

(1996) 06 PAT CK 0014
In the Patna High Court
Case No : Tax Case Nos. 21 and 22 of 1987

Commissioner of Wealth Tax

APPELLANT

Vs

Biswajit Samonta

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Citation : (1996) 06 PAT CK 0014

Judgement

1. At the instance of the Revenue, the Income Tax Appellate Tribunal, Patna Bench, under the provisions of Section 27(1) of the Wealth-tax Act, 1957, referred to this court the following two questions for its opinion (assessment years 1981-82 and 1982-83)

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the provision for tax liability was deductible for arriving at the break-up value of unquoted shares held by the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the CDS deposit could not form part of the taxable asset ?"

2. The assessee is an individual and owns certain shares in a company. He worked out the value of the shares at Rs. 133.70 per share. The Wealth-tax Officer, however, worked out the value of each share at Rs. 149.59. This difference arose due to the fact that the Wealth-tax Officer ignored the amount which had been kept by the assessee as provision for tax liability while computing the break-up value. The Wealth-tax Officer also took into account the advance and self-assessment tax paid by the assessee at Rs. 1,99,763 for the assessment year 1981-82 and Rs. 2,02,979 for the assessment year 1982-83. He, therefore, arrived at a higher figure. On appeal filed by the assessee, the Appellate Assistant Commissioner agreed with his contention holding that the valuation of the shares at higher value was not justified and directed the Wealth-tax Officer to recompute the value of the shares after giving the entire amount of provision for tax as a deduction from the net assets. The appeal of the Revenue

to the Tribunal failed. This led to the first question aforesaid being referred to us.

3. The answer to the first question would stand settled by the decision of the Supreme Court in *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, wherein the court held that while valuing the unquoted shares under Rule 1D of the Wealth-tax Rules, no deduction including that for provision for taxation, provident fund and gratuity would be admissible. Following the decision, we answer this question in the negative, in favour of the Revenue and against the assessee.

4. On the second question, Mr. Vidyarthi referred to a Bench decision of the Calcutta High Court in *Smt. Sunanda Devi Singhania Vs. Commissioner of Wealth Tax*, and submitted that the amount deposited as C.D.S. could not be excluded from the assessee's wealth.

5. We do not think that Mr. Vidyarthi is quite right in his submission. In view of the fact that the facts of that case were different and in view of the specific provisions as contained in Section 7A of the Compulsory Deposit Scheme (Income tax Payers) Act, 1974, as introduced by the Finance (No. 2) Act, 1980, C.D.S. would be exempt from being included in the assessee's wealth, Section 7A reads as under (see [1980] 124 ITR 64, 91) :

"7A Compulsory deposit to be exempt for purposes of wealth-tax.--For the purposes of exemption u/s 5 of the Wealth-tax Act, 1957 (27 of 1957), the amount of compulsory deposits shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies."

6. Clause (xxvi) of Section 5 of the Wealth-tax Act is relevant. Section 5 grants exemption in respect of certain assets. One of such assets is deposits with the banking company to which the Banking Regulation Act, 1949, applies and that exemption is under Clause (xxvi). Thus, the amount deposited as C.D.S. would, therefore, be exempt from being included in the wealth of the assessee. It is, therefore, held that the compulsory deposit under the Compulsory Deposit Scheme (income tax Payers) Act cannot be included in the net wealth of the assessee.

7. Accordingly, we answer the second question in the affirmative, in favour of the assessee and against the Revenue. There will be no order as to costs.