
(1998) 02 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 1489 of 1986 26 February 1998

COMMISSIONER OF Income Tax

APPELLANT

Vs

S. VIJI

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Citation : (1999) 154 CTR 470

Hon'ble Judges : R. Jayasimha Babu, J;N. V. Balasubramanian, J

Bench : Division Bench

Advocate : C. V. Rajan, S. A. Balasubramanyan, for the Appellant;

Judgement

M. V. Balasubramanian J.:

At the instance of the Revenue the following question of law has been referred to us for our consideration by the Tribunal:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding and had valid materials to hold that discount of 30 per

cent should be given while valuing the shares under break-up value method?

2. The year of assessment with which we are concerned is 1973-74. The assessee is an individual. She gifted during the course of previous year

relevant to 1973-74, 4,500 shares held by the company M/s TY Sundaram Iyengar and Sons Pvt. Ltd. and 240 shares held by the company M/s

Southern Roadways Pvt. Ltd. She made the gift on 28th March, 1973 to Miss Niveditha Ram. While completing the assessment for the

assessment year 1973-74, the GTO valued the shares by applying the break-up value method by taking the balance sheet as on 31st March, 1973

which was near to the date of gift.

On appeal, the Appellate Assistant Commissioner and the Tribunal, held that the

balance sheet as on 31-3-1972 has to be taken into account for the purpose of assessment. The Revenue took the matter to the Court and this Court in TC No. 1182 of 1977 by a judgment dt. 18-12-1981 held that the relevant balance sheet to be taken into account will be the balance sheet dt. 31-3-1973 and directed the Tribunal to determine the value of the share on the basis of the balance sheet as on 31-3-1973. The apex Court in the case of S. Viji Vs. Commissioner of Gift Tax, , has affirmed the judgment of this Court.

3. On the basis of the direction of this Court, the matter went back to the Tribunal. At the time of passing of the order by Tribunal to give effect to the orders of this Court, the assessee raised a plea that the discount of 30 per cent should be given to arrive at the break-up value of the shares.

The Tribunal following its earlier order in GTA No. 24/Mad/1974-75 dt. 15th March, 1978, held that the assessee was entitled to the discount of

30 per cent of the value of the shares and held that the value determined by applying the break up value method should be further reduced to

determine the taxable value of the gifted share by the assessee. The Revenue challenged the order of the Tribunal and the question of law set out

earlier has been referred to us for our consideration.

4. Mr. C.V. Rajan, learned counsel appearing for the Revenue submitted that as per the WT Rules which are adopted in the GT case, the discount

of 15 per cent of the value of shares should be given and it is not open to the assessee to claim 30 per cent as discount under the value of gifted share.

5. Mr. S.A. Balasubramanyan, learned counsel appearing for the assessee relied upon two decisions of this Court in the case of CGT v. Sundaram

Industries Ltd. (1997) 141 CTR (Mad) 213: (1997) 222 ITR 710 and another one in the case of Commissioner of Gift Tax Vs. K. Mahesh and

Others, , wherein it was held that the view of the Tribunal granting discount of 30 per cent of the value of the shares was upheld by this Court.

Therefore, the learned counsel submitted that the Tribunal was justified in holding that the assessee would be entitled to the discount of 30 per cent

of the value of the shares.

6. We have carefully considered both the submissions of the learned counsel. Under the provisions of s. WT Rules, which it is not disputed was

applied to determine the value of the shares gifted, by the GTO, the Wealth Tax Officer determined the market value of the share and granted 15

per cent of the value as a discount. Under the relevant provisions of WT Rules, a deduction of 15 per cent of the value of the share is granted

towards the restriction found against free transferability of share. However, the discount of 15 per cent of the value can be increased further in a

gradual manner provided there was no declaration of dividend by" the company during the earlier years before the end of the accounting year and

the maximum amount of further discount provided under r. 1D is 25 per cent of the value, if there was no declaration of dividend during the period

of six accounting years. The Tribunal in the instant case has followed an earlier order, but that order is not included as a part of the statement of the

case. The order of the Tribunal in the instant case does not indicate whether there was a declaration of dividend or not in the earlier year and it is

also not clear how the Tribunal came to the conclusion that discount of 30 per cent of the value of the shares was* warranted by the facts of the

case. The Tribunal has not even indicated anywhere about the non-declaration of dividend during the period of six years prior to the relevant

valuation period and in the absence of any material how the table appended to the r. 1D was applied. We are not in agreement with the view of the

Tribunal that 30 per cent of the value of the shares should be given as a discount to arrive at the value of the shares. Since the Tribunal has not

discussed the matter, we are of the opinion that the Tribunal at the time of rehearing the appeal should determine the question and it is open to the

assessee to establish how the discount of 30 per cent was warranted on the facts of the case. It is also made clear that it is always open to the

Tribunal to ascertain whether there was any declaration of dividend during the earlier accounting years and determine the question in the light of

two decisions of this Court in the case of M.T. vs. Sundaram IndusWes Ltd. (supra), and in the case of MT vs. K. Mahesh & Ors. (supra). Since

the Tribunal in the absence of any material has come to the conclusion that the discount of 30 per cent of the value of share should be granted, we

answer the question of law referred to us in favour of the Revenue, but leaving the matter open to the Tribunal to consider the question again in the

light of the materials that may be produced at the time of hearing of the appeal by the Tribunal. We answer the question of law referred to us in the

negative, against the assessee and in favour of the Revenue, subject to the direction given above, but, in the circumstances, there will be no order as to costs.