
(1991) 07 CAL CK 0027

In the Calcutta High Court

Case No : Matter (Original Side) No. 497 of 1991

Bal Krishna Binani

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 22-07-1991

Acts Referred:

Wealth Tax Act, 1957 — Section 46(4), 7, 7(1)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1993) 199 ITR 516 : (1994) 77 TAXMAN 188

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—This writ application has been specially assigned before this Bench. This writ application has been filed by the petitioner as the karta of a Hindu undivided family challenging the vires of Rule 1D of the Wealth tax Rules, 1957. The facts are in a narrow compass.

2. The Hindu undivided family of which the petitioner is the karta held, amongst others, shares and securities in several companies. The shares are both quoted and unquoted. The unquoted shares are as follows :

(i) 3,079 equity shares in Prayagdas-Mathuradas (Bombay) Private Limited, (a trading company).

(ii) 4,170 equity shares in Rashtriya Metal Industries Ltd. (a manufacturing company).

(iii) 19 preference shares in Rashtriya Metal Industries Ltd. (a manufacturing company).

(iv) 1,65,000 equity shares in Binani Commercial Co. (Private) Limited, (a trading company).

3. For the assessment year 1981-82, for which the relevant valuation date is November 7, 1980, the petitioner family filed its return declaring a net wealth of

the Rs. 7,86,700. The petitioner valued the unquoted shares on the basis of the yield method. In the course of the assessment proceedings for the said assessment year, the petitioner family made statements in regard to the valuation and audited accounts of the companies in which the petitioner held unquoted shares. The contention of the petitioner before the Assessing Officer was that the market value of the said unquoted shares should be determined on the basis of the yield method as accepted by the Central Board of Direct Taxes in its Circular dated March 31, 1992, and the principles laid down by the Supreme Court in the case of Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, and another decision of the Supreme Court in the case of Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., . The petitioner-family filed a revised valuation on the basis of the yield method before the Assessing Officer. By an order of assessment dated February 21, 1985, made u/s 16(3) of the said Act, the Wealth-tax Officer computed the value of the unquoted shares on the basis of the break-up method under Rule 1D of the Rules. The Wealth-tax Officer was of the view that the Circular of the Central Board of Direct Taxes applies only to investment companies and not to manufacturing companies and the break-up method as per Rule 1D of the Wealth-tax Rules, 1957, had to be applied in determining the valuation of the unquoted shares.

4. The petitioner-family preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner was of the view that the application of the break-up method in valuing the shares of a non-investment company in a running condition was directly u/s 7(1) of the said Act. He, therefore, directed the Wealth-tax Officer to value the said unquoted shares on yield basis as per the registered valuer's report and there were no special circumstances for the application of Rule 1D.

5. Being aggrieved by the said order of the Appellate Assistant Commissioner, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Income tax Appellate Tribunal held that the valuation shown by the assessee on the basis of the registered valuer's report on yield basis should be accepted and that the same was rightly upheld by the Appellate Assistant Commissioner. At the instance of the Revenue, the Income tax Appellate Tribunal drew up a case u/s 27(1) of the said Act of 1957, referring the following question of law to this court for its opinion :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the market value of unquoted equity shares of the companies which were not investment companies or managing agency companies should be determined on yield basis and not in accordance with Rule 1D of the Wealth-tax Rules, 1957? "

6. When the said reference came up for hearing, it was submitted that, since the vires of Rule 1D cannot be gone into in advisory jurisdiction, the assessee has moved a writ application challenging the vires of Rule 1D. Accordingly, the said

reference should be heard after the decision is rendered in the writ application filed by the assessee. The said reference is still pending, although at this stage we must observe that, by the judgment dated March 21, 1991, in Matter No. 149 of 1987, in the case of Commissioner of Wealth Tax Vs. India Exchange Traders' Association, , this Bench has held that Rule 1D is mandatory and accordingly in valuing the unquoted shares of a non-investment company, such rule has to be applied by the Wealth tax Officer.

7. In assailing the provisions of Rule 1D as ultra vires, learned counsel for the assessee has first emphasised the fact that the competence of Parliament to levy wealth-tax emanates from entry 86 of List I of the Seventh Schedule to the Constitution of India. The entry empowers the levy of " taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies, tax on the capital of companies. " On the basis of numerous decisions cited before us, he has argued that this point is beyond dispute.

8. His next argument is that the expression " capital value of assets " in entry 86 inherently refers to the market value of an asset and the definition of net wealth in Section 2(m) which is the subject-matter of charge u/s 3 of the Wealth-tax Act, 1957, is defined as the aggregate value computed in accordance with the provisions of this Act of all the assets. This provision, according to him, brings in Section 7 of the said Act which says that the value of any asset, other than cash, 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. Thus, the market value must have omnipresence in any estimate to be framed of the value of any asset to be aggregated in terms of Section 2(m). According to him, this is the correct legal position. Learned counsel does not, however, ignore the fact that the estimate which the Assessing Officer is to make of such market value is subject to the rules framed by the rule-making authority. But his contention is that the rule-making authority has to frame rules within the limits of the fundamental legislative policy that the market value has to be the prime consideration. For this proposition, he has relied on, inter alia, the following decisions of the Supreme Court :

(1) CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai, (1988) 170 ITR 144 (SC)

(2) Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.,

(3) Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad,

(4) State of Karnataka and Another Vs. H. Ganesh Kamath and Others,

9. He has also cited a number of other decisions to contend that subordinate legislation cannot be inconsistent with or repugnant to the main legislation. In any case, it is not necessary to quote chapter and verse as no one is contending to the contrary. The real question at issue is not whether or not the rule should

override, abridge or extinguish the provisions of the Act but whether Rule 1D impugned in this petition in fact overrides the Act. According to learned counsel for the petitioner, Rule 1D overrides Sub-section (1) of Section 7 and consequently Section 46(2)(a) also. Thus, it does violate not only Section 7(2) of the Wealth-tax Act, 1957, but also entry 86 of List I of the Seventh Schedule to the Constitution of India.

10. Rule 1D prescribes as the manner of determining the market value of unquoted shares of a company, the break-up value method, to the exclusion of the profit-earning method and thereby, according to him, causes distortion of the legislative intent that every asset should be valued on the basis of the price it would fetch if sold in the open market on the valuation date. According to learned counsel for the petitioner, the proper method of estimating the market value of unquoted shares of a company which is a going concern is the profit-earning method and the break-up method is totally inappropriate since such method is relevant only where the company is ripe for winding up.

11. In support of his contention, he relied on three decisions of the Supreme Court, namely, *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) . In all these three decisions, the Supreme Court has held that the yield method is the proper method for estimating the market value of an unquoted equity share since the maintainable profit of the company is the factor that enters into the consideration of a willing purchaser. The same view has been reiterated in the later two decisions. In all these decisions, the break-up value has been treated as relevant only for a company in liquidation or ripe for liquidation. Therefore, according to him, Rule 1D, by adopting the break-up value method as the only method for valuing unquoted equity shares of all companies irrespective of the facts and circumstances of individual companies, is not in harmony with the basic theme of Sub-section (1) of Section 7 and thus suffers from the vice of transgressing the said provision and, consequently, the totality of the scheme of the Act as well as entry 86 of List I of the Seventh Schedule to the Constitution of India.

12. It has been contended on behalf of the Department that the writ petitioner has not indicated how and to what extent Rule 1D is repugnant to or inconsistent with the provisions of the Wealth-tax Act or is ultra vires any provision of the said Act or the Constitution of India. This argument is not correct. Learned counsel for the petitioner has clearly submitted as to why, in his opinion, Rule 1D is inconsistent with the provisions of Sub-section (1) of Section 7.

13. The next argument of learned counsel for the Revenue is that Rule 1D has not exceeded the rule-making authority u/s 46 inasmuch as Clause (a) of Sub-section (2) of Section 46 empowers the Board to provide for the manner in which the market value of any asset may be determined. It has also been contended by

him that, while dealing with the question of validity of any rule, attempt should be made to sustain it as far as possible and, in support of this proposition, reliance has been placed on the case of Smt. Kusumben D. Mahadevia V. N. C. Upadhya and Others Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I, . According to the Revenue, Section 46(2)(a) of the Act has authorised the Board to prescribe the manner of determining the market value and, pursuant to such authority, the Board has validly framed the Wealth-tax Rules for fulfilment of the objects of the Wealth-tax Act. It has also been submitted that different High Courts have held different views on the question whether Rule 1D is directory or mandatory and reliance has been placed on the decision of this court in the case of Commissioner of Wealth Tax Vs. India Exchange Traders' Association, , where the judgment was delivered on March 21, 1991. There the court has held that Rule 1D is mandatory. According to him, this court, by necessary implication, has upheld the constitutional validity of Rule 1D of the Wealth tax Rules. The argument on behalf of the Revenue is that there is nothing in Rule 1D of the Wealth tax Rules which militates against either Section 7 or Section 46(2)(a) or entry 86 List I of the Seventh Schedule to the Constitution ; rather Rule 1D has fulfilled the object of the Act enabling the valuation of a specified asset, namely, unquoted equity shares of a company other than an investment company for the purpose of the levy of wealth-tax.

14. The argument advanced on behalf of the Revenue that the issue raised in the writ petition impugning the vires of Rule 1D should be considered as concluded against the petitioner because of the decision of this court holding Rule 1D as mandatory, is not tenable. The decision on the matter in the said reference was absolutely guided by the inherent presumption of validity of the rule because the question of vires is not justiciable in a reference proceeding. Therefore, this part of the argument on behalf of the Revenue does not hold good.

15. The crucial question arising from the writ petition is whether the breakup value method adopted by Rule 1D as an invariable method for valuing unquoted equity shares of all companies is contrary to the legislative intent underlying the provisions of Sub-section (1) of Section 7. If the method of valuation prescribed by Rule 1D does not harmonise with such legislative intent, Rule 1D has to be declared as ultra vires. That is the moot question in the writ petition falling for determination before us.

16. The sheet-anchor of the arguments of learned counsel of the petitioner in our view is the decision of the Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., , because that is the decision directly dealing with the question of unquoted equity shares of a company under the Wealth-tax Act, 1957. The other two decisions, viz., 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) were delivered in the context of the provisions of the Gift-tax Act, 1958, and the rules framed thereunder. Though the provision for

determining the value of an asset in sub Section (1) of Section 6 of the Gift-tax Act is the same as it is in subsection (1) of Section 7 of the Wealth-tax Act, there is a significant distinction in the rules prescribing the manner of valuation of assets framed under the two Acts, viz., Rule 10(2) of the Gift tax Rules and Rule 1D of the Wealth tax Rules. It is, therefore, necessary to deal first with the decision of the Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., . The first notable point as respects this decision is that it was delivered in the context of the provisions of the Wealth-tax Act obtaining at a time when there was no rule framed in the Wealth-tax Rules for valuing the unquoted equity shares of a company. The assessments involved in the referred cases decided by the Supreme Court pertain to the assessment years 1957-58 and 1958-59. It was in that perspective that the Supreme Court held that, where the company is ripe for winding up, then break-up value method determines what could be realised by that process. But the market value, according to the Supreme Court, except in exceptional cases cannot be determined on the hypothesis that because in a private limited company one holder can bring it into liquidation, it should be valued as on liquidation by the break-up method. The yield method is the generally applicable method while the break-up method is resorted to in exceptional circumstances or where the company is ripe for liquidation. But, finally, the Supreme Court observed : " none the less is one of the methods ". As a matter of fact, the Supreme Court, in its decision, made certain observations which highlight the practical difficulty of applying the yield method in valuing unquoted equity shares of a company. The determination of the value by the yield method throws up a plethora of complex questions to be resolved as projected in the following passage in the said decision (at page 633) :

" Where the shares are of a public limited company which are not quoted on a stock exchange or 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. In other words, the profits which the company has been making and should be making will ordinarily determine the value. The dividend and earning method or yield method are not mutually exclusive ; both should help in ascertaining the profit earning capacity as indicated above, if the results of the two methods differ, an intermediate figure may have to be computed by adjustment of unreasonable expenses and adopting a reasonable proportion of profits.

In the case of a private limited company also where the expenses are incurred out of all proportion to the commercial venture, they will be added back to the profits of the company in computing the yield. In such companies the restriction on share transfers will also be taken into consideration as earlier indicated in arriving at a valuation. Where the dividend yield and earning method break down by reason of the company's inability to earn profits and declare dividends, if the set-back is temporary then it is perhaps possible to take the estimate of the

value of the shares before set back and discount it by a percentage corresponding to the proportionate fall in the price of quoted shares of companies which have suffered similar reverses. "

17. This shows that the yield method requires the taxing authorities to address themselves to a marathon task. It is perhaps for this reason that the Supreme Court, even after observing that the yield method or profit-backing method is the appropriate method for determining the market value of such unquoted shares, has not ruled out the application of the break-up method. The Supreme Court observed (at page 634) :

" The yield method is the generally applicable method while the break-up method is the one resorted to in exceptional circumstances or where the company is ripe for liquidation, but none the less is one of the methods. "

18. This observation suggests that the break-up method is not absolutely discarded and is to be invariably restricted only to a company as on liquidation or ripe for liquidation. This concluding observation assumes all the more importance when judged in the context of the introductory observations of the Supreme Court at pages 627 and 628 [86 ITR].

" Even where they are quoted on the stock exchange, the quotations do not depend entirely on the yield or dividend declared. There are several factors which are taken into consideration which affects and determines the quotation, namely, the factors which are taken into consideration by a person who wants to sell his shares and the factors which a buyer who wants to purchase them considers as determining the price which price the buyer is willing to pay and the seller to receive. Leaving aside any distress sales, the factors which in our view are likely to determine the fixation of a share on any particular day or at any particular time is, firstly, the profit-earning capacity of the company on a reasonable commercial basis ; secondly, its capacity to maintain those profits or a reasonable return for the capital invested, and in special cases such as investment companies, the asset-backings ; . . ."

19. Therefore, it cannot be said that the Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., has laid down a hard and fast rule that the break up method cannot be adopted as the manner of valuing unquoted shares where the company is a going one. What the Supreme Court decided was only a broad guideline. However, the fact remains that the Supreme Court has approved profit-backing method for valuing the unquoted shares of a going company.

20. The other two decisions of the Supreme Court, namely, 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) under the Gift-tax Act are not of much assistance to us because Sub-rule (2) of Rule 10 of the Gift-tax Rules provides for alternative methods of valuing such shares. The Gift-tax Rules give primacy to the break-up value method. But

it was not decided by the Supreme Court as to whether such primacy in the rule framed under the Gift-tax Act should prevail or not because that question did not arise from the order of the Tribunal, the same not being at all canvassed before it. However, in *CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai*, (1988) 170 ITR 144 (SC) , the Supreme Court has clearly indicated its preference for the profit-backing method to the break-up method. This supports the petitioner only to the extent that there has been a manifest leaning of the Supreme Court towards the profit-backing method or yield method.

21. But, the question is whether the decision of the Supreme Court supports the contention of the assessee that the adoption of the breakup method by the rule-making authority would be violative of Section 7(1) of the Wealth-tax Act. The Supreme Court in *Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc.*, , had no occasion to examine this question, because, at that stage, there was no rule for prescribing the manner of valuing unquoted equity shares. As a matter of fact, Section 7(1) itself, at that stage, did not refer to any rules. It read until its amendment by the Wealth-tax (Amendment") Act, 1964, as follows :

" 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. "

22. The Amendment Act that came into force from April 1, 1965, inserted the following phrase in Sub-section (1) of Section 7--"Subject to any rules made in this behalf ". The result is that the said sub section, with effect from April 1, 1965, reads as under :

" 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. "

23. The main legislation itself has given paramountcy to the rules made for the purpose of Sub-section (1). The Notes on Clauses placed before Parliament while introducing the said Wealth-tax (Amendment) Bill, 1964, say :

" Clause 7(a) clarifies that the market value of an asset for the purposes of Section 7(1) of the Act has to be estimated by the Wealth-tax Officer subject to any rules that may be framed. " (See [1964] 53 ITR 105, 107).

24. In the Statement of Objects and Reasons, there is a clear indication that the amendment was made in order to take an opportunity to implement the recommendations of the Direct Taxes Administration Enquiry Committee, relating to the wealth-tax law, which have been accepted by the Government, and also to make amendments to the Wealth-tax Act which have been found necessary in the light of the experience gained in the operation of the Act. (See [1964] 53 ITR 105).

25. Thus, the market value which, according to learned counsel for the petitioner, is the central theme of Sub-section (1) of Section 7, has been tempered by the requirement of the taxing officer to follow the rules framed to implement the provision.

26. In this connection, we have once again to refer to the decision in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., . There, the Supreme Court at pages 627 has observed :

" It may also be noted that where under the articles of the company the right to transfer shares is restricted without being first offered to other members at a price which is either fixed in advance or in a prescribed manner, or where the directors have a power to veto a transfer, the fixation of the value of the share will have to be determined without ignoring the restriction as to transfer because they are an inherent element in the property which has to be valued. This restriction may not necessarily be depreciatory, because the chance of acquiring the shares of other members in the company on advantageous terms is itself a benefit. In cases where shares have to be valued by reference to the assets of the company restrictions on alienation are irrelevant. "

27. From this flows a number of implications :

1. There is no open market for unquoted shares.
2. A willing buyer may have motivation other than profit simpliciter
3. The restriction as to transfer by itself is an inherent property element.
4. The restriction may have a booster effect rather than depreciatory effect on price.
5. If the restrictions are to be treated as irrelevant to imagine an open market, the shares have to be valued by reference to the assets of the company.

28. The last factor, as flowing from the enunciation by the Supreme Court, is an all important factor in considering the question of the propriety of the break-up method. The purchase or sale of an unquoted equity share necessarily predicates a hypothesis of the lifting of the restrictions on transfer. In that case, by necessary implication of the observations of the Supreme Court, the shares have to be valued with reference to assets. That is precisely the reason why the Supreme Court emphasised in a broad manner that the breakup method is one of the methods.

29. Rule 1D was framed in 1967. It was inserted by the Wealth tax (Amendment) Rules, 1967, with effect from October 6, 1967, and has been in force until April 1, 1989, when it was omitted. It had been on the statute book for almost two decades and the vires of the rules has never been in question until the present petition. Of course, the long duration of a rule is no test of its validity. The duration cannot be a ground for perpetuation of a rule, if it is otherwise not consonant with the parent legislation. The question still subsists as to whether

the rule made by the rule-making authority is within the four corners of its rule-making power. The Supreme Court in *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, , has taken a similar view. We may draw guidance from the main formulations made by the Supreme Court with regard to the forensic examination of the vires of a rule. In that case, the question arose as to the vires of Rule 19A of the Income Tax Rules, 1962, providing for computation of the capital employed as on the first day of the computation period for the purpose of allowing relief on the profits and gains derived by a new industrial undertaking. The rule prescribed exclusion of borrowed capital from, the capital employed by the undertaking. There the Supreme Court held that the rule cannot be challenged as not correctly reflecting the intention of Parliament because the rule, after its framing, had been laid before both the Houses of Parliament for its approval. If Parliament had thought that the rules were not in conformity with its intention, it would not have refrained from expressing its disapproval. Therefore, the rules not having been disapproved or modified when laid before each House, of Parliament soon after they were made as required by Section 296 of the Income Tax Act, 1961, Parliament gave its approval to the rule knowing that the rule provided for a particular measure. The Supreme Court, in connection with that case, held that it should not, however, be understood that even if a rule purported to be made under a statute, it would still be valid and have the force of law if it is placed before each House of Parliament and has not been disapproved by either House. But it would definitely show the intention of the law-makers. The same is true of Rule 1D. Rule 1D, after having been framed in 1967, was placed before each House of Parliament in terms of Section 46(4). Therefore, it cannot be said that the rule was contrary to the legislative intent specially in the context of the amendment inserting the phrase in Section 7(1) "subject to any rules made in this behalf".

30. The subsequent legislative development has also to be taken as a guideline for deciding the question of the vires of the rule. The self-same break-up method has been subsequently incorporated in the main legislation by the Direct Tax Laws (Amendment) Act, 1989, with effect from April 1, 1989. Schedule III of the Act now forms part of the main legislation containing the rules for determining the value of assets and Rule 11, Part C, of the said Schedule elevates it as part of the statute what was the erstwhile Rule 1D which is challenged before us. We may usefully refer to the decision of the larger Bench of the Supreme Court in *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, The enactment of the break-up method as a legislative measure for valuing unquoted equity shares rings down the curtain on the question of excess of the rule makers in framing Rule 1D. The subsequent enactment by Parliament of break-up method as the statutory one only clarifies that Rule 1D did not suffer from any vice of excess of or disharmony with the legislative intent nor any infirmity otherwise. It cannot be said that Parliament has validated an invalid rule. That is not either the petitioner's case before us.

31. The only question that remains to be decided is whether by reason of

adopting a universal method of valuation for unquoted equity shares of all companies, whether profit-making or on the brink of liquidation, an unreasonable discrimination results. We do not see that there is any such discrimination.

32. The Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., has observed that if the restrictions on transfer of such shares are lifted, the value should be with reference to the assets. The fiction of an open market, a concept inlaid in Section 7(1) creates another fiction, i.e., the lifting of such restrictions and, therefore, the asset-backing method has to hold sway. In that event, Rule 1D is unexceptionable and cannot be said to suffer from any infirmity.

33. For the foregoing reasons, this application fails. The rule is discharged.

34. There will be no order as to costs.

Shyamal Kumar Sen, J.

35. I agree.