(1995) 01 MAD CK 0047

In the Madras High Court

Case No : Tax Case No. 1353 of 1981 (Reference No. 699 of 1981)

Commissioner of Gift-tax APPELLANT

Vs

Gopal Srinivasan RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1996) 130 CTR 39 : (1995) 214 ITR 637

Hon'ble Judges : S.M. Ali Mohamed, J;Mishra, J

Bench : Division Bench

Advocate : N.V. Balasubramanian, for the Appellant; P.P.S. Janarathana Raja, for the Respondent

Judgement

Mishra J.

1. We are following in the instant case, the method adopted by another Bench in Tax Cases Nos. 943 and 1320 of 1991 Commissioner of Gift-

tax Vs. Gopal Srinivasan, and many other cases, only because we are informed at the Bar that there is a chance of all controversies in this behalf

coming to an end and this and other cases, which have already been ordered by the other Bench, constituted the bulk that might dispose of the

controversies once for all. We have not been able to know how in the instant case, the third question of law referred to us, i.e., whether the

Appellate Tribunal was right in holding that the break-up value of the shares should be discounted by 30 per cent. because of the restrictions

contained in the memorandum and articles of association of the company in the matter of alienation of shares, has arisen. But we see reason for a

reference of the second question whether, the Appellate Tribunal was right in holding that the balance-sheet as at March 31, 1970, and not as at

March 31, 1971, should be taken into account for determining the value of the shares gifted on March 22, 1971, and the reason why the first

question whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the shares of Messrs. T. V.

Sundaram Iyengar and Sons (P.) Ltd. should be valued for gift-tax for assessment year 1971-72 at Rs. 107.34. per share and not at Rs. 134.82

per share as worked out by the Income Tax Officer. The assessee, it is not in dispute, had shares in Messrs. T. V. Sundaram Iyengar and Sons

(P.) Ltd., which he gifted to others on March 22, 1971. The Gift-tax Officer adopted the break-up value method for assessing the value of the

shares of the donor and accepted the balance-sheet value as at March 31, 1971. The Appellate Assistant Commissioner confirmed the gift-tax

assessment and the value of the shares as determined by the Gift-tax Officer. The assessee appealed and the Tribunal at the first instance thought

that the balance-sheet of the nearest preceding year should be adopted and not of the date subsequent to the date of gift. The matter came up

before this court, remanded and again determined by the Tribunal, but, the controversy remained whether it should be the balance-sheet preceding

the date of the gift or the one subsequent to the date of gift also could be taken into account. Now, in the case of the assessee, if the balance-sheet

as on March 31, 1970, is accepted, the value per share conies to Rs. 134.82. If the date of March 31, 1971, is adopted it comes to Rs. 107.34.

What remained as part of the rules under the Gift-tax Act has been deleted by an amendment Act in the year 1989 and incorporated in Schedule II

of the Gift-tax Act which says that value of gifted property has to be determined in accordance with the provisions of Schedule III to the Wealth-

tax Act subject to the modifications stated therein. Rules as to unquoted equity shares in companies other than the investment companies which

alone has to be applied under the Wealth-tax Act, give a procedure which has been indicated in two earlier judgments of this court in

Commissioner of Gift-tax Vs. K. Ramesh, and Commissioner of Gift-tax Vs. Venu Srinivasan, . In the latter judgment, this court has stated as

follows (at page 680) :

The question for consideration is about the valuation of unquoted shares of a private company. The valuation in such cases is done by following

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-gift-tax-appellant-...

the break-up value method. That is to say, the assets and liabilities of the company, whose shares have to be valued, would be taken into account

first and the net worth of the company will be ascertained therefrom. Thereafter, the value of the individual shares will be determined. For arriving

at the value of the company''s assets and liabilities, the company''s balance-sheet is usually referred to for the relevant figures of valuation.

2. We have an order of a Bench of this court in Tax Cases Nos. 943 and 1320 of 1981, dated January 17, 1994 Commissioner of Gift-tax Vs.

Gopal Srinivasan, , wherein this court has taken the view that the Tribunal has not followed the proper procedure and so, the matter has to be

redone by the Tribunal. We propose to do the same. But before we do so, we may indicate that no authority should entertain any doubt as to the

method of determination of the value of unquoted equity shares of a company in accordance with the provisions of the Wealth-tax Act. The

Supreme Court has in the case in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, laid down the law

saying that rule 1D has to be followed in valuing each and every case of unquoted equity shares of a company other than an investment company

or a managing agency company. It is not a matter of choice or option. The rule-making authority has prescribed only one method for valuing the

unquoted equity shares. If this method were not to be followed, there is no other method prescribed by the rules. Where there is a rule prescribing

the manner in which a particular property has to be valued, the authorities under the Act have to follow it. They cannot devise their own way and

means for valuing the assets. It is reiterated and emphasised that merely because the valuation date of the assessee and the date with reference to

which the balance-sheet of the company is drawn up do not coincide, it cannot be said that rule 1D is not mandatory or that it need not be

followed. The break-up method contained in rule 1D takes the balance-sheet of the company as the basis for working the rule. That rule cannot be

worked in the absence of the balance-sheet. But there may be cases where the date of the balance-sheet and the valuation date of the assessee do

not coincide. It is to meet such a situation that Explanation I is provided in rule 1D. The Explanation says that where the date on which the balance-

sheet is drawn up does not coincide with the valuation date of the assessee, ""the balance-sheet drawn up on a date immediately preceding the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-gift-tax-appellant-…

valuation date"" shall be adopted as the basis for working the rule. Yet another situation contemplated by the Explanation is where both the above

situations are absent, ""the balance-sheet drawn up on a date immediately after the valuation date"" shall be adopted as the basis. This is the most

reasonable thing to do.

3. The law as clarified by the Supreme Court in our view is enough for answering the second question in the way the Supreme Court has answered

and since the second question is answered as above, as a consequence the possibility on the facts of the instant case of taking the latter balance-

sheet into consideration is not ruled out. This, however, shall be subject to the other constraints which are exercised, viz., that it is always seen

whether there are any restrictions upon the transfer of the shares, etc., and on that account whether the shares in the market may not fetch the

proper value. We say nothing more about it, because we do not have necessary materials on record.

4. In the result, questions Nos. 2 and 1 are answered in the order as above. The third question is left unanswered to be decided by the Tribunal

afresh. We remit the case for rehearing and disposal in accordance with law by the Tribunal. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-gift-tax-appellant-...