(1989) 08 CAL CK 0014

In the Calcutta High Court

Case No : GT Reference No. 1404 of 1984

Basant Kumar Aditya Vikram Birla APPELLANT

Vs

Commissioner of Gift Tax RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:
Gift Tax Act, 1958 — Section 26(3)

Citation : (1992) 62 TAXMAN 295

Hon'ble Judges : Suhas Chandra Sen, J;Bhagabati Prasad Banerjee, J

Bench : Division Bench

Judgement

Sen, J.—The Tribunal has referred the following questions of law to this Court u/s 26(3) of the Gift-tax Act, 1958 (''the Act''):

"1. Whether, on the facts and in the circumstances of the case, the order of the Tribunal upholding the order of the Commissioner u/s 24(2) of the Gift-tax Act, 1958 is vitiated for having relied on certain private departmental instructions relating to valuation of the shares although such instructions were not referred to or relied upon by the Commissioner for passing his said order?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the Commissioner u/s 24(2) of the Gift-tax Act, on the basis of the private departmental instructions issued to Gift-tax Officers for valuation of the shares?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the private departmental instructions issued to Gift- tax Officers by the Board for determining the value of shares under the Gift-tax Act, were binding on them and that valuation not made in accordance with such instructions was wrong and prejudicial to the interest of revenue?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the principles for determination of the market value of shares under rule 1D of the Wealth-tax Rules, 1957 were not relevant for the

valuation of the shares under the Gift-tax Act, 1958?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the book value of the assets shown in the balance sheet of a company could be distributed for determining the break up value of the shares under the Gift-tax Act?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in the case of the shares of the said Bachraj & Co. Ltd., a purchaser would go on the basis of the market value of the assets merely because figures of market value have been mentioned in the balance sheets of the said company and whether the aforesaid conclusion of the Tribunal is based on any material?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the Commissioner of Gift-tax was justified in revising the order of the Gift-tax Officer on the ground that it was erroneous insofar as it was prejudicial to the interest of the revenue?"

We need not answer specifically any of these questions. The dispute is basically on the question of valuation of shares. The Supreme Court has pointed out that the question of correct principles applicable to the case of valuation of shares is a question of law. In the case of CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai, (1988) 170 ITR 144 (SC) the Supreme Court had occasion to go into the question as to what should be the correct method of valuation of unquoted share of a private company. There the Supreme Court reiterated that the principles laid down in the case of Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., and more particularly in the case of Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, should be followed. In that view of the matter, the Supreme Court held that the Tribunal would have to go through the exercise of the determination of the value of shares once again by adopting the correct principles.

2. The Supreme Court, however, in that case having regard to the small amount of money involved and the case being already two and half decades old decided not to set in motion afresh the old litigation. But the declaration of law was made by the Supreme Court as to the method of valuation of such shares.

3. Under the circumstances, we remand the case back to the Tribunal to value the disputed shares in accordance with the principles laid down by the Supreme Court in the case of Smt. Kusumben D. Mahadevia (supra). The reference is accordingly disposed of.

4. There will be no order as to costs.

Banerjee, J.

I agree.

