

(1985) 06 KL CK 0017

In the High Court Of Kerala

Case No : Income-tax Reference No. 228 of 1979

Commissioner of Gift-tax

APPELLANT

Vs

Mammen Mathew

RESPONDENT

Date of Decision : 10-06-1985

Acts Referred:

Gift Tax Act, 1958 — Section 6
Wealth Tax Rules, 1957 — Rule 1D, 7

Citation : (1986) 50 CTR 367 : (1997) 158 ITR 466

Hon'ble Judges : K. Bhaskaran, C.J.;V. Sivaraman Nair, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant;

Judgement

Bhaskaran, C.J.—The assessee, who was a director of Malayala Manorama Company Limited, gifted 1,940 shares of the face value of Rs. 10 each in that company to one Sri Jacob Mathew on February 1, 1972. The assessee filed the gift-tax return showing the value of the gifted shares as Rs. 19,400. It was his case before the Gift-tax Officer that there were no willing buyers in the market for purchasing those shares since the Central Government had introduced a Bill for diffusion of ownership in newspaper industry which sought to limit the holdings of a director and his relations to 5% of the total share capital. The Gift-tax Officer, however, held that there was no valid basis for estimating the value of the shares at their face value. Noticing the value of the assets of the company, the Gift-tax Officer determined the value of the gifted shares as Rs. 73,089 at the rate of Rs. 40.25 per share, that being the value arrived at on the basis of the last balance-sheet. Determining the taxable turnover (market value) to be Rs. 73,000 by his order dated November 30, 1973, the Gift-tax Officer levied a tax of Rs. 7,464. Annexure A is a copy of that order. Annexure B is the copy of the memorandum of the grounds of appeal before the Appellate Assistant Commissioner who by order dated March 30, 1974, a true copy of which is annexure C, allowed the appeal substantially by determining the value of the gifted shares at Rs. 12-50 per share holding that there was some force in the

argument of the assessee that the shares had not been listed on the stock exchange and were not easily saleable. It was also noted by the Appellate Assistant Commissioner that the company had been declaring only 10% dividend on the equity shares. On appeal by the Revenue, the Appellate Tribunal determined the value of the gifted shares at Rs. 30 per share. Annexure D is a copy of the memorandum of appeal before the Tribunal and annexure F is the copy of the order of the Tribunal dated February 28, 1976. The Tribunal taking due notice of the news reports published in "The Hindu" dated August 19, 1971, August 30, 1971, September 6, 1971, and by the Malayala Manorama dated October 20, 1971, true copies of which are Annexures E, E1, E2 and E3, respectively, and the statement made by responsible Ministers of the Central Government that steps were being taken to have an enactment passed by Parliament for diffusing the ownership in newspaper industry and the Prime Minister had also expressed full faith in the objective of the Bill, thought that by the provisions of the proposed legislation, a structural change in the management and capital was sought to be brought about by limiting the maximum shareholdings of an individual to 5% with a view to bring about workers' participation in the industry. After having considered this and other salient features of the proposed legislation, the Tribunal took the view that the legislation under contemplation had the effect of depressing the value of the shares and accordingly held that it would be proper to fix the value of the gifted shares at Rs. 30 per share. Aggrieved by the order of the Tribunal dated February 28, 1976, an application for reference of the questions of law involved was made before the Tribunal by the Revenue. The Tribunal having rejected the reference application at the instance of the Revenue by order dated August 21, 1976, a copy of which is annexure H, the Commissioner of Gift-tax filed O. P. No. 5580 of 1976-L before this court and as per judgment dated December 20, 1978, a copy of which is annexure I, this court directed the following questions of law to be referred to this court u/s 26(3) of the Gift-tax Act. Accordingly, the Income Tax Appellate Tribunal, Cochin Bench, has drawn up a case and referred the following questions of law for our judgment and thus the reference is now before us :

" 1. Whether, on the facts and in the circumstances of the case, and in view of the provisions of Rule 1D of the Wealth-tax Rules, 1957, the Appellate Tribunal is right in law in holding that in determining the value of the equity shares gifted by the assessee, a discount from the valuation arrived at on the basis of the balance-sheet of the company is called for ?

2. If the answer to the above question is in the affirmative, whether, on the facts and in the circumstances of the case, the discount of Rs. 10.25 per share allowed by the Tribunal is in total disregard of the evidence adduced by the Department, and is not the finding of the Tribunal arbitrary and unreasonable ?

3. On the facts and in the circumstances of the case, whether the Tribunal was correct in law in concluding that Rule 1D of the Wealth-tax Rules is not

mandatory ?

4. On the facts and in the circumstances of the case, whether the orders of the Tribunal are not vitiated by the fact that the facts, documents, papers and arguments relied upon by the Department have been entirely omitted from consideration in their orders ?

5. On the facts and in the circumstances of the case, whether the orders of the Tribunal are not vitiated by the fact that there is no evidence at all in support of the conclusion that the prices of the shares of Malayala Manorama Co. Ltd. had fallen ; and

6. On the facts and in the circumstances of the case, whether the Tribunal was justified in reducing the value of the shares to Rs. 30 per share in the place of the value of Rs. 40.25 per share arrived at in accordance with Rule 1D ?

2. The main question that falls for decision is whether the Appellate Tribunal acted in accordance with law in fixing the share value at Rs. 30 after having discussed the possible impact a structural change in the management and capital might have if the proposed legislation was to come into force and was implemented. The Appellate Tribunal seems to have thought that it had the freedom to fix the value of the shares gifted without adhering to any principle or following any procedure. In our opinion, the Appellate Tribunal has no discretion to fix the share value without following any procedure prescribed or the well-known principle adopted. The Gift-tax Officer is seen to have fixed the share value at Rs. 40.25, which, according to him, is based on the value of the shares on the basis of the last balance-sheet.

3. As to how the value of gifts is to be determined, the method is laid down in section 6 of the Gift-tax Act, 1958, which reads as follows :

"6. (1) The value of any property other than cash transferred by way of gift, shall, subject to the provisions of Sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date on which the gift was made.

(2) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from the property gifted during the period for which the gift is not revocable.

(3) Where the value of any property cannot be estimated under Sub-section (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner."

4. In this case, what is relevant being the value of unquoted shares, the Value has to be estimated by the Gift-tax Officer by finding out what price they would fetch if sold in the open market on the date on which the gift was made. We have not been shown any rule under the Gift-tax Act prescribing the manner in which the value of gifts is to be estimated or determined. All the same, under the sister

law pertaining to wealth-tax, rules have been framed and for all practical purposes that method would hold good in determining the value of gifts for the purposes of the Gift-tax Act.

5. This court in COMMISSIONER OF WEALTH-TAX Vs. MAMMAN VARGHESE and OTHERS., , has taken the view that the Appellate Tribunal might not have interfered with the valuation made by the Wealth-tax Officer and confirmed by the Appellate Assistant Commissioner following the principle indicated by Rule 1D of the Rules. The same would be the position here also, once we accept the principle that in the absence of rules made under the Gift-tax Act for determining the value of gifts, the procedure prescribed in the rules under the Wealth-tax Act for that purpose would and should be adopted. As in Section 7 of the Wealth-tax Act, in Section 6 of the Gift-tax Act, the expression "shall" has been used; and that makes it imperative on the part of the Gift-tax Officer to estimate the value of the share to be the price which, in the opinion of the Gift-tax Officer, it would fetch if sold in the open market on the date on which the gift was made. The Gift-tax Officer, or for that matter the Tribunal, has no discretion to fix the value arbitrarily without following any principle or procedure.

6. The Mysore High Court in Controller of Estate Duty, Mysore Vs. J. Krishna Murthy, held (headnote):

" No rules were made under the Act prescribing the manner in which the value of unquoted shares may be determined for purposes of estate duty. In the absence of rules, valuation for purposes of the Act has to be made in accordance with well-recognised methods of valuation followed in India. The method of valuation prescribed by Rule 1D of the Wealth-tax Rules, 1957, being the only statutorily recognised method of valuation of unquoted equity shares in this country, it would not be wrong to adopt that method of the valuation for purposes of estate duty also."

7. It has been held by a Division Bench of the Madhya Pradesh High Court in Shyamsukh Garg Vs. Controller of Estate Duty, , that in the absence of any contrary provision, principles laid down by Rule 1D of the Wealth-tax Rules could be taken into consideration for valuation of unquoted shares for the purpose of Section 37 of the Estate Duty Act. We are broadly in agreement with the views expressed by the Mysore and Madhya Pradesh High Courts and what is said of the valuation for the purpose of the Estate Duty Act in those cases could be appropriately applied to cases relating to valuation for the purpose of the Gift-tax Act.

8. The Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., has laid down the guidelines for determination of the value of unquoted shares for the purpose of wealth-tax. The determining of value could be with reference to dividend, reflecting the profit-earning capacity on a reasonable commercial basis. If the profits are not, however, reflected in the dividends which are declared, and a low earning yield is

shown by the company which is unrealistic on a consideration of the financial affairs disclosed for the relevant year, the Wealth-tax Officer can, on an examination of the balance-sheet, ascertain the profit-earning capacity of the concern and, on the basis of the potential yield, fix the valuation. Dealing with the relevant provisions of the Gift-tax Act itself, the Supreme Court has in *Mrs. Kusumben D. Mahadevia Vs. The Commissioner of Income Tax, Bombay*, expressed the broad principles which should govern the determination of the value for the purpose of the Gift-tax Act.

9. In the light of the foregoing discussions, we are inclined to hold that the Appellate Tribunal ought to have allowed the appeal (annexure "D") and should have restored the order of the Gift-tax Officer dated November 30, 1973 (annexure "A"), arriving at the value per share at Rs. 40.25 in accordance with Rule 1D of the Wealth-tax Rules and ought not to have valued it at Rs. 30 per share arbitrarily.

10. The result, therefore, is that we answer question No. 6 referred to in the negative, that is, in favour of the Revenue and against the assessee. In this view, we decline to answer questions Nos. 1 to 5 as it is felt not necessary in view of our answer to question No. 6 which would cover the entire matter.

11. A copy of the judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.