(1991) 11 BOM CK 0043

In the Bombay High Court

Case No : Gift-tax Applications No''s. 1, 2 and 3 of 1989

Commissioner of Gift-tax APPELLANT

Vs

Madhurkumar Bajaj RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Citation : (1995) 211 ITR 519

Hon'ble Judges : V.A. Mohta, J;G.D. Patil, J

Bench : Division Bench

Advocate : P.N. Chandurkar, for the Appellant;

Judgement

V.A. Mohta, J.—These are applications u/s 26(3) of the Gift-tax Act, 1958 ("the G.T. Act"), by the Commissioner of gift-tax, Vidarbha, Nagpur, seeking a reference on the following question, said to be of law :

"Whether, on the facts and in the circumstances of the case, the learned Income Tax appellate Tribunal was right in holding that the valuation of unquoted equity shares be made on the basis of the yield method and not on the basis of break-up value?"

2. During the assessment years between 1971-72 and 1973-74, the assessee sold unquoted equity shares of certain companies. The Gift-tax Officer valued the shares at a higher rate on the basis of the break-up value as per the Wealth-tax Rules and treated the difference between the two rates as deemed gifts u/s 4(1)(a) of the gift-tax Act. The appeal by the assessee before the commissioner of gift-tax (Appeals) was successful and the matter was remanded for fresh assessment of the value of the shares on the basis of the yield method. The commissioner of Gift-tax ultimately accepted the valuation of the assessee adopted on the yield method. Against that order, a second appeal was filed by the Department which was dismissed on the ground that the point stood directly concluded by the Bombay High Court in the case of Seth Memant Bhagubhai Magatlal Vs. N. Rama Iyer, Gift-tax Officer and another, , which, to some extent,

is based upon the decision of the Supreme Court in CGT v. Smt. Kusumben D. Mahadevia [1980] 22 ITR 38.

3. In view of the undisputed position that the companies were going concerns not ripe for liquidation and there were no exceptional circumstances about them, the ratio of the Bombay High Court decision clearly applied.

4. Under the circumstances rightly has the Tribunal refused to make a reference on the ground of existence of the above binding decisions.

5. These applications are, therefore, dismissed summarily without issuing rule.

