

(1998) 01 GAU CK 0021

In the Gauhati High Court

Case No : Wealth-tax Reference No. 1 of 1996

Commissioner of Wealth-tax

APPELLANT

Vs

Ajoy Kumar Saharia

RESPONDENT

Date of Decision : 19-01-1998

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1D

Citation : (1999) 151 CTR 511 : (1998) 233 ITR 29

Hon'ble Judges : V.D. Gyani, J;D. Biswas, J

Bench : Division Bench

Advocate : G.K. Joshi, for the Appellant;

Judgement

V.D. Gyani, J.—Heard learned standing counsel for the Revenue, Mr. Joshi.

2. This court in Civil Rule No. 14(M) of 1991, issued a direction u/s 27(3) of the Wealth-tax Act, 1957, to draw up a statement of case. Accordingly, the same has been placed before us. The following questions have been referred for this court's opinion :

"1. Whether, on the facts and in the circumstances of the case and in view of Sub-rule (i) of Rule 1D of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the Appellate Assistant Commissioner's order directing that the value of the shares of Hapjan Purbat Tea Co. (P.) Ltd.. and in respect of the assessee's holding should be valued as per the stock exchange quotation of the value of shares of the said private limited company when such shares were not regularly quoted in any stock exchange ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in not accepting the appeal preferred by the appellant on the ground that the appellant could not have been able to show that the decision of the Appellate Assistant Commissioner on the similar point in the case of another assessee, viz., Ramgopal Mahesh Kumar, had been upset or disturbed by the higher authorities ?

3. Whether, on the facts and in the circumstances of the case and on proper construction of Sub-clause (c) of Clause (ii) of Explanation II of Rule 1D of the Wealth-tax Rules, 1957, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner holding that the amount of advance tax paid is not deductible from the provision for taxation as appears in the balance-sheet of a company, other than an investment company and managing agency company, the equity shares of which are unquoted ?"

3. Going through the order dated March 31, 1989, as passed by the Tribunal it appears that the Revenue contended before the Tribunal that the Appellate Assistant Commissioner erred in directing the Wealth-tax Officer to adopt the value of the shares quoted in the stock exchange. It was found in the direction of the Appellate Assistant Commissioner that the shares of Hapjan Purbat Tea Co. (P.) Ltd. were listed in the stock exchange and the assessee had shown the value of the shares at the value of the stock exchange quotation. The Wealth-tax Officer was of the view that the correct market value of the shares was not reflected by the stock exchange. He, therefore, valued the shares in accordance with Rule 1D of the Wealth-tax Rules, 1957. It was this point which was disputed by the assessee before the Appellate Assistant Commissioner who noted that the facts of the case were similar to those of the appeal of Ramgopal Mahesh Kumar decided on July 25, 1981. He also noted that the assessee belonged to the same group. Following the same line of reasoning, he held that the shares in the case of this assessee should also be valued in accordance with the quotations on the stock exchange. The same contention as noted above was reiterated by the Department but it was not accepted by the Tribunal. The Tribunal referring to its earlier order dated August 27, 1982, in the case of Smt. Sita Devi Saharia being W. T. A. No. 59 (Gau) of 1981 passed between the parties, and also in another connected appeal being W. T. A. No. 60 (Gau) of 1981, directed the Wealth-tax Officer to value the shares of Assam Forest Products (P.) Ltd. in accordance with the decision of the Tribunal. Following its own previous judgment, the Tribunal dismissed the appeal. As already noted above, a statement of case has been submitted under the direction of this court.

4. Mr. Joshi, learned standing counsel for the Revenue, placing reliance submitted that the point involved is covered by a judgment of the apex court as reported in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, . The Supreme Court, dealing with Rule 1D of the Wealth-tax Rules which relates to market value of unquoted equity shares of a company (other than an investment company) held as follows (page 34) :

"(1) Rule 1D is perfectly valid and effective. The rule has to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued. All the authorities under the Act including the Valuation Officer are bound by the said rule. The question of the rule being mandatory or directory does not arise.

(2) While valuing the unquoted equity shares under Rule 1D, no deductions on

account of capital gains tax which would have been payable in case the said shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. Rule 1D is exhaustive on the subject.

(3) Explanation 1 to Rule 1D is a perfectly valid piece of delegated legislation and has to be followed. Merely because the valuation date of the assessee and the date with reference to which the balance-sheet of the company is drawn up do not coincide, it cannot be said that Rule 1D is not mandatory or that it need not be followed.

(4) Sub-clause (a) of Clause (i) and Sub-clause (e) of Clause (ii) have to be read and understood in the manner indicated in this judgment hereinabove.

(5) An assessee holding shares in a company whose assets comprise wholly or partly of agricultural land, is not entitled to exclude such shares from his wealth."

5. Following the same, we set aside the order dated March 31, 1989 (annexure "C"), as passed by the Tribunal and remand the matter as a whole for disposal in accordance with law and the aforesaid judgment of the Supreme Court. The reference is answered accordingly.