

(1993) 02 GAU CK 0013

In the Gauhati High Court

Case No : Wealth-tax Reference No. 3 of 1987

Ajay Kumar Saharia

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 19-02-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 3, 7, 7(1)
Wealth Tax Rules, 1957 — Rule 1A, 1D

Citation : (1994) 206 ITR 98

Hon'ble Judges : U.L. Bhat, C.J.; R.K. Manisana, J

Bench : Division Bench

Advocate : A.R. Bannerjee, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

Judgement

U.L. Bhat, C.J.—The following questions have been referred by the Appellate Tribunal u/s 27(1) of the Wealth-tax Act, 1957 (for short, "the Act"), at the instance of the Revenue :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in treating the shares of Messrs. Moheema Ltd., Messrs. Sonai River Tea Co. Ltd. and Messrs. Numburnadi Tea Co. Ltd. as unquoted shares within the meaning of Rule 1A(1) of the Wealth-tax Rules, 1957, though they had been quoted at the Calcutta Stock Exchange?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that Rule 1D of the Wealth-tax Rules must prevail over Section 7(1) of the Wealth-tax Act in valuing unquoted equity shares ?"

2. The reference relates to the assessment for the wealth-tax assessment year 1977-78 under the Wealth-tax Act, 1957 (for short, "the Act"), and the Wealth-tax Rules, 1957 (for short, "the Rules"). The relevant valuation date is December 31, 1976. The assessee is an individual owning wealth including equity and preference shares in three public limited companies, namely, Messrs. Moheema

Ltd., Messrs. Sonai River Tea Company Ltd., and Messrs. Numburnadi Tea Company Ltd. The assessee claimed that shares of these companies are quoted on the Calcutta Stock Exchange and he showed in the return the market value of the shares at what, according to him, are the prevailing rates quoted on the stock exchange. The Wealth-tax Officer found that Messrs. Moheema Ltd. is a subsidiary of another private limited company by name Messrs. Sookerating Tea Co. Ltd., which is holding 96 per cent. of the equity shares of Messrs. Moheema Ltd., and the majority of the remaining four per cent. shares were held by the members of the Saharia family group and that the holding company is controlled and managed by the Saharia family. He found that 80 per cent. of shares of Messrs. Sonai River Tea Co. Ltd. and Messrs. Numburnadi Tea Company Ltd. were held by the members of the Saharia family in their own names or in the name of the bank as security. He found that there had been no transactions in the stock exchange within two years prior to the valuation date in the shares of Messrs. Moheema Ltd., within one year prior to the valuation date in the shares of Messrs. Sonai River Tea Company Ltd, and the shares of Messrs. Numburnadi Tea Company Ltd. He also found that, in the present distribution of shares, the shares of the three companies are not eligible for listing on any stock exchange and the companies have not complied with the listing conditions and the provisions of the Securities Contracts (Regulation) Rules, 1957, and thereby rendered themselves liable for delisting. He, therefore, held the shares as "unquoted shares" within the meaning of Rule 1A(1) of the Wealth-tax Rules, 1957 (for short, "the Rules"), and valued the shares under Rule 1D of the Rules on the break-up value.

3. In appeal, the Appellate Assistant Commissioner reversed this decision and held that the shares must be valued at the rates quoted in the stock exchange. In appeal at the instance of the Revenue, the Tribunal restored the decision of the Wealth-tax Officer on the ground that the shares were not regularly quoted in any stock exchange.

Question No. (i) :

Rule 1A(1) defines "unquoted share" thus :

"(1) "unquoted share" means an equity share or a preference share of a company other than any such share the value of which is regularly quoted at any recognised stock exchange ;"

4. The emphasis appears to be on the words "the value of which is regularly quoted". If the value of shares of a company is regularly quoted at the stock exchange, ordinarily the quoted price shall be the basis for valuation for the purpose of the Act and the Rules. Rule 1C prescribes how the market value of unquoted preference shares is to be computed. Rule 1D lays down how the market value of unquoted equity shares of companies other than investment companies and managing agency companies is to be determined.

5. The three companies are public limited companies. According to the assessee,

the shares of these companies are listed in the Calcutta Stock Exchange and the value of the shares is regularly quoted in the stock exchange. The valuation date is December 31, 1976. The last transaction in the shares of Messrs. Moheema Ltd. was on April 24, 1974. The last transaction in the shares of Messrs. Sonai River Tea Co. Ltd. before the valuation date was on April 30, 1976, and the first transaction in the shares after the valuation date was on March 12, 1978. The two dates in the case of shares of Messrs. Numburnadi Tea Co. Ltd. are December 3, 1976, and January 22, 1977, respectively. It is admitted by the assessee that there were no other transactions at the stock exchange in regard to these shares. It was by considering these circumstances that the Tribunal held that the shares of the three companies cannot be said to be "regularly quoted" in the absence of regular transactions. According to learned counsel for the assessee, even if there are no regular transactions, prices of shares will be regularly quoted at the stock exchange with reference to the price fetched at the last transaction and, therefore, for shares of a company to be regarded as regularly quoted there need not be regular transactions and even if there was only a solitary transaction or there were only isolated transactions, the shares of the company must be regarded as regularly quoted.

6. In *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, the Supreme Court considered various methods of valuation of shares. The company concerned in the case was a private limited company. The court observed (at page 627) as follows :

"Where shares in a company are bought and sold on the stock exchange and there are no abnormalities affecting the market price, the price at which the shares are changing hands in the ordinary course of business is usually their true value. These quotations generally reflect the value of the asset having regard to the several factors which are taken into consideration by persons who transact business on the stock exchange and by the buyers who want to invest their money in any particular share or shares."

7. The conclusions arrived at by the court on various aspects of valuation are seen (at page 633). Conclusion No. (1) reads thus :

"(1) Where the shares in a public limited company are quoted on the stock exchange and there are dealings in them, the price prevailing on the valuation date is the value of the shares."

8. In *Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia*, after referring to the earlier decision, the Supreme Court observed that the conclusions arrived at in the earlier decision, though they do not amount to any hard and fast rule, represent well-settled general principles.

9. We may in this connection refer to a decision of a Special Bench of the Calcutta High Court in *Nirmala Birla and Others Vs. The Wealth Tax Officer, "M" Ward Dist. V(I), Calcutta and Others*, Datta J., at paragraph 94, observed as follows (at page 518) :

"The daily stock exchange quotations set out in official quotations under its rules and as is obvious, represent the rates at which transactions have been done. Such quotations of shares published by the stock exchange of daily transactions also contain a compilation of quotations of various securities and shares not necessarily quoted in the daily quotation in the absence of transactions but based on past transactions and the date of last transactions is also set out therein. To enable the assessee to avail of the quotation of shares of a stock exchange for purposes of valuation under the Act, it is necessary that such shares must be regularly quoted at any recognised stock exchange. "Regularly quoted" in Rule 1A(1), in my opinion, means a quotation of shares with regularity, the last quotation being within a reasonably proximate time of the date of the valuation. If there is a quotation of a share in the stock exchange on a date in 1962 or even in 1966 when the date of valuation is March 51, 1968, it will not be a quoted share as implied by the definition under the said clause but it will be an "unquoted share" as therein defined in the absence of regular quotation of regular transactions."

10. We are inclined to agree with the view expressed by Datta J., which is strengthened by the observations of the Supreme Court. The quotation at the stock exchange for the share of any company need not necessarily reflect the transactions on the day. It may reflect the price fetched at the last transaction, which may have been a few days, weeks, months or years earlier. Net wealth has to be valued for the purpose of the Act as on the valuation date, namely, the last day of the previous year as defined in Section 3 of the Income Tax Act, 1961, that is, December 31 of the previous year. Necessarily, the valuation must reflect the position as on the valuation date and if that is not practicable, as on a date within reasonable proximity to the date of valuation. It is only this idea which is reflected in the words "the value of which is regularly quoted" in Rule 1A(1) of the Rules. When there has been only a solitary transaction or when there have been only isolated transactions in shares of a particular company in a stock exchange, it cannot be said that the shares of the company are regularly quoted. Regularity of transactions is implicit in the concept of "regularly quoted". If there were no regular transactions in the shares of a company at a stock exchange or if the transactions were isolated or not within reasonable proximity to the date of valuation, it cannot be said that shares are "regularly quoted shares", and such shares must be regarded as "unquoted shares" within the meaning of Rule 1A(1) of the Rules. Question No. (i) has to be answered in favour of the Revenue.

Question No. (ii) ;

Rule 1D deals with determination of market value of unquoted equity shares of companies other than investment companies and managing agency companies. The first part of the rule states :

"The market value of an unquoted equity share of any company, other than an investment company or a managing agency company, shall be determined as follows :...."

11. A study of the rule would indicate that the method prescribed therein is a modified form of the break-up method.

12. It is argued for the assessee that shares of a company which is a going concern must be treated differently from the shares of a company which is in dire straits or facing liquidation, and the Supreme Court has held in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, , *Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia*, and *CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai*, (1988) 170 ITR 144 (SC) , that valuation of shares of a company which is a going concern must be based on income or dividend and must reflect profitability. Viewed in this light, according to the assessee, if Rule 1D of the Rules is regarded as mandatory, it will be in conflict with the provisions in Section 7(1) of the Act as interpreted by the Supreme Court and hence the rule must be regarded as directory and, in the case of a going concern, the normal method based on profitability must be adopted. According to the Revenue, Section 7(1) itself is subject to rules made in this behalf, including Rule 1D of the Rules, and having regard to the language used in the statutory provision and in the statutory rule, Rule 1D must be regarded as mandatory. The Supreme Court has not pronounced on this aspect specifically and various High Courts have adopted different views. The High Courts of Andhra Pradesh, Bombay, Delhi, Karnataka and Madras have held Rule 1D of the Rules to be directory while the High Courts of Allahabad, Calcutta and Kerala have taken the contrary view. See *Smt. Kusumben D. Mahadevia V. N. C. Upadhyaya and Others* *Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I*, , *Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII*, and others, , *Commissioner of Wealth Tax Vs. R.K. Gupta*, , *D. Renuka Vs. Commissioner of Wealth-tax*, , *Commissioner of Wealth Tax Vs. S. Jindal*, , *K.M. Mammen Vs. Wealth-Tax Officer, City Circle-II (1) Madras*, , *Commissioner of Wealth-tax Vs. Laxmipat Singhania*, , *Commissioner of Wealth-tax Vs. Padampat Singhania*, , *COMMISSIONER OF WEALTH-TAX Vs. MAMMAN VARGHESE and OTHERS.*, , *Mrs. Grace Collis and Others Vs. Commissioner of Wealth-tax*, and *Commissioner of Wealth Tax Vs. India Exchange Traders" Association*,

13. We will examine the matter independently before dealing with the reasoning in the above decisions. The Act is to provide for levy of wealth-tax. Section 3 is the charging section by which tax is leviable in respect of net wealth on the corresponding valuation date at the rates specified in Schedule 1. Section 4 contains an inclusive definition of net wealth. Section 5 deals with exemptions in regard to certain assets and Section 6 deals with exclusion of assets and debts outside India. Section 7 lays down how the value of assets has to be determined. Sub-Section (1) of Section 7 reads as follows :

"(i) 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 date."

14. The above definition adopts the general formula regarding assessment of the value of property adopted in similar statutes. This provision has been explained by the Supreme Court in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, . It is to be emphasised that the case related to assessment years prior to October 6, 1967, with effect from which date Rule 1D of the Rules has been introduced. The judgment naturally did not take into consideration the impact of Rule 1D of the Rules. The Supreme Court, at page 633 of the reported decision, arrived at six conclusions. Where the shares in a public limited company are quoted on the stock exchange and there are dealings in them, the price prevailing on the valuation date is the value of the shares. Where they are not so quoted, or where the shares are of a private limited company, the value is determined by reference to the dividends, if any, reflecting the profit-earning capacity on a reasonable commercial basis. But, where they do not, then the amount of yield on that basis will determine the value of the shares. This is known as the yield method. If the results of the dividend method and yield method differ, an intermediate figure may have to be computed. Where the company is ripe for winding up, then the break-up value method determines what would be realised by that process. If there are fluctuations of profits and uncertainty in the conditions on the date of valuation preventing any reasonable estimate of the prospective profit and dividends, valuation by reference to the assets would be justified. It is unnecessary to refer to the other conclusions of the Supreme Court.

15. The rules framed in 1957 did not contain any specific provision regarding the determination of the market value of shares of companies and the guidelines in that regard were available only in the provision in Section 7(1) of the Act, which was interpreted by the Supreme Court in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, . Rules 1C and 1D were introduced by the Wealth-tax (Amendment) Rules, 1967, with effect from October 6, 1967. Rule 1C indicates the manner in which the market value of unquoted preference shares is to be determined. Rule 1D lays down the manner in which the market value of unquoted equity shares of companies other than investment companies and managing agency companies is to be determined. It is unnecessary to refer to the exact formula laid down in Rule 1D. It is sufficient to indicate that the formula is a variant of the breakup method. In laying down the formula, Rule 1D states as follows :

"The market value of an unquoted equity share of any company other than an investment company or a managing agency company, shall be determined as follows :--"

16. While the expression "shall" need not always be indicative of the mandatory nature of a provision and the word "may" need not always be indicative of its directory nature, ordinarily the word "shall" may be taken to be indicative of the intention of the Legislature or the rule-making authority to make the provision

mandatory. The intention has to be gathered on the basis of the general purpose of the statute, the purpose of the particular provision, the inter-relationship between the two, the language used and the consequences of interpreting the provision to be mandatory or directory and the mischief, if any, sought to be avoided.

17. The object of the statute is to levy tax on wealth. This is intended not only to secure revenue to the State, but also to subserve the Directive Principles of State Policy incorporated in Article 38 of the Constitution enjoining the State to secure a social order for the promotion of welfare of the people and Article 39 enjoining the State to direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. It is to effectuate the purpose of levying tax on wealth that Section 7(1) has been incorporated. The Supreme Court arrived at the conclusions referred to already on an interpretation of Section 7(1) of the Act and drawing a distinction between valuation of shares of a company which is a going concern and a company which is facing liquidation on the basis of the comments in *Green on Death Duties* and a decision of the Privy Council and certain other decisions. The rule-making authority must have incorporated Rule 1D of the Rules having in view these legal materials and intended a sharp departure from the position as it obtained in England in regard to valuation of unquoted shares of certain types of companies. The intention underlying Rule 1D of the Rules could not have been to prescribe an alternate method of valuation in the case of a company facing liquidation so as to leave it to the discretion of the Wealth-tax Officer to choose one of the methods of valuation. The intention could only have been to pin down the Wealth-tax Officer to a particular method in relation to unquoted equity shares of certain types of companies. If the rule is interpreted to be directory, it would vest unguided discretion in the statutory authority, which could not have been the intention of the rule-making authority. If the rule is understood as mandatory, the Wealth-tax Officer is bound to follow the particular method in regard to assets falling within its ambit. This, it is said, may lead to hardship and excessive taxation in several cases. In our view, this is only an assumption not supported by any data. The rule has taken care to ensure that the valuation is not excessive by prescribing a percentage of the break-up value as the market value.

18. We will now advert to the contention that Rule 1D of the Rules is in conflict with the decision of the Supreme Court in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, and hence the rule should not be held to be mandatory. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they are in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. See *State of U. P. v. Babu Ram Upadhyaya*, AIR 1961 SC 751, at paragraph 23. A rule and a statutory provision must be harmoniously construed and in case of conflict, the rule must give way to the statutory provision. A statutory rule, while even subordinate to

the parent statute, is, otherwise, to be treated as part of the statute and as effective. See *State of Tamil Nadu Vs. Hind Stone and Others*, . This is the ordinary principle relating to subordinate legislation. However, this principle may not be apposite in the present case in view of the language used in Section 7(1) of the Act. Section 7(1) of the Act states that the provision contained therein is "subject to any rules made in this behalf". This would indicate that the Legislature found it a matter of complexity to prescribe in the statute itself methods of valuation for different kinds of assets and at the same time was not prepared to leave it to the domain of subordinate legislation. The legislative device of making the provision in Section 7(1) of the Act subject to any rules made in this behalf is intended to indicate the intention of the Legislature to give the rule the same status as the statutory provision. In *Harish Chandra Bajpai Vs. Triloki Singh*, the Supreme Court, considering Section 90(2) of the Representation of the People Act, 1951, which contained the words "subject to the provisions of this Act and of any rules made thereunder", observed (at page 454) :

"The true scope of the limitation enacted in Section 90(2) on the application of the procedure under the CPC is that when the same subject-matter is covered both by a provision of the Act or the rules and also of the Civil Procedure Code, and there is a conflict between them, the former is to prevail over the latter."

19. Rule 1D of the Rules cannot, therefore, be regarded as an ordinary subordinate legislation which has to be discarded if it is in conflict with the statutory provision. The language of Section 7(1) of the Act indicates that it is subject to the rules. The clear intention of the Legislature is to enable specific methods of valuation of specific kinds of assets to be prescribed by the Rules and to treat such prescription as part of the statute. The same idea has been expressed by the Kerala High Court in *COMMISSIONER OF WEALTH-TAX Vs. MAMMAN VARGHESE and OTHERS.*, in the following words (at page 355):

"The section itself opens with the words "Subject to any rules made in this behalf, thereby bringing out the paramountcy of the rules."

20. In our view, Rule 1D of the Rules is mandatory.

21. We will now advert to the reasons which weighed with some of the High Courts in holding the rule to be directory. It is said that Rule 1D of the Rules goes against the recognised methods of valuation laid down by the Supreme Court in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others* etc., according to which the break-up method is to be followed ordinarily only in the case of a company facing liquidation. We do not understand the decision of the Supreme Court as laying down any rigid formula. The conclusion or rules formulated by the Supreme Court in a case relating to a period prior to incorporation of Rule 1D of the Rules are rules of general or ordinary application and cannot affect the power of the Legislature or the rule-making authority to prescribe any particular method with reference to a particular kind of asset. It is

also not correct to assume that Rule 1D of the Rules follows in its entirety the break-up method. It prescribes a modified form of the break-up method.

22. Sub-section (1) of Section 46 empowers the rule-making authority to make rules for carrying out the purposes of the Act. Sub-section (2)(a) provides that :

"(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for-

(a) the manner in which the market value of any asset may be determined ;"

23. It is pointed out that Section 46(2)(a) uses the word "may" while some of the other clauses in Section 46(2) use the word "shall", and hence the rule-making authority cannot make a rule mandating the Wealth-tax Officer to adopt a particular method of valuation. This reasoning ignores the legislative device adopted in Section 7(1) of the Act making the provision subject to the rules and, therefore, cannot stand scrutiny. In view of this legislative device also the word "may" used in Section 46(2)(a) has to be understood as "shall". Section 46 of the Act confers a discretion on the rule-making authority to make a rule providing for the manner in which the market value of any asset is to be determined ; but once the rule is made it will be deemed to be part of the substantial provision in Section 7(1) of the Act and adoption of the method by the Wealth-tax Officer is imperative.

24. In Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., the Supreme Court had no occasion to consider the impact of Rule 1D of the Rules. Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, relates to the provisions of the Gift-tax Act, 1958. The Supreme Court declined to consider the effect of Rule 10(2) of the Gift-tax Rules, 1958, which had given an option to the assessing authority to adopt one of two methods of valuation on the ground that it was not considered by the Tribunal. CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai, (1988) 170 ITR 144 (SC) also arose under the Gift-tax Act, 1958, and it was held that Rule 10(2) of the Gift-tax Rules, 1958, did not apply to the facts of the case and, therefore, it was not considered. Hence it cannot be said Rule 1D of the Rules is in conflict with the view expressed by the Supreme Court.

25. It is said that if Rule 1D of the Rules is mandatory, it will be in conflict with Section 7(3) read with Section 16A of the Act as also Section 24(6) of the Act. Section 7(3) reads thus :

"(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 u/s 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 or, in the case of an asset being a house referred to in Sub-section (4), the valuation date referred to in that sub-section."

26. Section 16A deals with reference to the Valuation Officer, The Wealth-tax

Officer may refer the valuation of any asset to a Valuation Officer only in cases covered by Clauses (a) and (b) of Sub-section (1) of Section 16A of the Act. The Valuation Officer may pass an order in accordance with the other provisions of the section. On receipt of the order, the Wealth-tax 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. It is argued that Rule 1D of the Rules applies only to valuation by the Wealth-tax Officer and not to that by the Valuation Officer and if a reference is made, the Valuation Officer is not bound to follow Rule 1D of the Rules and, therefore, this would lead to an anomalous situation. Assuming and without deciding that the Valuation Officer is not bound by Rule 1D of the Rules, it would only mean that the Wealth-tax Officer has to follow the order of the Valuation Officer. There is no provision in the Act to the effect that the appellate authorities are bound to pass orders in conformity with the estimate of the Valuation Officer. Section 24(6) has been repealed and does not require consideration.

27. It is also argued that the break-up method in relation to companies which are going concerns is unrelated to realities and is unjust. We need only point out that no attempt has been made to justify this contention with reference to any fact situation.

28. We may also refer to the decision of the Calcutta High Court in *Commissioner of Wealth Tax Vs. India Exchange Traders' Association*, where reference is made to the Direct Tax Laws (Amendment) Act, 1989, which has recast with effect from April 1, 1989, the existing provisions of Section 7. The main change effected is that the rules for valuation of assets have been made a part of the Act itself by inserting Schedule III to the Act. The Calcutta High Court has taken the view that this clearly manifests the legislative intent and gives an indication of the legislative recognition of the principles embodied in Rule 1D of the Rules and is declaratory of the validity of Rule 1D since Parliament must be presumed to be aware of the conflicting decisions of the High Courts, but nevertheless has given recognition to the decisions of the High Courts that Rule 1D is mandatory.

29. For the reasons indicated above, we are unable to agree with the view taken by the High Courts of Andhra Pradesh, Bombay, Delhi, Karnataka and Madras and with respect, we are in agreement with the view taken by the High Courts of Allahabad, Calcutta and Kerala. We hold that Rule 1D of the Rules is mandatory.

30. Question No. (ii) is not happily worded. It is not a question of Rule 1D of the Rules prevailing over Section 7(1) of the Act or vice versa. Rule 1D of the Rules is mandatory and Section 7(1) is subject to the Rules. Rule 1D of the Rules does not conflict with Section 7(1) of the Act. It is to be regarded as part of Section 7(1) of the Act and both the provisions must be harmoniously construed. Since there is nothing in Section 7(1) which is in conflict with Rule 1D of the Rules, it is legitimate to say that the rule prevails. Question No. (ii), viewed in this light, must be answered in favour of the Revenue and in the affirmative.

31. We answer both the questions in favour of the Revenue and against the assessee, i.e., in the affirmative.

32. A copy of this judgment under the signature of the Registrar and seal of the High Court shall be transmitted to the Income Tax Appellate Tribunal. In the circumstances, there will be no direction as to costs.