

(1984) 03 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Wealth-tax Reference No. 3 of 1977

Ashok Kumar Oswal

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 12-03-1984

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1D

Citation : (1984) 43 CTR 216 : (1984) 2 ILR (P&H) 375 : (1984) 148 ITR 620

Hon'ble Judges : Rajendra Nath Mittal, J;M.M. Punchhi, J

Bench : Division Bench

Advocate : B.S. Gupta and S.K. Mittal, for the Appellant; Ashok Bhan and A.K. Mittal, for the Respondent

Judgement

R.N. Mittal, J.—This wealth-tax reference has been made u/s 27(1) of the W.T. Act, 1957, at the instance of the assessee by the Wealth-tax Appellate Tribunal, Amritsar Bench, Amritsar.

2. Briefly, the facts are that the assessee filed his return of net wealth for the assessment year 1968-69 on September 16, 1968, showing a net wealth of Rs. 2,27,537. He owned 4,000 equity shares of M/s. Oswal Woollen Mills Ltd. which were unquoted. In the return, the value of the shares was shown by the assessee as Rs. 83,200 at the rate of Rs. 20.80 per share. The Wealth-tax Officer (hereinafter referred to as "the WTO") while examining the balance-sheet of M/s. Oswal Woollen Mills Ltd. found that the assessee had not properly valued the shares of the company. He determined the break-up value of the shares at Rs. 61.03 per share and adopted 82% of the break-up value of the shares as the market value on the valuation date. On that basis he worked out the value of the shares at Rs. 50.04 per share. Consequently, he determined the total value of the shares at Rs. 2,00,160.

3. After the completion of the assessment, the assessee made an application u/s 35 of the W.T. Act, 1957, for rectification of the value of the shares as per the W.T. Rules, 1957, on May 19, 1971. Therein he made a prayer that the value of

the shares be reduced to Rs. 20.15 from Rs. 50.04 per share in the assessment order. The WTO rejected the said prayer. However, he held that there was a mistake in calculation in the assessment order and, therefore, he recalculated the value of the shares at Rs. 46.29 per share. In doing so he worked out the value of the shares and the revised net wealth of the assessee as under :

Rs. Rs. Rs. "Total assets as per balance-sheet of M/s. Oswal Woollen Mills Ltd. as on 31-12-1967 1,51,65,838 Less advance tax payments not con- ----- sidered as assets. 34,42,312 Balance assets 1,17,23,526 Less liabilities: 1. Secured Loans 21,28,296 2. Unsecured loans 14,01,136 3. Current liabilities & provisions 58,42,998 Less provisions for taxes 36,99,182 ----- 21,43,816 Add current tax 3,80,140 ----- 25,23,956 ----- 60,53,388 1,17,28,526 Deductible liabilities 60,53,388 ----- Net assets 56,70,138 No. of equity shares 94,933 Break-up value per share Rs. 59-73 77% thereof Rs. 46-29 The revised net wealth of the assessee is computed as under: Net wealth assessed as per order, dated 24-10-1968 3,51,739 Less value of 4,000 shares 2,00,160 ----- 1,51,579 Add value of 4,000 shares @ Rs. 46-29 per share as worked out above 1,85,160 ----- Revised net wealth 3,36,739."

4. The assessee went up in appeal before the AAC. It was submitted on behalf of the assessee before him that, while calculating the value of the shares, the WTO should have excluded from the figure of the total assets "provision for taxes amounting to Rs. 36,99/182" as per Sub-clause (e) of Clause (ii) of Expln. II to Rule 1D of the W.T. Rules, 1957 (hereinafter called "the Rules"). The AAC did not accept, the contention and upheld the order of the WTO. Against the said order, the assessee went up in further appeal before the Tribunal which came to the conclusion that the value of the shares was correctly determined by the WTO in accordance with the abovesaid rule. Consequently, it affirmed the findings of the AAC. On an application of the assessee u/s 27(1) of the Act, the following question of law has been referred to this court for its opinion :

"Whether, on the facts and circumstances of the case, the interpretation of Sub-clause (e) of Clause (ii) of Explanation II to Rule 1D of the Wealth-tax Rules, 1957, is correct ? "

5. Mr. Gupta, learned counsel for the assessee, has argued that the interpretation taken by the Tribunal is not warranted. He urges that under Sub-Clause (e) of Clause (ii) of Expln. II to Rule 1D of the W.T. Rules, 1957, the provision for taxation made on the book profits of the company should be treated as liabilities. If there is any excess in the amount shown by way of provision for taxes over what would be payable with reference to the book profits, only that excess amount, he argues, cannot be treated as liabilities of the company. It is further argued by him that the tax payable, according to book profits, is the total amount of tax on such profits and not the amount of tax which is actually payable by the company after deducting the advance tax. In support of his contention he refers to Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, , wherein it is observed that what Sub-clause (e) of Clause (ii) requires

the WTO to do is to ascertain first as to what are the book profits shown by the company and in the light of those book profits what would be the tax payable with reference to those book profits in accordance with the law applicable thereto. Having thus ascertained the amount to be the tax payable with reference to the book profits, the WTO has then to see whether the provision for taxation on the liabilities side of the balance-sheet is in excess of the amount of tax payable with reference to the book profits as already ascertained by him. If there is any excess in the provision for tax liabilities, then that excess is not to be treated as part of the liabilities of the company while computing the break-up value of the shares of the company. So far as provision for advance tax is concerned that provision has to be disregarded while applying the provisions of Sub-clause (e) of Clause (ii) of Expln. II. It is further observed that Sub-clause (e) of Clause (ii) and Sub-clause (a) of Clause (i) of the rule operate in two different fields altogether. Clause (i)(a) operates in the field of actual payment of advance tax. Clause (ii)(e) operates in the field of excess provision for taxation, other than the provision for taxation regarding advance tax. For the purpose of computation of the market value of the shares of a company, the advance tax paid and shown on the assets side of the balance-sheet of the company cannot be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of Clause (ii)(e) of Expln. II.

6. We have given due consideration to the argument but regret our inability to accept the same. In order to determine the question, it is necessary to reproduce the relevant part of Rule 1D which is as follows:

"1D. The market value of an unquoted equity share of any company, other than an investment company or managing agency company, shall be determined as follows :

The value of all the liabilities, as shown the balance-sheet of such company, shall be deducted from the value of all its assets shown in that balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet..."

Explanation II.--For the purposes of this rule-

(i) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely :

(a) any amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922 (11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961) :.....

(ii) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely :--.....

(e) any amount representing provision for taxation [other than the amount referred to in Clause (i)(a)] to the extent of the excess over the tax payable with

reference to the book profits in accordance with the law applicable thereto;....."

7. The case involves the interpretation of Sub-clause (a) of Clause (i) and Sub-Clause (e) of Clause (ii) of Expln. II. Clause (i) deals with the amounts on the assets side in the balance-sheet, which are not to be treated as assets and Clause (ii) with the amounts on the liabilities side in the balance-sheet which are not to be treated as liabilities. Under Sub-clause (a) of Clause (i), any amount paid as advance tax and shown as an asset in the balance-sheet of a company is not to be treated as an asset, and under Sub-clause (e) of Clause (ii), the difference between the amount representing provision for taxation and amount payable as tax on the book profits is not to be treated as a liability. It is well settled that various clauses in a rule should be interpreted harmoniously. In Sub-clause (e) the words "the tax payable with reference to the book profits" are important. These words connote the amount of tax due from a company after deducting the advance tax and not the whole of the amount of tax worked out on the book profits. A provision for taxation is made in the balance-sheet under rules of accountancy and not under any rule of law. The liability of a company to pay tax is the amount of tax worked out on its profits minus the payment made as advance tax. It cannot be said that the advance tax paid is not relevant for determining the tax liability of a company. Therefore, under Sub-clause (e), out of the provision for taxation, the actual amount payable after deducting the advance tax will be taken as the liability of the company and not the whole of the tax on the book profits. With great respect to the learned judges we have not been able to persuade ourselves to accept the view expressed in Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, .

8. In the present case, in accordance with the contention of the assessee, the amount of Rs. 34,42,312 deposited as advance tax has not been treated by the wealth-tax authorities as assets of the company and the amount of Rs. 3,80,140 has been treated by them as its liability. However, regarding the amount of Rs. 36,99,182, which is the provision for taxes made in the balance-sheet, his contention has not been accepted and the amount has not been treated as a liability on the ground that it has not been shown that the amount beyond Rs. 3,80,140 was payable by the company as tax on its book profits. In our view, Sub-clause (e) has been correctly interpreted by the said authorities. Consequently, we answer the question in the affirmative, i.e., in favour of the Revenue and against the assesses. No order as to costs.

M.M. Punchht, J.

9. I agree.