(1995) 10 DEL CK 0010

In the Delhi High Court

Case No : WT Case No. 156 of 1989

Commissioner of Wealth Tax APPELLANT

Vs

Ajay Kumar Sood RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Citation : (1996) 132 CTR 145 : (1996) 217 ITR 686

Hon'ble Judges : Dr. M.K. Sharma, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Dr. M.K. Sharma, J.—This is an application under s. 27(3) of the WT Act, 1957 (hereinafter called the Act) seeking for a direction to the Tribunal to state a case and refer the following question of law in respect of the asst. yr. 1982-83 :

"Whether the Tribunal was correct in law on the facts of the case in directing the WTO to adopt the market value of the share of M/s R. C. Sood & Co. (P) Ltd., M/s Kumar Construction Co. (P) Ltd. and Nehru Place Hotel Ltd., on the yield method instead of the break up value under r. 1D of the WT Rules?"

2.The WTO, by his assessment order in respect of the present assessed for the relevant asst. yr. 1982-83 valued the shares as per r. 1D of the WT Rules (hereinafter called the Rules). On appeal having been filed the AAC directed to adopt the market value of shares on yield basis. The Tribunal, however, on the appeal filed before it, followed the decision of this Court in the writ petition of Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, and directed the WTO to adopt the market value of the share on the yield method instead of the break up value under r. 1D of the Rules. Consequently, the Revenue filed a reference application seeking reference to this Court on the question referred to in paragraph 1 hereinabove. The Tribunal, however, held that the answer to the question sought for by the Revenue is self evident in view of the answer in the case of Sharbati Devi Jhalani (supra) and rejected the reference application on the ground that the question sought for is academic.

3. The learned counsel appearing for the respective parties fairly submitted before us that the case of Sharbati Devi (supra) came to be reversed by the Supreme Court in the case of Bharat Hari Singhania & Ors. vs. CWT & Ors. and also the connected case of Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, . In view of the fact that the case of Sharbati Devi Jhalani on which the Tribunal place reliance for rejecting the reference application having been reversed by the Supreme Court in the case of Bharat Hari Singhania & Ors vs. CWT (supra) we feel that a question of law does arise out of the order of the Tribunal. We, with the consent of the parties, convert the present application under s. 27(3) of the WT Act, 1957 into a reference, in view of the fact that the question of law that is sought to be referred to this Court by the present application is concluded by the aforesaid decision of the Supreme Court in Bharat Hari Singhania & Ors. (supra). The Supreme Court has held that there may be fluctuations between the date of the balance sheet of the company and the valuation date, one way or the other, is no ground for holding that Expln. 1 to r. 1D is inconsistent with s. 7(1) or that r. 1D should not be followed unless the valuation date or the date of the balance sheet are identical. In the said case it has been further held that merely because the valuation date of the assessed and the date with reference to which the balance sheet of the company is drawn do not coincide, it cannot be said that r. 1D is not mandatory or that it need not be followed.

4. Accordingly, following the ratio of the aforesaid decision laid down by the Supreme Court in Sharbati Devi Jhalani''s case (supra) we answer the question in the present reference in the negative and in favor of the Revenue and against the assessee.

5. In the result, this petition stands allowed. No costs.

