

residential flat owned by the appellant-assessee. There was wide variation between the value of the flat as disclosed in the return filed by the assessee on self assessment as per Rule 3 to 7 of Schedule III of the Wealth Tax Act, 1957; and that determined by the Departmental Valuation Officer under Rule 20 of Schedule III of the Wealth Tax Act. The Assessment Officer held that it was not practicable to value the property as per Rule 3 to 7, hence, 8(a) was attracted and referred the matter to the Valuation Officer u/s. 16A for determination of value of the asset. The Commissioner of Wealth Tax upheld the order of the AO. Thereafter, the tribunal as also the High Court upheld the view taken by the respondent-Revenue. Hence, the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. Rule 8(a) of the Schedule III of Wealth Tax Act, 1957 carves out an exception to Rule 3 that while the Assessment Officer (AO), with the previous approval of the Joint Commissioner is of opinion that it is not practicable to apply Rule 3 to a particular case, then Rule 3 shall not be made applicable. In such case, the AO may invoke Rule 8 and determine the value of an asset in the manner laid down in Rule 20. As per Rule 20 the value of any asset shall be estimated to be the price which, in the opinion of the AO would fetch, if sold in the open market on the date of valuation.[Para 16, 17] [60-C; 61-A]

1.2. While Rule 1BB was omitted by Wealth-tax (Second Amendment) Rules, 1989 w.e.f. 1.4.1989 but simultaneously Rule 8 was inserted vide Schedule III. Therefore, it cannot be said that after insertion of Schedule III to the Act the value on which the wealth tax is payable has no relevance in determining the fair market value of the asset or the price which the asset would fetch if sold in the open market on the valuation date. [Para 22] [65-G-H]

A 1.3. A conjoint reading of the various provisions
makes it clear that the legislature has not laid down a rigid
directive on the AO that the valuation of an asset is
mandatorily required to be made by applying Rule 3; the
B Rule 3 or Rule 8 is applicable in a particular case. If the
AO is of the opinion that it is not practicable to apply Rule
3, the AO can apply Rule 8 and value of the asset can be
determined in the manner laid down in Rule 20 or
C Sec.16A, the value of such asset shall be estimated to be
the price which, in the opinion of the Valuation Officer,
would fetch if sold in the open market on the date of
valuation. Therefore, the word "practicable" is to be
construed widely. In the instant context if in the opinion
of the AO, if the value determined by the tax payer on the
D basis of Rules 3 to 7 is absurd or has no correlation to
the fair market value or otherwise not practicable, in such
a case, it is open to the AO to invoke Rule 8 of Schedule
III and determine the value of the asset either under Rule
20 or refer under Section 16A, for determination of the
valuation of the asset. The invocation of Rule 8(a) cannot
E be based on the AO. The discretion vested in the AO to
discard the value determined as per Rules 3 has to be
judicially exercised. It must be reasonable, based on
subjective satisfaction; the power must be shown to be
objectively exercised and is open to judicial scrutiny.
F [Paras 22, 23, 24, 25] [67-B-D]

Black's Law Dictionary Eighth Edn p 1210;
Advanced Law Lexicon 3rd Edition 2005 page 3660 -
referred to.

G 2.1. In the instant case, the AO refused to accept self
assessment for the following reasons: that there is a wide
variation between the market value and the valuation
done by the assessee as per municipal taxes; that the
property is used as a guest house; that the value for levy
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of municipal tax is very low, as the total ratable value of the assessee is done by the municipal authorities @ Rs.6,573/- per annum; that the assessee was a tenant of the property @ Rs.500/- per month; that after purchase of the property a lot of expenditure was incurred from time to time on improvement of the property which is very difficult to ascertain; that the value of the building is grossly understated as the assessee himself entered into an agreement to sell the same in the year 1995 for a sum of Rs.10,26,00,000/-. Considering the said factors, the AO assessed the value of the property at Rs.2,60,73,000/- as valued by the Departmental Valuation Officer. [Para 26] [67-E-H; 68-A-B]

2.2. The AO was justified in holding that it was not practicable to apply Rule 3 in the instant case and referred the matter to the Valuation Officer under Section 16A for determination of value of the asset. The AO, thereafter, rightly assessed the wealth tax on the basis of such value determined by the Valuation Officer. [Para 28] [68-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.938 of 2003

From the Judgment and Order dated 08.03.2002 of the High Court of Judicature at Allahabad in WTR No. 374 of 2000.

Ajay Vohra, Kavita Jha, Bhargava V. Desai, Shreyas Mehrotra for the Appellant.

Arijit Prasad, N. Annapoorni, S.A. Haseeb, B. V. Balaram Das, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. : 1. This appeal is directed against judgment dated 8th March, 2002

A passed by the High Court of Judicature at Allahabad in Wealth Tax Appeal No.374 of 2000 filed by the appellant-assessee. By the impugned judgment, the High Court upheld the order dated 12th June, 2000 passed by the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as the, 'ITAT').

B 2. The dispute relates to wealth-tax return of appellant-
assessee for the Assessment Year 1993-94. The assessee
filed its return of taxable wealth at Rs.1,31,76,000/- against
which the assessment was completed at net wealth of
C Rs.3,90,93,800/-. The dispute is about the valuation of the
property in question being a residential flat situated in Worli,
Bombay which is owned by the assessee and used as a guest
house. The immovable property was acquired by the assessee
before 1st April, 1974 and the assessee filed return on self
assessment as per Rule 3 to 7 of Schedule III of the Wealth-
D Tax Act, 1957 (hereinafter referred to as the, 'Act'). In the course
of assessment proceedings, the Assessing Officer (for short,
'AO') was of the opinion that the value of the said flat as
disclosed in the return (as Rs.1,55,139/-) did not appear to be
in consonance with the market value for a similar size flat in
E Mumbai and referred the matter to Departmental Valuation
Officer under Rule 20 of Schedule III who valued the flat at
Rs.2,60,73,000/-. The AO also relied upon the agreement to
sell of the said flat dated 15th September, 1995 entered by the
assessee with its vendor. In the said agreement the price of
F the flat was shown at Rs.10,26,000/-. The AO was of the opinion
that due to wide variation between alleged market value as
determined by the Departmental Valuation Officer and the value
as disclosed by the assessee, it was not practicable to value
the property as per Rules 3 to 7 hence Rule 8(a) is attracted.

G The A.O. further observed that as the assessee had taken
plea that it was paying rent @ Rs.500 per month prior to the
purchase of the flat and incurred expenditure on the
improvement of the said flat, it was difficult for the AO to

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AMRIT BANASPATI CO. LTD. v. COMMISSIONER OF WEALTH TAX, GHAZIABAD [SUDHANSU JYOTI MUKHOPADHAYA, J.] 51

ascertain the price and, therefore, it would be impracticable to apply Rule 3. A

3. On appeal, preferred by assessee, the Commissioner of Wealth-tax (Appeals) dismissed the appeal vide order dated 31st December, 1996. The appellate order was confirmed by ITAT vide order dated 12th June, 2000. Thereafter, the assessee preferred a miscellaneous application u/s 35 of the Act seeking rectification of mistakes of fact and law apparent from the Tribunal's order. It was rejected by ITAT by its order dated 11th July, 2001. Finally, by the impugned judgment the High Court also affirmed the view taken by the Revenue. B C

4. According to learned counsel for the assessee the provisions of Rule 3 is applicable on the facts of the case. On the other hand, according to learned counsel for the revenue it is not practicable to apply Rule 3 and hence Rule 8 (a) was rightly applied by Revenue. D

5. In order to appreciate the submission made by the parties it may be just and necessary to notice the relevant provisions. E

6. Section 7 of the Act deals with 'method of determination of value of assets'. Prior to amendment made by the Direct Tax Laws (Amendment) Act, 1989 the value of any asset was to be estimated to be the price which in the opinion of the AO, it would fetch if sold in the open market on the valuation date. F

The method of determination of value of assets under Section 7 was amended by the Direct Tax Laws (Amendment) Act, 1989 w.e.f. 1.4.1989. Schedule III was incorporated in the Act by the said Direct Tax Laws (Amendment) Act, 1989 w.e.f. 1.4.1989 providing rules for determining the value of assets. Simultaneously Rule IBB of the Wealth Tax Rules, 1957 was deleted by the Wealth Tax (Second Amendment) Rules, 1989 w.e.f. 1.4.1989. As the dispute relates to Assessment Year G H

A 1993-94, amended Section 7 is applicable in the present case, which is as follows:

"7. Value of assets how to be determined.-

B (1) Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III.

C (2) The value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date, may, at the option of the assessee, be taken to be the value determined in the manner laid down in Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later.

E Explanation.--For the purposes of this sub-section,-

(i) Where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed:

F (ii) "house" includes a part of a house being an independent residential unit."

G 7. Rules 3 to 8 of the Schedule III lay down rules for valuation of immovable property whether let out or self occupied. Rule 3 relates to valuation of immovable property as under:

H **"3. Valuation of immovable property.-** Subject to the provisions of rules 4, 5, 6, 7 and 8 for the purposes of sub-section (1) of section 7, the value of any immovable

property, being a building or land appurtenant thereto, or part thereof, shall be the amount arrived at by multiplying the net maintainable rent by the figure 12.5:

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Provided that in relation to any such property which is constructed on lease hold land, this rule shall have effect as if for the figure 12.5

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(a) where the unexpired period of the lease of such land is fifty years or more, the figure 10.0 had been substituted; and

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(b) where the unexpired period of the lease of such land is less than fifty years, the figure 8.0 had been substituted:

Provided further that where such property is acquired or construction of which is completed after the 31st day of March, 1974, if the value so arrived at is lower than the cost of acquisition or the cost of construction, as increased, in either case, by the cost of any improvement to the property, the cost of acquisition or, as the case may be, the cost of construction, as so increased, shall be taken to be the value of the property under this rule:

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Provided also that the provisions of the second proviso shall not apply for determining the value of one house belonging to the assessee, where such house is acquired or the construction whereof is completed after the 31st day of March, 1974, and the house is exclusively used by the assessee for his own residential purposes throughout the period of twelve months immediately preceding the valuation date and the cost of acquisition or, as the case may be, the cost of construction, as increased, in either case, by the cost of any improvement to the house, does not exceed,--

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(a) if the house is situate at Bombay, Calcutta, Delhi or Madras, fifty lakh rupees;

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A (b) if the house is situate at any other place, twenty-five lakh rupees:

B Provided also that where more than one house belonging to the assessee is exclusively used by him for residential purposes, the provisions of the third proviso shall apply only in respect of one of such houses which the assessee may, at his option, specify in this behalf."

8. Rule 4 deals with computation of net maintainable rent which is follows:

C "4. Net maintainable rent how to be computed. -For the purposes of rule 3, "net maintainable rent" in relation to an immovable property referred to in that rule, shall be the amount of gross maintainable rent as reduced by

D (i) the amount of taxes levied by any local authority in respect of the property; and

(ii) a sum equal to fifteen per cent, of the gross maintainable rent."

E 9. Rule 5 deals with computation of gross maintainable rent in the following manner:

F "**5. Gross maintainable rent how to be computed.** - For the purposes of rule 4, "gross maintainable rent", in relation to any immovable property referred to in rule 3, means--

G (i) where the property is let, the amount received or receivable by the owner as annual rent or the annual value assessed by the local authority in whose area the property is situated for the purposes of levy of property tax or any other tax on the basis of such assessment, whichever is higher;

H (ii) where the property is not let, the amount of annual rent

assessed by the local authority in whose area the property is situated for the purpose of levy of property tax or any other tax on the basis of such assessment, or, if there is no such assessment or the property is situated outside the area of any local authority the amount which the owner can reasonably be expected to receive as annual rent had such property been let.

Explanation. -In this rule;

(1) "annual rent" means, -

(a) where the property is let throughout the year ending on the valuation date (hereinafter referred to as "previous year"), the actual rent received or receivable by the owner in respect of such year;

(b) where the property is let for only a part of the previous year, the amount which bears the same proportion to the amount of actual rent received or receivable by the owner for the period for which the property is let as the period of twelve months bears to the number of months (including part of a month) during which the property is let during the previous year:

Provided that in the following cases, such actual rent under sub-clauses (a) and (b) shall be increased in the manner specified below: -

(i) where the property is in the occupation of a tenant and taxes levied by any local authority in respect of the property are borne wholly or partly by the tenant, by the amount of the taxes so borne by the tenant;

(ii) where the property is in the occupation of a tenant and expenditure on repairs in respect of the property is borne by the tenant, by one-ninth of the actual rent;

(iii) where the owner has accepted any amount as deposit

- A (not being advance payment towards rent for a period of three months or less), by the amount calculated at the rate of 15 per cent, per annum on the amount of deposit outstanding from month to month, for the number of months (excluding part of a month) during which such deposit was
- B held by the owner in the previous year, and if the owner is liable to pay interest on such deposit, the increase to be made under this clause shall be limited to the sum by which the amount calculated as aforesaid exceeds the interest actually paid;
- C (iv) where the owner has received any amount by way of premium or otherwise as consideration for leasing of the property or any modification of the terms of the lease, by the amount obtained by dividing the premium or other amount by the number of year of the period of the lease;
- D (v) where the owner derives any benefit or perquisite whether convertible into money or not, as consideration for leasing of the property or any modification of the terms of the lease, by the value of such benefit or perquisite;
- E (2) "rent received or receivable" shall include all payments for the use of the property, by whatever name called, the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the
- F property in respect of any obligation which, but for such payment, would have, been payable by the owner."

G 10. Adjustments to value arrived at under rule 3 for unbuilt area of plot of land to be made as per Rule 6 which reads as follows:

H "6. Adjustments to value arrived at under rule 3, for unbuilt area of plot of land. - Where the unbuilt area of the plot of land on which the property referred to in rule 3 is constructed exceeds the specified area, the value arrived

at in accordance with the provisions of rule 3 shall be increased by an amount calculated in the following manner, namely: - A

(a) where the difference between the unbuilt area and the specified area exceeds five per cent, but does not exceed ten per cent, of aggregate area, by an amount equal to twenty per cent, of such value; B

(b) where the difference between the unbuilt area and the specified area exceeds ten per cent, but does not exceed fifteen per cent, of the aggregate area by an amount equal to thirty per cent, of such value; C

(c) where the difference between the unbuilt area and the specified area exceeds fifteen per cent, but does not exceed twenty per cent, of the aggregate area by an amount equal to forty per cent, of such value. D

Explanation. -For the purposes of this rule and rule 6;

(a) "aggregate area", in relation to the plot of land on which the property is constructed, means the aggregate of the area on which the property is constructed and the unbuilt area; E

(b) "specified area", in relation to the plot of land on which the property is constructed, means F

(i) where the property is situate at Bombay, Calcutta, Delhi or Madras, sixty per cent, of the aggregate area;

(ii) where the property is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Lucknow, Ludhiana, Madurai, Nagpur, Patna, Pune, Salem, Sholapur, Srinagar, Surat, Tiruchirapalli, Trivandrum, Vadodara (Baroda) or Varanasi (Banaras), sixty-five per cent, of the aggregate area; and H

A (iii) where the property is situate at any other place, seventy per cent, of the aggregate area:

B Provided that where, under any law for the time being in force, the minimum area of the plot of land required to be kept as open space for the enjoyment of the property exceeds the specified area, such minimum area shall be deemed to be the specified area;

C (c) "unbuilt area", in relation to the aggregate area of the plot of land on which the property is constructed, means that part of such aggregate area on which no building has been erected."

11. Adjustment for unearned increase in the value of the land prescribed under Rule 7 as quoted hereunder:

D **"7. Adjustment for unearned increase in the value of the land.** -Where the property is constructed on land obtained on lease from the Government, a local authority or any authority referred to in clause (20A) of section 10 of the Income-tax Act, and the Government or any such authority is, under the terms of the lease, entitled to claim and recover a specified part of the unearned increase in the value of the land at the time of the transfer of the property, the value of such property as determined under rule 3 shall be reduced by the amount so liable to be claimed and recovered or by an amount equal to fifty per cent, of the value of the property as so determined, whichever is less, as if the property had been transferred on the valuation date.

G Explanation.--For the purpose of this rule, "unearned increase" means the difference between the value of such land on the valuation date as determined by the Government or such authority for the purpose of calculating such increase and the amount of the premium paid or

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payable to the Government or such authority for the lease of the land." A

12. The cases in which Rule 3 is not applicable is shown in Rule 8 and reads as follows:-

"8. Rule 3 not to apply in certain cases. -Nothing contained in rule 3 shall apply, - B

(a) where having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the 1[Joint Commissioner], is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or C

(b) where the difference between the unbuilt area and the specified area exceeds twenty per cent, of the aggregate area; or D

(c) where the property is constructed on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease, E

and in any case referred to in clause (a) or clause (b) or clause (c), the value of the property shall be determined in the manner laid down in rule 20." F

13. It is submitted on behalf of the appellant that the purpose of the amendment of Sec.7, if read it can be stated that the intention of the legislature, behind the amendment of Section 7(1) and deletion of Rule 1BB was to bring in uniformity and provide relief to the tax payers by bringing down litigation. It nowhere provided that the levy of the wealth tax after the amendment would be based on a value that does not have any correlation with the fair market value of an asset. G

14. According to learned counsel for the assessee since H

A the property in question was acquired prior to 1.4.1974, second proviso to Rule 3 is not applicable. However, such submission has been refuted by the learned counsel for the Revenue.

B 15. As there is a dispute as to whether Rule 3 is applicable or Rule 8, it is also desirable to notice Rule 20 and Section 16A of the Act.

C 16. Rule 8(a) carves out an exception to Rule 3 that while the AO, with the previous approval of the Joint Commissioner is of opinion that it is not practicable to apply Rule 3 to a particular case, then Rule 3 shall not be made applicable. In such case, the AO may invoke Rule 8 and determine the value of an asset in the manner laid down in Rule 20.

D 17. Rule 20 deals with valuation of assets in other cases, as follows:

E **"20. Valuation of assets in other cases.** - (1) The value of any asset, other than cash, being an asset which is not covered by rules 3 to 19, for the purposes of this Act, 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.

F (2) Notwithstanding anything contained in sub-rule (1), where the valuation of any asset referred to in that sub-rule referred by the Assessing 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.

G (3) Where the value of any asset cannot be estimated under this rule because it is not saleable in the open market, the value shall be determined in accordance with such guidelines or principles as may be specified by the Board from time to time by general or special order."

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As per Rule 20 the value of any asset shall be estimated to be the price which, in the opinion of the AO would fetch, if sold in the open market on the date of valuation. A

18. Section 16A is relevant for the purposes of Rule 8, the said provision is extracted below: B

"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 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- C D

(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 34[Assessing] Officer is of opinion that the value so returned is less than its fair market value; E

(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 F

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

(2) For the purpose of estimating the value of any asset in pursuance of a reference under sub-section(1), the Valuation Officer may serve on the assessee a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other H

A documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessee under section 14 or section 15, he shall pass an order in writing to that effect and send a copy of his order to the [Assessing Officer] and to the assessee.

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(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessee under section 14 or section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessee intimating the value which he proposes to estimate and giving the assessee an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessee may rely in support of his objections. (5) On the date specified in the notice under sub-section (4), or as soon thereafter as may be, after hearing such evidence as the assessee may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer shall, by order in writing, estimate the value of the asset and send a copy of his order to the [Assessing Officer] and to the assessee.

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(6) On receipt of the order under sub-section (3) or sub-section (5) from the Valuation Officer, the [Assessing Officer] shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer."

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19. Rationale behind Schedule III of the Act as has been explained by the Central Board of Direct Taxes, vide Circular

No.559, dated 4th May, 1990, relevant portion of which reads as follows:

"Incorporation of Rules for valuation of Assets in the Wealth Tax Act-Insertion of Schedule III.

18.1. Reasons for incorporating rules for valuation of assets in the Wealth-tax Act. In the past one of the main areas of litigation under the Wealth-tax Act was the valuation of assets for the purposes of inclusion in the net wealth of the assessee. Section 7 of the Wealth-tax Act laid down the general principle that for purposes of the Act, the value of an asset shall be taken to be its market value on the valuation date, i.e., the price it would fetch if sold in the open market on the date. Since the concept of "open market value" led to prolonged litigation on various issues, an attempt was made to reduce the litigation by prescribing rules of valuation in respect of certain assets. Thus, rules 1B to 1D and 2 to 2I of the Wealth-tax Rules, 1957, provided for determination of the value of life interest, residential house, unquoted preference shares, unquoted equity shares of companies other than investment companies, interest in partnership or association of persons, determination of net value of assets of business as a whole etc. This did not solve the problem to any appreciable extent, as the determination of the value in accordance with these rules was often challenged in the courts on the ground that such determination did not correspond to the market value concept envisaged in the Wealth-tax Act and, therefore, the rules were ultra vires the main provisions of the Act. Thus, it was held by several High Courts that the rules are not mandatory.

Kusumben D Mahadevia v CWT (1980) 124 ITR 799 (Bom) and *K.M. Mammen v WTO* (1983) 139 ITR 357 (Mad). Such interpretations made the rules for valuation ineffective. Therefore, in order to eliminate litigation on the subject and also to make the said rules mandatory so that

- A there is certainty and uniformity in the matter of valuation of assets, the Amending Act, 1989, has incorporated the rules for valuation in the Wealth-tax Act itself, by inserting a new Schedule III. Rules 1B to 1D and 2 to 2I of the Wealth-tax Rules, 1957, have been omitted.
- B 18.2. It may also be pointed out that the rules for valuation of assets, as contained in the Wealth-tax Rules, 1957, did not provide for valuation of certain categories of assets like commercial house property, quoted equity shares or preference shares of companies, unquoted equity shares of investment companies, jewellery etc. Therefore, draft rules for valuation of these assets were notified for eliciting public opinion, as Draft Rules, 1986- Notification No.149(E), dated March 31,1986. These Draft Rules also contained proposals for appropriate amendments in the existing rules. After considering the comments and suggestions in this respect, these Draft Rules, with necessary modifications, have also been incorporated in the said Schedule III to the Wealth-tax Act.
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- E 18.3. Thus, the said Schedule III to the Wealth-tax Act, consisting of Parts A to H (Rules 1 to 21), provides for the method of determining the value of each category of assets. The provisions of these rules are discussed in detail in the following paras."
- F 20. According to counsel for the assessee the wealth tax is payable on the value of the asset as computed in accordance with the provisions of Act, i.e. Schedule III of the Act, which provides the basis for computation of the value of the asset. The value of the asset, on which wealth tax is payable is totally disassociated from the fair market value of the asset, i.e., the value which the asset would fetch if sold in the open market on the valuation date. It is contended that if the legislatures had intended wealth tax to be payable on the fair market value of immovable property, being building or land appurtenant thereto,
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- H Section 2 (m), Section 7(1) and the rules contained in Schedule

III to the Act would have specifically provided so. For levy of wealth tax, the value of assets exigible to wealth tax is computed as per relevant rules to Schedule III to the Act applicable to such assets. In other words, the relevant rules in Schedule III to the Act is only the basis for determining the value of asset on which wealth tax is payable. But we are not inclined to accept the aforesaid submission made by the counsel for the assessee.

21. Provision similar to Rule 8(a) of Schedule III was contained in sub Rule 5 of Rule 1 BB as under:

"(5) Nothing contained in this rule shall apply- (i) where, having regard to the facts and circumstances of the case, the Wealth-tax Officer, with the previous approval of the Inspecting Assistant Commissioner, is of opinion that it is not practicable to apply the provision of this rule to such a case; or

(ii) where the difference between the unbuilt area and the specified area exceeds twenty per cent of the aggregate area; or

(iii) where the house is built on leasehold land the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease:

(c) Provided that in a case referred to in clause (i) or clause (ii) or clause (iii) the valuation of the house shall be made by the Wealth-tax Officer with the prior approval of the Inspecting Assistant Commissioner."

22. While Rule 1BB was omitted by Wealth-tax (Second Amendment) Rules, 1989 w.e.f. 1.4.1989 but simultaneously Rule 8 was inserted vide Schedule III. Therefore, it cannot be said that after insertion of Schedule III to the Act the value on which the wealth tax is payable has no relevance in determining the fair market value of the asset or the price which the asset would fetch if sold in the open market on the valuation date. In

A case, AO is of the opinion that it is not practicable to apply the provisions of Rule 3, and the said asset is referred to Valuation Officer under Section 16A for assessment, the value of such asset shall be estimated to be the price which, in the opinion of the Valuation Officer, would fetch if sold in the open market on the date of valuation.

23. A conjoint reading of the various provisions reproduced above makes it clear that the legislature has not laid down a rigid directive on the AO that the valuation of an asset is mandatorily required to be made by applying Rule 3; the AO has the discretionary power to determine whether Rule 3 or Rule 8 is applicable in a particular case. If the AO is of the opinion that it is not practicable to apply Rule 3, the AO can apply Rule 8 and value of the asset can be determined in the manner laid down in Rule 20 or Sec.16A.

24. The word "practicable" is defined in Black's Law Dictionary Eighth Edition page 1210 as follows:

"Practicable, adj (of a thing) reasonably capable of being accomplished; feasible."

The ordinary meaning of the word "practicable" as defined in Advanced Law Lexicon: 3rd Edition 2005 page 3660 is:

"The expression "practicable" means possible or feasible with due diligence.

Though the word "practicable" has a number of significances, yet its meaning depends largely on context. Ordinarily, it means that which may be practiced or performed; capable of being put into practice, done or accomplish. The word "such" appearing in Section 132(3) refers to the money, bullion etc., mentioned in Section 132(1) (c). Therefore, it is only when the nature or location of the particular asset found on a search does not allow, or the circumstances of a given case do not permit, the

immediate seizure of the same, that the provisions of Section 132(3) may be resorted to....." A

Therefore, the word "practicable" is to be construed widely. In the present context if in the opinion of the AO, if the value determined by the tax payer on the basis of Rules 3 to 7 is absurd or has no correlation to the fair market value or otherwise not practicable, in such a case, it is open to the AO to invoke Rule 8 of Schedule III and determine the value of the asset either under Rule 20 or refer under Section 16A, for determination of the valuation of the asset. B C

25. It is true that the invocation of Rule 8(a) cannot be based on ipsi dixit of the AO. The discretion vested in the AO to discard the value determined as per Rules 3 has to be judicially exercised. It must be reasonable, based on subjective satisfaction; the power must be shown to be objectively exercised and is open to judicial scrutiny. D

26. In the present case, the AO refused to accept self assessment for the following reasons:

(i) There is a wide variation between the market value and the valuation done by the assessee as per municipal taxes. E

(ii) The property is used as a guest house.

(iii) The value for levy of municipal tax is very low, as the total ratable value of the assessee is done by the municipal authorities @ Rs.6,573/- per annum. F

(iv) The assessee was a tenant of the property @ Rs.500/- per month. After purchase of the property a lot of expenditure was incurred from time to time on improvement of the property which is very difficult to ascertain. G

(v) The value of the building is grossly understated as H

A the assessee himself entered into an agreement to sell the same in the year 1995 for a sum of Rs.10,26,00,000/-.

B Considering the above factors, the AO assessed the value of the property at Rs.2,60,73,000/- as valued by the Departmental Valuation Officer.

C 27. The CWT held that the reference made by the AO to Departmental Valuation Officer was justified. ITAT also justified the action of the AO and on appeal, the same was affirmed by the High Court vide impugned judgment.

D 28. After careful consideration of the facts and circumstances of the case and the submission made by the learned counsel for the parties, we are of the opinion that the AO was justified in holding that it was not practicable to apply Rule 3 in the instant case and rightly referred the matter to the Valuation Officer under Section 16A for determination of value of the asset. The AO, thereafter, has rightly assessed the wealth tax on the basis of such value determined by the Valuation Officer. We find no merit in this appeal and the same is, according to, dismissed.

Nidhi Jain

Appeal Dismissed