
(1997) 02 MAD CK 0175
In the Madras High Court
Case No : TCP No. 316 of 1996

Commissioner of Wealth Tax

APPELLANT

Vs

A. Ramamoorthy

RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Citation : (1997) 02 MAD CK 0175

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—This is a petition filed by the CWT, Madurai under s. 27(3) of the WT Act, 1957 (hereinafter referred to as "the Act") seeking a direction to the Tribunal to state a case and refer the following questions of law.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of r. 1D of the WT Rules are only directory and not mandatory and that the yield method should be taken as the criterion for determining the value of unquoted equity shares held by the assessee ?

2. Without prejudice to the fact that r. 1D is mandatory, whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the value of unquoted equity shares held by the assessee should be adopted on the basis of average of the values arrived at by dividend yield method and profit earning method ?"

2. The assessee is an HUF and is a owner of certain unquoted equity shares of certain companies. In the return filed by the assessee for the asst. yr. 1979-80, the assessee returned the value of the shares computed on yield basis. The AO held that the unquoted equity shares should be valued as provided under r. 1D of the WT Rules and hence, he valued the assessee as provided under r. 1D of the

Rules.

3. The assessee filed an appeal to the CIT(A) challenging the valuation of the shares made by the AO on the ground that the provisions of r. 1D of the WT Rules are not mandatory but only directory. The CIT(A) accepted the contentions urged on behalf of the assessee and held that the r. 1D is not mandatory and the shares should be valued by taking the average value by determining the value of the shares by dividend yield method and profit earning method.

4. The Department preferred an appeal before the Tribunal and the Tribunal upheld the order of the CIT(A) holding that r. 1D of the WT Rules is not mandatory in nature and the method adopted by the CIT(A) for the valuation of the shares was correct. The Revenue filed a reference application seeking reference to this Court on the question set out above. The Tribunal, however, held that in view of the decision of this Court in *K.M. Mammen Vs. Wealth-Tax Officer, City Circle-II (1) Madras*, and also the decision of the Supreme Court in *CGT v. Executors and Trustees of the Estate of the Late Shri Ambalal Sarabhai*, (1988) 170 ITR 144 (SC) , the questions sought for are not referable questions of law and hence rejected the petition.

5. Mr. C. V. Rajan learned counsel appearing for the Department submitted that the Supreme Court in the case of *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, has held that r. 1D of the WT Rules is mandatory in character. Therefore, the view of the Tribunal that the said rule is directory in nature is not correct in view of the decision of the Supreme Court in the case of *Bharat Hari Singhania*, cited supra. Mr. Janarthana Raja, learned counsel for the assessee also fairly submitted that the issue raised in the questions is fully covered by the decision of the Supreme Court in the case of *Bharat Hari Singhania*, cited supra against the assessee. In view of the said decision of the Supreme Court, the view of the Tribunal that the provisions of r. 1D are directory in nature is not sustainable in law.

6. Normally, in view of the decision of the Supreme Court in *Bharat Hari Singhania's* case, cited supra, we would have called for a statement of case and directed the Tribunal to refer the questions of law sought for by the Revenue. However, at the time of hearing of this petition, it was felt that it would be an empty formality to direct the Tribunal to state a case and then answer the questions in favour of the Revenue after the case comes up by way of reference. The process of calling for a statement of case, the preparation of the statement of case, then forwarding the petition to the High Court, then appearance of the counsel and preparation of typed sets all would involve considerable time and expenses. We felt that in view of the decision of the Supreme Court which is binding on the parties, it will be an empty formality to go through the entire process of calling for the statement of case and then rendering an answer. We are also conscious of the fact that we are now dealing with a tax case petition, and there is no reference by the Tribunal. Therefore, we ascertained from the learned counsel for the assessee, whether he has any objection to convert the

present application filed by the Revenue under s. 27(3) of the WT Act into a reference in view of the fact that the questions of law that are sought for to be referred have to be answered in any event against the assessee. Learned counsel for the assessee has very fairly stated that he has no objection for converting the present tax case petition into a reference and then answer the question in the light of the decision of the Supreme Court in Bharat Hari Singhania's case, cited supra. We have also noticed that the Delhi High Court in Commissioner of Wealth Tax Vs. Ajay Kumar Sood, has adopted the practice of converting a tax case petition into a reference and then answering the question. We are also of the view that it will be in the interest of justice to convert the present petition filed under s. 27(3) of the WT Act into a reference and then decide the questions.

As already seen, the Supreme Court in Bharat Hari Singhania's case cited supra, has held that r. 1D has to be followed in valuing each and every case of unquoted equity shares of a company (other than an investment company or a managing agency company) and it is not a matter of a choice or option. The Supreme Court also held that the rule-making authority has prescribed only one method for valuing the unquoted equity shares. The Supreme Court further held that where there is a rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it and they cannot devise their own ways and means for valuing the assets. The Supreme Court also held that the authorities are bound by r. 1D of the WT Rules. In view of the decision of the Supreme Court, the view of the Tribunal that the provisions of r. 1D are not mandatory and the shares in question need not be valued in accordance with the method prescribed by the rule is not sustainable in law. Therefore, the finding of the Tribunal that the shares should be valued by adopting the yield basis as well as profit earning methods and the average of both the values should be taken as the value of the shares for computation of wealth-tax is not legally correct, and against the decision of the Supreme Court in Bharat Hari Singhania's case cited supra. Accordingly, following the decision of the Supreme Court in the case of Bharat Hari Singhania, cited supra, we answer both the questions in the negative and in favour of the Revenue. No costs.

7. The Tribunal is directed to pass an order in conformity with the decision rendered by us.