from the position that the resort to Section 7(2) itself is discretionary and optional, the

provision being an enabling one". This Court thus has categorically laid down that resort to Section 7(2) (a) is discretionary and enabling provision to Wealth Tax Officer to adopt the method as laid down in Section 7(2)(a) for a running business but the above enabling power cannot be held as obligation or shackles on right of Assessing Officer to adopt an appropriate method. In the present case reference was made to the Departmental Valuer by Assessing Officer under Section 7(3). Thus there is a conscious decision of the Assessing Officer to obtain the report from the Departmental Valuer. The above conscious decision itself contains the decision of Assessing Officer not to resort to Section 7(2)(a). The Valuation report of Departmental Valuer has been received which has been relied by the Assessing Officer for assessing the assessee in the relevant year. We, thus, do not find any error in the order of the Assessing Officer in adopting the land and building method by making a reference to Departmental Valuer to value the property on the said method. The

Appellate Authority has considered in paragraph 17 of the judgment the objection of assessee against the land and building method and repelled the same by the following reasons:

"17.i) The other objection which has been vehemently stressed is against the valuation of Alpana Theatre by applying land and building method. In this connection, it may not be an unwarranted repetition to state that Alpana Cinema was purchased by the firm M/S G.D. & Sons in semi finished condition from M/s Gill and Bros. Asaf Ali Road, New Delhi and thereafter it has been uninterruptedly used by the firm for film exhibition. What has, therefore, to be appreciated is that the property in question has been used by the owners without any adverse riders which enjoin a property if it is let out. It has thus to be taken into account that the firm owning this theatre had no encumbrances in case it decided to dispose it off at any moment. This factor is of great consequence while arriving at fair Market value. At one point, it has also been agitated by the appellant that the land over which the Cinema building is situated could not be used for any purpose other than as Cinema Building, hence it was not proper for the Valuation Officer to consider it as an open piece of land and value it likewise. This

objection if of no avail because the appellant's claim beaten from the very reasoning he has given. To make the matter more than clear, it may be remarked that it is a privilege to get a licence for film exhibition on an urban land. Such land use is only conducive to raise the value and does not in any way depreciate its value as has been wrongly assumed by the appellant."

24. Learned counsel for the appellants submits that reasons given by ITAT for holding that income capitalisation method is a more appropriate method has not been adverted to by the High Court. We have perused the order of the Tribunal. The Tribunal has observed that once it is accepted that the property is useable only as Cinema building then its method of valuation has to be necessarily different from the one normally adopted in the case of buildings which are capable of being used for other commercial purposes. The mere fact that the building is only for the use of Cinema exhibition does not in any manner diminish the marketable price. At the relevant period uses of building as running Cinema were no less valuable. The finding has been returned by the

Appellate Authority that it has not been further challenged that the building was self-occupied and in possession of assessee with no encumbrances.

25. It is true that the High Court in so many words had not adverted to the reasons given by the ITAT. However, the High Court has expressed opinion that Wealth Tax Officer was justified in adopting the land and building method. One of the reasons given by the High Court is that if there is loss in the business or in other words there is negative income, it cannot be possible to say that the property in question has no marketable value. Learned counsel for the appellants has submitted that in the relevant year the income was earned.

26. It is relevant to point out that the Appellate Authority in its judgment has observed that there was loss shown by assessee himself in the year 1969-70. In paragraph 17 sub-paragraph (iv) following has been observed by the Appellate Authority:

"iv)....Even in the case of the appellant there is a returned loss of Rs.1,16,845/- in the first assessment year i.e. 1969-70. Thus

if income capitalisation method is applied in such cases where the assessee may have unfortunately suffered losses in the initial years, the valuation of an asset will workout to a negative figure. This will be certainly a situation far from reality and not in any way the intention of the legislature while directing in Section 7 of the W.T. Act for taking the fair market value of an asset."

27. The above circumstances taken by the High Court cannot be said to be irrelevant which apprehensions were duly found proved by the facts as noticed by the Appellate Authority.

28. Learned counsel for the appellants has further submitted that in the event there are more than one methods of valuation of an asset of an assessee, the method under which the valuation is in favour of assessee has to be accepted. He has relied on the judgment of this Court in ***The Commissioner of Income Tax, West Bengal, Calcutta vs. M/s. Vegetables Products Ltd., (1973) 1 SCC 442.*** This Court in paragraph 6 of the judgment has laid down the following:

"6. There is no doubt that the

acceptance of one or the other interpretation sought to be placed on Section 271(1)(a)(i) by the parties would lead to some inconvenient result, but the duty of the court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the Legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. This is a well accepted rule of construction recognised by this Court in several of its decisions. Hence all that we have to see is, what is the true effect of the language employed in Section 271(1)(a)(i). If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."

29. The proposition which was laid down by this Court was that if two reasonable constructions of taxing statute are possible, that construction which favours the assessee must be adopted. The above proposition

cannot be read to mean that under two methods of valuation if the value which is favourable to assessee should be adopted. Here in the present case, the provisions of Section 7 are neither unambiguous nor lead to two constructions. The construction of Section 7 is clear as has already been elaborately considered by this Court in the judgment of this Court in **Juggilal Kamlapat Bankers (supra)**.

30. The Wealth Tax Officer having referred the Departmental Valuer to value the property, in consequent to which reference for valuation report having already been received on 26.07.1977 which has relied in the assessment. Objections to the valuation report were considered by the Appellate Authority and having been rejected, we do not find any fault with the assessment made by the Wealth Tax Officer. We are of the view that the High Court did not commit any error in interfering with the order of ITAT.

31. In view of the foregoing discussions all the appeals are dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
OCTOBER 13, 2017.