
(1991) 03 KL CK 0010

In the High Court Of Kerala

Case No : Income-tax References No's. 198 and 199 of 1988

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

DOMINIC JOSEPH.

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Income Tax Act, 1961 — Section 210, 46

Citation : (1992) 110 CTR 261 : (1992) 195 ITR 412

Hon'ble Judges : K. P. Radhakrishna Menon, J

Bench : Division Bench

Judgement

K. P. RADHAKRISHNA MENON J., - The Commissioner of Wealth-tax is before us.

The question referred to us for our opinion reads :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in directing the Wealth-tax Officer to value the shares held by the assessee by allowing the provision for taxation as a liability without deducting the advance tax payment ?"

There is no need to state the facts because the answer to the question depends purely upon the construction of the relevant rule. However, we would refer to the relevant parts of the order from which the above question arises and pertaining to the issue. They read :

"... But, we find that this very question" was considered by the Bombay High Court in a very recent decision in the case of Commissioner of Wealth-tax Vs. Pratap Bhogilal and another, , wherein the High Court had considered all the High Court decision on this point and have in favour of the assessee. Since the High Court had considered all the decisions and found it necessary to follow the Gujarat High Court decision, we are of the opinion that we should also follow the Gujarat High Court decision. Therefore, we will accept the assessee's appeal and reject the Department's contentions."

Now, coming to the question : The answer thereto depends upon the construction of rule 1D, Explanation II (i) (a) and Explanation II(ii) (e) of the Wealth-tax Rules, 1957. For easy reference, we shall extract these rules (leaving out unnecessary parts) :

"Rule 1D. Market value of unquoted equity shares of companies other than investment companies and managing agency companies. - The market value of an unquoted equity share of any company, other than an investment company or a managing agency company, shall be determined as follows :

The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet. The resultant amount multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share. The market value of such share shall be 85 per cent. of the break-up value so determined...

Explanation II. - For the purposes of this rule - (i) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely :

(a) any amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922 (11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961)...

(ii) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely :-...

(e) any amount representing provision for taxation (other than the amount referred to in clause (i) (a)) to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto."

This rule prescribes the procedure the assessing authority should follow while determining the market value of an unquoted equity share of any company other than an investment company or a managing agency company. To determine the market value of unquoted equity shares, the assessing authority shall first deduct all the liabilities as shown in the balance-sheet from the value of all its assets, again as shown in the balance-sheet. In view of Explanation II(i) (a) (hereinafter mentioned as clause a), the assessing authority, however, shall not treat the amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922(11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961), as an asset although the same is shown as an asset in the balance-sheet. Similarly, the amount representing provision for taxation (other than the amount referred to in clause (i)(a)) to the extent of the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto, the assessing authority shall not treat as a liability notwithstanding the fact that the same is shown as a liability in the balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet. Eighty-five per cent of the break-up value so determined is

the market value of each unquoted equity share.

The plain and unambiguous language employed in the Rules makes it clear that the assessing authority is directed not to treat the amount paid as advance Income Tax and shown as an asset in the balance-sheet, as an asset while assessing the value of the assets shown in the balance-sheet for the purpose of determining the market value of the unquoted equity share. That that is what is intended to be accomplished, is made further clear by the words in brackets in Explanation II(ii) (e) (hereinafter mentioned as clause (e), namely, "other than the amount referred to in clause (i) (a) ". In other words, preceding the words in brackets, namely, "any amount representing provision for taxation" read and understood along with the words in brackets make it abundantly clear that the amount paid as advance tax shall not be treated as "assets" within the meaning of the rule. Any other interpretation would make clause (a) otiose.

Counsel for the Revenue, however, argued that sub-clause (e), in terms, provides that an adjustment must be made, if called for, to the amount appearing as "provision for taxation" in the balance-sheet. He expanded the argument by giving the following illustration. For example, if the tax on the book profits is Rs. 200 and the advance tax paid Rs. 70, then the provision for taxation that an assessee could make can be only Rs. 200.70. In other words, only the resultant Rs. 200.70 alone can be deducted by way of liability. To treat the advance tax paid as a liability as suggested by counsel for the Revenue, the court necessarily has to stretch the language employed in clause (ii) and, in doing so, shall ignore clause (a). This will result in the erasure of the mandate contained in clause (a). This is not permissible the court indirectly will be declaring that Parliament enacted clause (a) without any purpose. It is worthwhile to remember, in the connection, the well established principle of interpretation that Parliament, viz., Legislature would legislate only for the purpose of bringing about an effective result. That is why it is always said that as far as possible, the court shall endeavour to make every part of the statute effective, harmonious and sensible. It, therefore, follows that the advance tax paid, under no circumstance, can be treated as a liability within the meaning of clause (ii) (a) of the Explanation. A similar view is expressed by the High Courts of Gujarat, Bombay and Madras (vide Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai, , Commissioner of Wealth-tax Vs. Pratap Bhogilal and another, , L.G. Balakrishnan and Others Vs. Commissioner of Wealth-tax, and Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, . The contrary view expressed by the High Courts of Punjab and Haryana, Karnataka and Andhra Pradesh (vide Ashok Kumar Oswal Vs. Commissioner of Wealth-tax, ; Commissioner of Wealth Tax Vs. N. Krishnan, , Commissioner of Wealth Tax Vs. Latha D. Pai, and Commissioner of Income Tax Vs. M. Lakshmaiah and Another, with respect, we cannot agree with.

Counsel for the Revenue then argued that the canons of interpretation that govern construction of a statute or the provision thereof cannot provide the guidelines to interpret the rules made under the statute because the rules cannot

be treated on a par with the provisions of a statute. We are not impressed by this argument because Rules made under an Act cannot be described as, or equated with, administrative directions. "Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained or obligation". (see Maxwell on the Interpretation of Statutes, 10th edition, pages 50-51, and The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya,). The Wealth-tax Act and the rules made u/s 46 thereof by the Central Board of Direct Taxes constitute any action taken by the assessing authority must conform to the provisions of the Act and the Rule. The above argument of counsel for the Revenue, therefore, is rejected.

The question, accordingly, is answered in the affirmative and in favour of the assessee.

A copy of this judgment under the signature of the Registrar and the seal of this court will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.