(1990) 01 CAL CK 0043

In the Calcutta High Court

Case No : Income-tax Reference No. 125 of 1985

COMMISSIONER OF GIFT-TAX — APPELLANT

Vs

PRATYUSH BHARTIA. — RESPONDENT

Date of Decision : 22-01-1990

Acts Referred:
Gift Tax Act, 1958 — Section 26(1)
Income Tax Act, 1961 — Section 256(1)

Citation : (1992) 107 CTR 304 : (1992) 193 ITR 586 : (1992) 53 TAXMAN 107 : (1990) 53 TAXMAN 107

Hon'ble Judges : S.C. Sen, J;S. C. Sen, J;Bhagabati Prasad Banerjee, J

Bench : Full Bench

Judgement

S. C. SEN J. - The Tribunal has referred the following questions of law to this court u/s 256(1) of the Income Tax Act, 1961, read with section 26(1) of the Gift-tax Act, 1958 :

"1. Whether, on the facts and in the circumstances of the case and having regard to the fact that as per clause (3) of the articles of association of East India Commercial Co. (P.) Ltd., no intimation can be issued to the public to subscribe for any share of the aforesaid company, the Tribunal was justified in law in holding that the shares of the said company were freely transferable and in that view in directing that in terms of the provisions of rule 10 (2) of the Gift-tax Rules, 1958, the value of shares of the aforesaid company should not be computed by reference to the value of the total assets of the company, i.e., the break-up value method ?

2. Whether, on the facts and in the circumstances of the case and on a correct, interpretation of clause (3) of the articles of association of East India Commercial Co. (P.) Ltd., the Tribunal was justified in law in upholding the decision of the Commissioner (Appeals) that the restriction on the alienation of shares of the aforesaid company cannot be equated with the restriction as mentioned in rule 10 (2) of the Gift-tax Rules and in that view holding that the fair market value of

the shares of the aforesaid company as on the date of transfer should be determined on yield basis instead of break-up value basis ?"

The year of assessment is 1979-80 for which the accounting period was the year ended December 31, 1978.

The dispute is about the valuation of shares of East India Commercial Co. (P.) Ltd. The Tribunal has adopted the yield method of valuation by following the decision of the Supreme Court in the case of Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., . This judgment has been followed by the Supreme Court in two other cases Commissioner of Income Tax, West Bengal II, Calcutta Vs. Kalyanji Mavji and Company, and CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai, (1988) 170 ITR 144 (SC) , where the principles laid down in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., were reiterated.

Mr. Mitra, appearing on behalf of the Revenue, has sought to argue that the mode of valuation in the instant case must be different because rule 10 (2) of the Gift-tax Rules, 1958, specially provides how the shares are to be valued where the right to transfer shares was restricted. This argument was specifically made before the Tribunal and was rejected by the Tribunal. The Commissioner (Appeals) also dealt with the question and held after examination of the assessee-company, that there was no restriction in the matter of transfer of shares. The right was restricted only in the sense that the number of members of the company was limited to 50. On appeal, the Tribunal held that the Commissioner (Appeals) was justified in holding that the shares in question were freely transferable and that the yield method was the normal method of valuation which could be adopted to arrive at the fair market value of the shares.

The Tribunal has rightly pointed out that there was no restriction on the right to transfer the shares imposed by the articles of association in any way. What the articles of association had done was only to restrict the membership of the company to 50 and to restrict the public issue of shares but the shareholder was otherwise free to transfer the shares.

In that view of the matter, both the questions are answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

BHAGABATI PRASAD BANERJEE J. - I agree.

