(1999) 04 AP CK 0024

In the Andhra Pradesh High Court

Case No : GTC No. 3 of 1992

Commissioner of Gift-Tax, Bangalore — APPELLANT

Vs

K. Saradhi — RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Gift Tax Act, 1958 — Section 4(1)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1999) 5 ALD 87 : (1999) 3 ALT 262 : (2000) 241 ITR 213

Hon'ble Judges : K.B. Siddappa, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. S.R. Ashok, SC for IT Dept, for the Appellant;

Judgement

B. Subhashan Reddy, J

1. This Gift Tax Case is preferred by the Revenue against the order of the Income Tax Appellate Tribunal, Hyderabad-B Bench, dated 24-4-1991 rejecting the plea of the Revenue to refer the points of law for decision by this Court.

2. The dispute is with regard to computation of the value of the unquoted equity shares of M/s. Sri Ramdas Motor Transport Ltd. The assessees are the shareholders of S.R.M.T. Ltd., Kakinada. Certain shares of the assessees, the relative face value of which is Rs.50/- each, were sold by the assessees. The Assessing Officer viewed that the difference in the value of the shares under Rule 1-D of the Wealth Tax Rules and the selling price thereof amounted to deemed gift and consequently, while charging it to Gift-tax, the Assessing Officer refused to adopt the assessees method of valuation of shares under the Yield method. On appeal, the appellate Officer viewed that the correct method of arriving at the value of the shares being unquoted would be the break-up method and consequently directed the Assessing Officer to value the shares accordingly by reference to its existing assets for the purpose of taxable gift. On assessee''s appeal, the Tribunal reversed the judgment holding that unquoted equity shares of the company have to be valued under yield method only even for Wealth-tax

purposes relying upon the judgment of the Supreme Court in CGT v. Executors & Trustees of Ambalal Sarabhai, (1988) 36 Taxman 162, which was followed by this Court in D. Renuka Vs. Commissioner of Wealth-tax, .

3. Mr. S.R Ashok, the learned Counsel appearing for the Commissioner of Gift Tax strenuously contends that the decisions rendered by the Supreme Court and this Court are not at all applicable to the facts of this case and that this case is distinguishable and on the other hand, this case is squarely covered by the judgment of Madras High Court in Commissioner of Wealth-tax and Others Vs. S. Ram and Others, . He submits that the unquoted shares have to be valued by applying Rule 1-D of Wealth Tax Rules. Contention is that since the market value of the shares sold out was much more than the consideration for which the shares were sold, the Gift-tax is payable for the difference between the market value and the actual consideration, as it is a deemed gift u/s 4(1)(a) of the Gift Tax Act, 1958 and that valuation by yield method is not the correct procedure and the valuation should be by break-up method and that the lower authorities had correctly valued the shares with reference to its existing assets, for the purpose of determining the taxable gift.

4. The Tribunal has refused to refer the matter on the ground that no question of law arises in view of the judgments of the Supreme Court and of this Court in CGT v. Executors & Trustees of Ambalal Sarabhai and Dr. D. Renuka v. C.W.T. (supra). While it is true that the judgment rendered by the Madras High Court in C.W.T, v. S. Ram, (supra) may not sustain in view of the judgements rendered by the Supreme Court and followed by this Court in CGT v. Executors & Trustees of Ambalal Sarabhai and Dr. D. Renuka v. C.W.T. (supra), the legal position has changed drastically in view of the later Supreme Court judgment in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, in which it is held that Rule 1D of Wealth Tax Rules, which was introduced with effect from 6-10-1967 and was in the statue book till it was omitted in the year 1989, contemplating of computation of wealth by break-up method, was mandatory in nature and not directory and that there is no option, but to follow the valuation envisaged under the said Rules, thus, making a deviation in the view earlier taken by the Supreme Court in CGT v. Executors & Trustees of Ambalal Sarabhai and of this Court Dr. D. Remika v. C.W.T., (supra) in which it was held that Rule 1-D of Wealth-tax Rules was directory. In view of the same, a referable question raised out of the Tribunal''s order and as such, we direct the Tribunal to refer the following question of law to the High Court for its opinion:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in setting aside the Gift-tax assessment order and directing the Assessing Officer himself to reframe the assessment de novo by holding that the market value of unquoted equity shares of a going concern could be determined for Gift-lax purposes only according to yield method only and not as per the break-up method provided in Rule 1-D of the Wealth Tax Rules, 1957?".

5. The Gift Tax Case is accordingly allowed.

