

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT  
AND  
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**W.T.A. No. 8/HYD/2017**

Assessment Year: 2006-07

G. Girish Kumar, HYDERABAD <b>[PAN: ABHPG8273B]</b>	Vs	Asst. Commissioner of Wealth Tax, Central Circle-8, HYDERABAD
---	----	--

**(Appellant)**

**(Respondent)**

For Assessee : Shri S. Rama Rao, AR

For Revenue : Smt N. Swapna, DR

Date of Hearing : 11-12-2017

Date of Pronouncement : 22-12-2017

**ORDER**

**PER B. RAMAKOTAIAH, A.M. :**

This is an appeal by assessee against the order of the Commissioner of Wealth Tax(Appeals)-12, Hyderabad, dated 24-10-2016. The issue in this appeal is with reference to assessing the value of 10 acres of land.

2. In the course of search and seizure proceedings in the case of M/s. MBS Jewellers Pvt. Ltd., on 11-03-2010, an agreement of sale with regard to sale of 10 acres of land in Survey No. 972/AA of Kukatpally for a consideration of Rs. 1 Crore by assessee to Shri Pramod Kumar Gupta and Shri Janaki Rama Rao during the FY.

2006-07 was found and seized. Based on the said information, wealth tax assessment was reopened u/s. 17 of the Wealth Tax Act. In the course of assessment proceedings, AO adopted the taxable wealth at Rs. 3.35 Crores based on the adoption of market value for the 10 acres of land stated to be in the ownership of assessee as per the agreement of sale.

3. Before the Ld.CIT(A), assessee contended that reopening of assessment is bad in law and further on merits that possession of land was not handed-over, there were disputes about ownership of the land, as the said land was occupied by various other organisations including Government and the original allottee, his father was no more and assessee along with his brother also should have equal shares and the entire amount cannot be brought to tax in his hand and further, since property is not in his possession, adoption of market value is also not correct. Ld.CWT(A), however, did not accept the contentions and upheld both reopening of the assessment as well as valuation of property by stating as under:

*“5.3 Perused the submissions of the appellant and the observations made in the assessment order with specific reference to the basis for reopening of assessments u/s. 17 of Wealth Tax Act. For the year under reference, the reasons recorded for reopening of assessment was the material seized during the course of search operation in the case of M/s.MBS Jewellers Pvt. Ltd., where in the document in the form of Agreement for sale signed by the assessee was clearly indicating the value of land/transaction, which is more than 50.00 lakhs., which is above the taxable limits. For the reasons and facts, the reopening proceedings u/s.17 held to be valid.*

*5.4 As regard to the further facts on the issue of actual value/Fair market value of the property under reference, it was the contention of the assessee that the land was never under possession of the assessee, and was not inherited by him alone, with his brother have equal share in the*

*same. It was also contended that major portion of property was under occupation by others and the writ petition by the assessee on the issue, stood dismissed by High Court. In this regard, it would be relevant to observe that the information brought on record by the assessee appears only part of the information/facts of the case, with the document under reference, being an Agreement for Sale deed dated 15-11-2006, was a reality, with the document has been signed by both vendees and by the assessee as a solo vendor and the document got registered, with the actual sale consideration of Rs.50.00 lakhs mentioned therein. With the said information as found in search proceedings is so clear, there lies no do doubts the ownership over the land. The Agreement for Sale is very clear in proving that the assessee is sole legal heir of the original owner Sri Bharat Reddy. This declaration clearly establish that the assessee is the absolute owner of the entire property (10.00 acres) under reference, and the property comes under the purview of wealth tax, being the property located in Municipal lands and treated as non-agricultural land. The issue of absence of clear title and possession by others are not established, with the Agreement for sale being the latest and the registered document. Accordingly, it is reasonable to held that there is no strength in the argument of the appellant that he is not the owner of the land. Accordingly, it is held that the assessee is in possession of the property under reference being the sale owner, and the Fair Market Value of the property at Rs.3,50,00,000/- is supported by the prices indicated by SRO. Accordingly, I am of the considered opinion that there is no need to interfere with the order of the AO and hold that the assessment of wealth at Rs.3,50,00,000/- being the value of the urban land, is justified. Thus, on these lines, the grounds related to the issue are treated as dismissed”.*

4. It was the submission of Ld. Counsel that assessee indeed has entered into an agreement of sale but he is not in possession of property. A Writ Petition No. 18422 of 2006 was filed which was disposed of by the Hon'ble High Court, dismissing the appeal and restoring the matter to the appropriate authority to pass necessary orders in this regard and as of now, assessee is not in possession of property at all. He further referred to the report of the Dy. Collector, Balanagar Mandal, dt. 01-01-2009, wherein it is clearly stated that the land is recorded as Government land and was already allotted for public purposes to MM Court 5 acres, traffic police station 0.8 Gts, Indian Red Cross Society 0.8 Gts, Victoria

Society Church 0.8 Gts and Dr. B.R. Ambedkar Association, one acre. It was the submission that assessee was neither in possession of the property nor could handed over the property to the buyer. Accordingly, adoption of the value is not correct. Further, it was submitted that on the basis of the very same agreement, Income tax proceedings were also initiated for AY. 2007-08 with reference to capital gains, the matter of which was restored to the file of AO for fresh consideration and filed order in ITA No. 869/Hyd/2017 dt. 11-08-2017.

5. Ld.DR, however, relied on the orders of Commissioner of Wealth Tax and filed the statement of encumbrance on the property, wherein the agreement specially was mentioned to support that assessee is still shown as owner of the property.

6. We have considered the rival contentions and perused the documents placed on record. It is interesting to note that assessee has entered into an agreement of sale with the said persons for sale of 10 acres of land on his own. In that agreement, in para 1 of the recitals, it was clearly stated that *'The Vendor hereto being the sole legal heir of the said original owner Sri G. Bharat Reddy inherited and succeeded the Schedule Property as absolute owner and possessor thereof in perpetuity in evidence of which the Hon'ble High Court of Andhra Pradesh in WP No. 18422 of 2006 by its order dt. 11-09-2006 directed the District Collector, RR district and MRO Balanagar to issue Pattedar Pass books and title deeds.....'* The fact is that there is no such order by the Hon'ble High Court and the copy of Hon'ble High Court placed on record do indicate that writ petition was dismissed with a direction to appropriate

authorities to pass necessary orders on the application of petitioner within a period of four weeks from the date of receipt of copy of the order. The report of the Dy. Collector do indicate that the claim of assessee is not correct and the land is shown as Government land and in fact, was allotted to various other persons by the Government. Therefore, the very ownership of the land is in dispute. Since similar issue in Income tax proceedings was restored to the file of AO for examination in the Revenue appeal, we are of the opinion that this matter also should be restored to the file of AO to examine the facts afresh and decide the wealth tax liability, after giving due opportunity to assessee.

7. In the result, appeal of assessee is allowed for statistical purposes.

*Order pronounced in the open court on 22<sup>nd</sup> December, 2017*

Sd/-  
**(D. MANMOHAN)**  
**VICE PRESIDENT**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 22<sup>nd</sup> December, 2017

TNMM

*Copy to :*

- 1. Shri G. Girish Kumar, 1-5-510, Bakaram, Hyderabad.*
- 2. Asst. Commissioner of Wealth Tax, Central Circle-8, Hyderabad.*
- 3. CWT(Appeals)-12, Hyderabad.*
- 4. Pr.CWT(Central)-Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*