

Delhi High Court

B. M. Sahni (Huf) vs Wealth-Tax Officer. on 26 February, 1993

Equivalent citations: 1993 46 ITD 134 Delhi

ORDER Per Vimal Gandhi, J.M. - These are bunch of appeals by Partners of Firm M/s. Ishardas Sahni & Brothers, New Delhi which on the valuation dates, now before us, held immovable properties. In these appeals, we are concerned with dispute relating to valuation of following properties :

1. Odeon Cinema, Connaught Place, New Delhi.

2. Naaz Cinema, Lucknow.

3. Land at Shanker Road, New Delhi.

4. Property at Faiz Bazar, Daryaganj, New Delhi.

2. We would first consider valuation of Odeon Cinema, New Delhi and Naaz Cinema, Lucknow. The facts pertaining to valuation of Odeon Cinema are that above firm owned cinema building on the valuation dates which stood constructed on a lease hold and leased to the assessed in 1939. Out of the total of 1,444 sq. yds. an area of 367.82 sq. yds. is with tenants running different establishments around the theatre. The balance area of 1076 sq. yards inclusive of area under auditorium is with the management (owners).

3. The dispute relating to valuation of Cinema came before the Settlement Commissioner for earlier years right up to assessment year 1976-77. The Settlement Commissioner fixed its value at Rs. 46,57,490. The Settlement Commissioner fixed the aforesaid value on ad hoc basis. The Valuation Officer (V. O) while considering the question of valuation under section 16A (4) applied rent capitalisation method for let out property and land & Valuation Officer, thus took net value of property at Rs. 78,85,950 for the assessment year 1978-79, progressively increased it and ultimately took it at Rs. 2,72,65,000 for the assessment year 1983-84. On appeal, CWT (A) agreed in principle with the method adopted by the Valuation Officer but applied uniformly multiplier of 12.5% in fixing value of let out portion. The value of other portion was also reduced by taking rates of land lower than taken by the Valuation Officer while applying land and building method. The CWT (A) also allowed certain benefit to the assessed for joint ownership. He took net value of property at Rs. 53,64,194 for the assessment year 1978-79 and at Rs. 1,43,80,024 for the assessment year 1983-84. The value for other assessment years was taken in between the above two figures.

4. Before the CWT (A), assesseds main contention related to the method of valuation applied by the Valuation Officer. It was also contended that entire property was being exploited as a cinema and, therefore, its value should, however, be fixed on income capitalisation method. In support of above claim, the assessed relied upon the circulars of CBDT and on decision of different High Courts. The assessed further relied upon Rule 1-BB of W. T. Rules. To the objections that details of outgoings were not furnished, the assesseds learned counsel relied upon letter dated 7-3-1984 filed before Valuation Officer. It was further submitted that sale instances of Tolstoy Marg were not comparable

for fixing the value of property in Connaught Place. The assessed also objected to admission, if any, made under ignorance or mistaken legal or factual impression as determination of fair market value was duty of the Assessing Officer and of higher appellate authorities.

5. The CWT (A) rejected most of the objection raised on behalf of the assessed. He held that proper opportunity to raise objections to the valuation was granted by the Valuation Officer in the present case. As principle of agency was applicable and Shri Shyam Sahni, Partner had appeared on behalf of the firm, he be taken to have appeared on behalf of all partners. We may have reservation on above observation made by the CWT (A) but as the matter was not pursued by Shri Aggarwal during the course of hearing of appeal, we leave it there. CWT (A) also rejected the plea that different methods could not be applied for valuation of same property. In his view, the DVO was fully justified in adopting yield method for rented portion and land and building method for self-occupied portion including the theatre. The income yielding method according to the learned CWT (A) could not be adopted as "business activity fluctuates widely depending upon the circumstances prevailing in a particular year and sometime there may be loss also even for two given assessment years continuously and, therefore, the criteria of income on profit basis in such a case would be highly elusive and unrealistic giving highly deferent figures of valuation for different years and in a year of loss the valuation may be nil". Thus, the market value of the property was its real worth on a given date. In case of cinema, the income is bound to fluctuate because income depends upon type of films received from the producer and exhibited. If there are good movies, then there is more audience and more receipts. If the pictures are not good, income will fall. In support of this view CWT (A) found support from assesseds accounts for assessment years 1978-79 to 1982-83. As per the chart, income for assessment years 1981-82 was Rs. 5,17,000 against Rs. 7,52,000 in earlier assessment year 1980-81 and Rs. 11,47,000 in assessment year 1982-83. If income yielding method was adopted value of property in 1981-82 should be less than 1980-81. He therefore, rejected income yielding method. It is further mentioned by CWT (A) that even Settlement Commissioner was aware of above problem and, therefore, adopted land and building method right up to assessment year 1976-77 which position was accepted by the assessed.

6. The CWT allowed outgoings at 25% for repairs, municipal taxes, ground rent etc. and applied uniformly multiplier of 12.5% for all the assessment years. In respect of self-occupied portion he directed that depreciation on structure be uniformly allowed 2% taking life of building at 60 years as on 31-3-1978. As regards value of land under the self-occupied portion, CWT (A) rejected Valuation Officers view that value of cinema site should be taken at 2.5 times the rate applicable to commercial plots on the basis of circular of CBDT dated 25-6-1979.

7. For fixation of rate for land, CWT (A) took into account the rate taken by Hon'ble Delhi High Court in the case of CIT v. New India Construction Co. [1980] 123 ITR 68 for sale of land in Connaught Place in August 1973 at Rs. 3,477. He accordingly took value of land at Rs. 5,500 as on 31-3-1978 and proportionately increased it to Rs. 12,500; Rs. 15,000 and Rs. 17,500 as on 31-3-1981, 31-3-1982 and 31-3-1983 respectively. The CWT (A) also considered land rates of commercial plots in Curzon Road, New Rajinder Nagar, Jhanda Wallan Bagh etc. CWT (A) was of the view that deduction for unearned increase be allowed as per rates prescribed by L. & D. O and not at 50% of market rate claimed by the assesseds. The CWT (A) accordingly fixed value of Odeon Cinema at Rs.

53,64,194 for assessment year 1978-79 and at Rs. 1,43,80,024 for assessment year 1983-84 as mentioned earlier.

8. Regarding Naaz Cinema, Lucknow, the Valuation Officer determined its value of Rs. 11,22,000 for the assessment years 1978-79 to 1980-81 by applying income capitalisation method. For the assessment years 1981-82 to 1983-84 the value was taken at Rs. 12,45,000, Rs. 14,07,000 and Rs. 15,10,000 respectively by applying land and building method. In the later three years, the value of machinery employed was separately added at Rs. 2,55,000 Rs. 3,17,045 and Rs. 3,12,265. On appeal, the CWT (A) took value of property at Rs. 11,25,610 for assessment year 1980-81 as reasonable. He, however, directed the Valuation Officer to rework the valuation of property for assessment years 1978-79 and 1979-80 on the average income basis and apply the basis adopted for assessment year 1977-78 and take that figure or Rs. 11,22,000 whichever is lower. According to him the Department had met all the objections raised by the assessed and showed that on good grounds land and building method was adopted. The rates applied and other figures adopted for fixing the valuation were also upheld. Regarding separate addition on account of plant and machinery, the learned CWT (A) considered the objection of the assessed but held that Valuation Officer rightly adopted replacement cost method and valuation taken by him was neither excessive nor unreasonable in any manner. Thus addition on account of plant and machinery was also upheld.

9. We have heard the parties at length. We have also carefully considered material available on record. Regarding valuation of cinemas, Shri C. S. Aggarwal, learned counsel for the assessed submitted that these commercial properties were to be valued on income capitalisation method. Reliance was again placed on the decision of the Tribunal in the case of Alpna Pictures. Shri Aggarwal emphasised that the department itself valued Naaz Cinema in earlier years on income capitalisation method. The CWT (A)s view that the aforesaid method could become non-functional in the year of loss, Shri Aggarwal submitted that in such a situation the value assessed in the immediately preceding year can be applied or by taking average of 4/5 years, the problem can be solved. It was accordingly submitted that land and building method was inappropriately applied. Alternatively it was submitted that sale instances and rates of construction relied upon and applied were not comparable - resulting in lopsided and highly pitched valuation in different years. The learned Departmental Representative and V. Os strongly supported the impugned order of the CWT (A). They tried to justify application of cost replacement method for valuation of cinema building under self-control and also of machinery of Naaz Cinema, Lucknow.

10. Having considered anxiously the submissions of the parties in the light of material available on record we are to hold that learned lower authorities were not right in fixing valuation of a commercial composite asset like running cinema through cost replacement breaking up method taking the value of land and then adding reconstruction cost of building separately. The valuation, as has been consistently held "is an art involving guess work" -mathematical certainly is not required. The guess work starts with imagining a buyer willing to buy the property on the valuation date. As a second step, circumstances relating to property which go to influence the willing buyer are considered. The second step imaginary or not has to be performed judicially on objective data. The imaginary buyer has to be shown to be a reasonable prudent man. An actual sale or agreement of sale of same property or sale instance of a similar property like in case of Wenger & Co. v. District

Valuation Officer [1978] 115 ITR 648 (Delhi) being the best evidence, make the task of valuation easy. But in most cases, it is very difficult to find such a transaction and therefore addition and subtraction to get over dissimilarities are permitted. But the whole process as stated earlier has to be performed in a reasonable manner or objective data, and not arbitrary formulae. The Circular of CBDT and case law is relied upon to show that method of valuation adopted by the learned CWT (A) is not appropriate.

11. Immediately after the levy of wealth-tax was imposed, the CBDT issued Circular dated 28th September, 1957 providing as follows :-

"The value of lands and buildings should be estimated with due regard to the nature, size and locality of the property, the amenities available and the price prevailing for similar assets in the same locality or in the neighborhood of that locality.

Where the value is not easily ascertainable in this manner, the Wealth Tax Officer may adopt the capital value of the property determined by the appropriate authority in the latest assessment for purposes of property taxation, under the laws and regulations relating to municipalities and municipal corporations.

Where the municipal valuation is prima facie too low having in view the rents actually received, or where an assessment of capital value is not made by a municipality, or the property is located in an area where there is no municipality, the Wealth-tax Officer may estimate the reasonable annual value of the property and determine its capital value as a multiple, say 20 times, of such annual value."

12. In the case of *State of Kerala v. P. P. Hassan Koya* AIR 1968 SC 1201, the Supreme Court in the case relating to determination of compensation under section 23 of Land Acquisition Act disapproved of determining value of building by "breaking up value" of land and buildings separately. The land and the building constituted one unit and value of entire unit must be often determined with all its advantages and its potentialities. The Supreme Court further observed that when the property sold was land with building, it was often difficult to secure reliable evidence of instances of sale of similar lands with buildings proximate in time to the relevant date. Therefore, the method which was generally resorted to in determining the value of land with buildings specially those used for business purposes was method of capitalisation of return actually received or which might reasonably be received from the land and buildings.

13. In the case of *T. Kanagasabapathy Pillai v. CWT* [1964] 51 ITR 146, Madras High Court observed that the Wealth Tax Act was a charging statute and what the statute empowered was only to levy tax on the net wealth of an assessed to be determined according to the provisions of the Statute. The burden was on the taxing department to find out the true net value assessable and even if assessed had over valued, the department must take an effort to determine the true market value. The Court further observed that under section 7(1) it was the duty of the WTO to estimate the price which the asset would fetch if sold in open market.

14. In the case of C. Krishna Prasad v. CWT [1970] 76 ITR 115, Mysore High Court dealt with question of valuation of site on which theatre was constructed by the tenant which was to be surrendered to the Lesser at the end of 30 years of lease period without any compensation. The revenue authorities in that case fixed the value of property through land and building method. the Hon'ble Mysore High Court after considering provision of section 7 of W. T. Act observed that in the case of a building which was in possession of tenants and the tenants could neither be evicted nor rent payable by them enhanced, the only proper method of valuation if there was no sale transaction of house property that would have given the basis for valuing the market value of the property, would be to capitalise the annual rent by a certain number of years purchase. The method of valuing the land and the building separately and adding up the values would be improper in such cases. It was held that no material by way of sale transaction of house property leased to tenants was placed before the Officer and one the facts of the case the mode of valuation by capitalisation at 20 times the annual rental value was the only proper method of valuation which the Officer and the Tribunal should have accepted. Almost all High Courts in the country had uniformly expressed that in case of properties in possession of tenants who could not be evicted because of rent control regulations, the appropriate method of valuation would be rent capitalisation method.

In the case of Debi Prasad Poddar v. CWT [1977] 109 ITR 760 (Cal.), Sabya Sachi Mukherji Justice (later Chief Justice of India) held that appropriate method of valuation of building which could not be demolished without ejecting tenants protected under the Rent Restitution Act was, "the rental method i.e. method based on the expected return by letting out." Their Lordships further laid down following principles :

"(4) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which on of the various methods will be most suitable to reach as accurate as possible guess as to the valuation on the valuation date.

(5) Another factor that has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another, then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow."

15. It is clear from above authorities that in case of fully developed properties, income capitalisation method is generally adopted and application of the break-up method is disapproved. In the present case and particularly with regard to Odeon Cinema, the Valuation Officer and the CWT (A) applied cost replacement method, worked out cost of land, cost of superstructure, made adjustments, estimated present and future life of building for depreciation and arrived at different figures of valuation, These figures are based on guess work and not on any objective data. The hypothetical

purchaser was made to travel to Curzon Road, New Rajinder Nagar, Bagh Jhandawala, Bikaji Cama Palace etc. for commercial plots without considering that plots under running Cinema were not unencumbered but were subject to several restrictions. The learned authorities were in error in disregard in these restrictions. The owners are not free to demolish the superstructure at their pleasure and put land or structure to desired use. They are to carry on the cinema business. The rules of DDA, MCDA, DUAL, POLICE, Labour Act - Labour Unions and half a dozen other enactments require permission for change of user of land and structure thereon which by no means is easy to get. It is thus clear that authorities below failed to consider special factors which so directly affected the valuation and valued a property quite different in character and quality. We have already seen that in cases of properties subjected to restriction on use and occupation, appropriate method to be adopted is income capitalisation method. The fact that the restrictions in the present case are under other statutes and not Rent Control Act is not very material, as there is demonstrative evidence (Shankar Road property discussed later) to show that restrictions under NDMC are equally cumbersome. Therefore having regard to material on record and the situation in which the properties were placed on the relevant valuation dates, the most appropriate method of valuation was income capitalisation method.

16. In our considered view, the learned CWT (A) rejected above method on unsound reasons. Assuming here that all data collected is relevant and figures of cost of construction on different valuation dates are correct, the cinemas constructed at huge costs (as worked out) were to serve a purpose and that purpose can only be to earn income. How then income or return can be ignored ? to make entire thing a futile exercise. No reasonable prudent man can be expected to ignore return from investment in a commercial asset. Commercial assets are acquired for return and not alone for prestige, pleasure or passion. The argument that there can be loss in cinemas for 2-3 years is of no avail. Profit and loss are two sides of coin called business and no sensible businessman can dispute that any venture undertaken for profit may result in loss. But this factor does not deter a businessman from acquiring business assets. What is taken into account is income expected in normal conditions. Any isolated figures of loss due to unusual or uncontrollable circumstances is ignored or distortion avoided by taking an average income. The method is also accepted elsewhere is clear from following observations of authors on valuation. About England, Curtsies observes in "Valuation of land and houses" :-

"Normally all property is valued according to the capacity it possesses of producing revenue. The actual rent derived from a property, or the rental value of it, is adopted as a basis for its valuation by deducting there from the appropriate outgoings (if any) to ascertain the net income which will be capitalised to find the value."

17. The income capitalisation method has support not only of Judge made law, CBDT Circulars and other authorities but also of Legislature, if recent legislative development is taken into account as a guideline for determining the question of valuation, more particularly the method to be applied. The Direct Tax Law (Amendment) Act, 1989 with effect from April 1, 1989 has provided in Schedule III the main legislative rules to determine the valuation of assets through the same self-income capitalisation method. The above latest legislation reflects matured and better legislative wisdom. Thus considered from every angle, we see full justification for application of income capitalisation

method.

18. The learned CWT (A) has applied aforesaid method for valuation of part of Odeon Cinema with the tenants. The method be extended to entire property by adding in the rent received/receivable from tenants the average income (average to be taken of the previous year ending with relevant valuation date and 3 earlier years). From the above sum, outgoing be allowed for taxes, repairs etc. If actual figures are available, the deductions be allowed of above figure. Otherwise, deduction be allowed as per the guidelines laid down in Rules 4 and 5 of Schedule-III of the Wealth-tax Act. It is, however, made clear that deduction for outgoing are not to be allowed twice over. The net figure of income arrived at be multiplied by multiple of 8 as learned CWT (A) himself adopted capitalised value at 12.5%. The multiple is further justified on the basis of increase in annual return from capital as discussed in detail in the case of CIT v. Smit. Vimlaben Bhagwandas Patel [1979] 118 ITR 134 (Guj.). The deduction on account of unearned increase in the value of land be also worked out as per Rule 7 of Schedule-III. No separate addition be made for machine. On the above principles and by applying income capitalisation method, the value of Naaz Cinema, Lucknow should also be worked out. It is, however, made clear that in no case value of property is to be taken at a figure lesser than the one returned by the assessed as there is not material on record to show that value declared was shown under any wrong or misconception of facts or law. We direct accordingly.

### III - Land at Shanker Road, New Delhi.

19. The aforesaid plot of land at Shanker Road, New Delhi is measuring 4166.70 sq. yards as per the lease deed. The other facts as available in the decision of Hon'ble Delhi High Court in the case of Smt. Damyanti Sahni v. MCD [CPW No. 725 of 1975, dated 1-6-1984] are that the plot was allotted to the assesseds and their predecessors as highest bidder for sum of Rs. 2,56,550 in auction held on 11th November, 1954 by the Ministry of Rehabilitation as cinema site. A perpetual lease for 99 years was granted vide Lease Deed dated 4th October, 1956. It was, however, wrongly mentioned in the lease deed that land was leased for construction of a residential building. The aforesaid mistake was rectified by executing a fresh lease deed on 17th September, 1963 for 99 years commencing on 19th September, 1955. The assesseds, for construction of Cinema, submitted building plan to Delhi Municipal Corporation and the same was sanctioned by the Corporation on 14th July 1961.

Before the construction could start, the Rajinder Park Association instituted a Civil Suit for injunction to restrain the Municipal Corporation from granting permission for construction and in case sanction had already been granted, to restrain the assesseds from making construction on the plot. The said suit was, however, dismissed on 27th January, 1966 by Sub-Judge, 1st Class, Delhi.

The construction of Cinema on the plot in question for several reasons could not be carried and in November 1972 it was noted that Municipal Corporation, Delhi and Delhi Transport Corporation were planning to construct a Bus Stop on the plot question. This forced the assessed and their predecessors to file a suit for permanent injunction against above public authorities which was ultimately decreed by a subordinate Judge, Delhi on 5th November, 1980.

20. The original sanction to construct Cinema having lapsed, the assessed submitted a fresh plan in 1974 for construction of Cinema on the disputed plot. The Municipal Corporation, Delhi, as per their letter dated 10th May, 1974, rejected the plan for the following reasons :

"1. The plot in question is shown as open in the approved layout of Rajinder Nagar/Rajendra Park and the open spaces earmarked in the layout plan vest with M. C. D.

2. Size and shape of plot as shown in the site plan to not confirm the site conditions as well as the approved layout.

3. Area as per site plan is more than the area given in the lease deed.

4. Applicant is not the original lessee of the plot.

5. Head widths given in the site plan are not correct. And the plot is affected in the R. O. W. of Shanker Road.

6. Area chart is wrong and also incomplete.

7. R. C. C. calculations/certificate of structural stability not submitted.

8. No objection of the Lesser for the proposed construction by the applicant not submitted.

9. Cinema in the residential locality not allowed.

10. Cinema proposed fall within 500 yds. from the places of worship and hence not allowed.

11. The proposed parking space is against building bye law and very much inadequate.

12. The plot in question has since been transferred to M. C. D. along with services of the colony by the Government of India, and hence applicant is not the owner."

The assessed then requested Municipal Corporation vide letter dated 21st May, 1974, to review their order rejecting the sanctioned plant. Having received no response, a fresh letter dated 16th April, 1975 was addressed to Municipal Corporation alleging that sanction was being withheld on malafide grounds and was unwarranted. This claim was, however, rejected by the Municipal Corporation as per letter of its Executive Engineer, dated 26th May, 1975 informing that the plan was rightly rejected and matter could not be reconsidered.

21. The assessed then filed Writ Petition before Hon'ble High Court on 2nd June, 1975 seeking the following reliefs :-

"(i) Directing the M. C. D. to reconsider on merits according to law the said building plans submitted by the petitioner for the construction of a cinema buildings.



(ii) restraining the M. C. D. from representing to the Delhi Development Authority (DDA) to show the said plot in the Zonal Plan as an open space or a park;

(iii) directing the DDA not to show the said plot as an open space or a park in the Zonal Plan; and

(iv) directing the Central Government not to grant approval under section 9 of the Delhi Development Act, 1957 to the Zonal Plan showing the plot as an open space or a park or in any other manner which will have the effect of preventing the petitioners from constructing a cinema building or using the said plot and building constructed thereon as a cinema."

The claim in the writ petition was hotly contested by Municipal Corporation and Delhi Development Authority but Hon'ble Delhi High Court, as per its decision dated June 1, 1984 accepted the claim of the petitioner in terms of para 43 and 44 of the above order.

22. During the course of hearing of appeals, we were informed that Municipal Corporation, Delhi filed LPA against the aforesaid decision and Hon'ble High Court, as per order dated January 30, 1985, directed that status quo be maintained pending the disposal of the LPA by the Hon'ble High Court. The question of valuation of aforesaid plot was referred by the Assessing Officer to the Valuation Cell who fixed the following valuation of the property in different assessment years :-

Assessments years Value (Rs.) 1978-79 78,86,000 1979-80 1,18,88,000 1980-81 1,79,98,000 1981-82 2,72,22,000 1982-83 1,99,80,000 1983-84 2,13,00,000 The Valuation Cell in fixing the aforesaid value treated the plot as residential and relied upon certain instances of sale of property in New Rajinder Nagar. Although area of plot was mentioned at 4166 sq. yds. in the lease, the D. V. O. took area at 3954 sq. yds. in his Report.

23. The assessed challenged the aforesaid valuation in appeal before CWT (A) and contended that Assessing Officer and Valuation Officer assessed area taken over by the Corporation for expanding Shanker Road. If the area taken for widening of road was excluded, the total area would be 2880 sq. meters or 3444 sq. yards. The learned CWT (A) rejected the aforesaid objection as he found that on actual inspection carried under direction of CIT (A)-13, New Delhi, the assessed was found to be in possession of 4204 sq. yds. which was enclosed in Pakka fencing consisting of barbed wire and angle iron post in webbed in cement concrete blocks. He held that land was not capable of use as cinema plot but for residential purposes as "area around plot is residential and there are buildings of old Rajinder Nagar." He upheld the valuation made by the Valuation Officer. The area held to be in possession in excess of the area mentioned in the lease deed was directed to be valued at Rs. 500 per sq. yard as on 31-3-1978 and at Rs. 1,750 per sq. Mt. as on 31-3-1983. For in between years, the value was to be increased as per price index for each year. The land rate for area stated in lease deed was fixed at Rs. 2,250 sq. Mts. as on 31-3-1984. All other objections raised on behalf of the assessed were rejected.

24. The aforesaid order of CWT (A) has been challenged before us. It has been contended that CWT (A) was not right in treating the plot in question as a residential plot and fixing valuation accordingly. The sale instances relied upon related to a corner plot better situated and so could not

be treated as comparable to the plot in question. The CWT (A) was also not justified in ignoring the fact that the plot under the master plan of the DDA and MCD was shown as an open park and not a residential or cinema site. Shri Aggarwal on the facts of the case and in view of the stand taken by the MCD, claimed that the property had no value as no willing purchaser would like to buy litigation alone. The learned departmental representative and the V. Os. who were also heard in appeal, fully supported the order of CWT (A).

25. We have given carefully thought to the rival submissions of the parties. Here again, like in the case of Odeon Cinema, the learned CWT (A) was in error in not considering the prevalent circumstances and in assuming that the plot could be utilised for construction of residential units. As is clear from the facts narrated above, the plot was leased out for constructing a cinema house but in the background narrated earlier, the cinema hall could not be constructed. The MCD rightly or wrongly is claiming the property to "have been transferred to MCD along with services of colony", hence the assessed is not the owner. The plot is shown as open space in the master plan of New Delhi. There is thus no justification for treating it as a residential plot. The nature of plot on different valuation dates cannot be determined because of pursuing litigation which was mentioned earlier is now pending before the Hon'ble High Court with direction that status quo be maintained till the disposal of appeals. The disposal that status quo be maintained till the disposal of appeals. The disposal of appeal may taken years and years and ultimate decision may go either way. Thus the position as on the valuation date was that the assessed had possession of land with lease in his favor subject to litigation which is real and substantial very title being disputed by an authority no less than Delhi Municipal Corporation. Thus right of the lessee of the plot is subjected to a hazard or disadvantage which by no means can be disregarded by any purchaser. The learned CWT (A) and other lower authorities were not right in not see in any impediment in the way of the assesseds in disposing of the plot through smaller plots for construction of different residential units. Thus, the property valued was different in nature and character than the one held on different valuation dates. The assessed may ultimately succeed and be able to convert user of the plot into residential or derive some other advantages. But this would happen (if at all) in subsequent years. On the valuation dates, due to uncertainty and pending litigation many purchasers are not likely to be attracted. Nobody can be presumed to be interested in litigation and disputes. Keeping in view the above facts and in the absence of any other reliable data of similar disadvantages, the best course would be to accept the value as returned by the assesseds from year to year. There is no material nor there is any justification or basis to claim that as on the valuation date the market value of the property was higher than the one returned by the assessed. We accordingly direct that the value returned by accepted.

26. The learned CWT (A) was wholly in error in adding separately value of area beyond stated in the lease deed on the basis of actual physical possession. There is no finding that aforesaid possession on any valuation dates matured into ownership. The possession of property without a legal title cannot beheld as an assessable asset under the Wealth Tax Act. In this connection, it would be relevant to refer to definition of assets given in section 2(e) of W. T. Act which specifically excludes any interest for a period less than 6 years. It cannot be stated that the given possession of assesseds created an interest beyond a period of 6 years. We, therefore, see no merit in the addition made by the learned CWT (A). Likewise, we do not find any merit in the claim of Shri Aggarwal that nothing

could be added on account of serious jeopardised title of the assessed. The lease hold right granted to the assessed in spite of litigation had value which was estimated and shown in the returns. The said value is to be assessed as directed.

27. to 29. [These paras are not reproduced here as they involve minor issues].