(1998) 09 GUJ CK 0046

In the Gujarat High Court

Case No : WT Ref. No''s. 10,10A, 10B 10C, and 10D of 1992 2 September 1998

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

ARUN K. PARIKH — RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:
Income Tax Act, 1961 — Section 210
Wealth Tax Act, 1957 — Section 27(1)

Citation : (2000) 110 TAXMAN 280

Hon'ble Judges : R.K. Abichandani, J;A.R. Dave, J

Bench : Full Bench

Judgement

Abichandani, J. -

The Tribunal has referred the following common question for the opinion of this court u/s 27(1) of the Wealth-tax Act, 1957:

Whether, the Tribunal is right in law and on facts in directing that the value of unquoted equity shares of private limited companies be worked out

as per rule 1D of the Wealth-tax Rules as interpreted by the Gujarat High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ashok

K. Parikh,

2. The Tribunal dismissed the appeals of the revenue holding that there was no substance in the objection raised by the department in view of the

decision of this High Court in the case of Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, . In Ashok K. Parikh''s case (supra), in

which this court had taken a view, while construing clauses (z)(a) and (ii)(e) of Explanalion II to rule 1D of the Wealth-tax Rules, 1957 that, for the

purpose of computation of the market value of the equity shares of a company, the advance tax paid u/s 210 ofthe Income Tax Act, 1961 and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether theprovision for

taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of

clause (ii)(e) of Explanation II to rule 1D.

3. The dispute centres around the treatment to be given to the advanced tax paid shown on the assets side of the balance sheet of the company

while working out the value of the equity shares on break-up value method. At the time of making of references, this question was pcnding before

the Apex Court. Now, we have the benefit of the decision of the Apex Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth

Tax (Central) and others, . The Supreme Court, while construing the provisions of rule 1D, held that the said rule was required 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 and

that all the authorities under the Act including the Valuation Officer were bound by the said rule. It was further held that while valuing the unquoted

equily shares under rule 1 D, no deductions on account of capital gains tax which would have been payable in case the shares were sold on the

valuation date, can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. It was held

that rule 11) was exhaustive on the subject.

4. The Supreme Court while construing the provisions of the said FUle 11) read with Explanation II(ii)(e) of the said Rules held that, truly

speaking, the advance tax paid is not really an asset, but, the proforma of balance sheet in Schedule VI to the Companies Act, 1956 requires it to

be shown as such. It was held that what clause (i)(a) of the said Explanation did was to remove the said amount from the list of assets for the

purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be

treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of

advance tax already paid is again shown as a liability, it will not be treated as a liability. The advance tax paid had already gone out of the profits

and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in

the process accepted the view of Andhra Pradesh, Karnataka, Punjab & Haryana High Courts and differed from the view taken by the Gujarat

High Court in Ashok K. Parikh''s case (supra).

5. In view of the decision of the Supreme Court in Bharat Hari Singhania''s case (supra), the question referred to this court is answered in ille

negative in favour of the revenue and against the assessee. The references stand disposed of, accordingly, with no order as to costs.

