
(2004) 07 AHC CK 0127
In the Allahabad High Court
Case No : WT Ref. No. 343 of 1982

Commissioner of Wealth Tax

APPELLANT

Vs

Dr. Gaur Hari Singhania

RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Citation : (2004) 190 CTR 328 : (2004) 271 ITR 363

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. The Tribunal, Allahabad, has referred the following two questions of law for opinion of this Court u/s 27(1) of the WT Act, hereinafter referred to as the Act :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was entitled to file an appeal under the WT Act, 1957, even though he had agreed to be assessed on the value of the unquoted equity shares worked out in accordance with Rule 1D of the WT Rules. 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that arrears of dividends on cumulative preference shares and depreciation as allowed in the Income Tax assessment was allowable as deduction in working out the break-up value of the shares ?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The original assessment in this case was made on 30th Dec., 1971. The ITO had valued the unquoted shares in accordance with the WT Rules, 1957, hereinafter referred to as the Rules, at Rs. 2,01,545. He had also allowed deduction for a loan of Rs. 20,500 taken by the assessee from the Life Insurance Corporation (LIC). It appears that the above assessment order came up in appeal before the

Tribunal. The Tribunal set aside the assessment with the direction that the value of the unquoted shares should have been taken after referring the same to the valuer. It was, in these circumstances, that the matter again came up for the consideration of the WTO.

While the above assessment order was awaiting the consideration of the WTO, he also initiated action u/s 17(1)(a) of the Act for withdrawing the deduction allowed for the loan taken from the LIC. He finally made the assessment on 31st March, 1978, determining the value of unquoted shares as per Rule 1D at Rs. 1,84,540. In this order, he also did not allow deduction for loan from LIC. In this connection, he merely mentioned that the deduction was not allowed for the reasons mentioned in other cases of the group. It may be observed here that before passing this order, he obtained the consent of Shri S.S. Pandey, the representative of the assessee with regard to the above deductions.

The assessee appealed to the AAC. It was submitted before him that all the material facts had been fully and truly disclosed in the original assessment and, therefore, the reopening of the assessment u/s 17(1)(a) of the Act was invalid and illegal in law. It was also argued before the AAC that even the valuation of shares should not have been made by recourse to the provisions of Rule 1D of the Rules. The AAC held that in view of the concession allowed by Shri S.S. Pandey, it could not be said that the assessee was an aggrieved party and, therefore, he could not file an appeal against the assessment order. He also observed that it was now a settled law that unquoted equity shares could be valued by recourse to Rule 1D of the Rules. With regard to disallowance of deduction for LIC loan, he referred to the decision of Allahabad High Court in the case of *JIWAN LAL VIRMANI Vs. COMMISSIONER OF WEALTH-TAX, U. P.*, .

Against the order of the AAC, the respondent-assessee preferred an appeal before the Tribunal. The Tribunal vide order dt. 22nd Aug., 1981, had allowed the appeal. It held that the provisions of Section 17(1)(a) of the Act were not applicable as there could not be any estoppel against the statute. It further directed that the deduction should be allowed for the arrears of the dividends on preference shares and depreciation as allowed in the Income Tax assessment by the Department while working out the value of shares under Rule 1D of the Rules.

3. We have heard Sri A.N. Mahajan, learned counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee,

4. Learned counsel for the Revenue, Sri A.N. Mahajan, submitted that it is not necessary to go into the question as to whether the respondent-assessee was entitled to file an appeal under the Act even if he had agreed to be assessed on the value of unquoted equity shares worked out in accordance with the rules inasmuch as the Hon'ble Supreme Court in the case of *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, which has been subsequently followed by the apex Court in the case of *CWT v. Sita Ram Jindal*, (2001) 248 ITR 111, has held that the valuation of unquoted equity shares for

the purposes of wealth-tax has to be made as per the provisions of Rule 1D of the Rules. Thus, the valuation of unquoted equity shares has to be done in accordance with the provisions of Rule 1D of the Rules, So far as the question regarding deduction of arrears of dividends in respect of cumulative preference shares and depreciation is concerned, learned counsel invited the attention of the Court to the Expln. II of Rule 1D of the Rules and submitted that the rule-specifically provides for the amount which could not be treated as liability for the purposes of the determination of value of the shares. According to him, under Rule 1D, the amount set apart for payment of dividends of preference shares and equity share where such dividends have not been declared before the valuation date at a general body meeting of the company and the amount of depreciation has not been set apart as liability in the balance sheet, they cannot be allowed as deductions while computing the valuation of the unquoted equity shares.

5. Having heard the learned counsel for the Revenue we find that the value of unquoted equity shares are to be determined as per the provisions of Rule 1D of the Rules. This portion has now been well settled by the apex Court in the case of Bharat Hari Singhanian (supra) and Site Ram Jindal (supra). So far as the deduction towards liabilities is concerned such liabilities which have been excluded under the aforementioned rule cannot be allowed.

6. Clause (ii) of Expln. II of Rule 1D of the WT Rules, 1957, reads as follows :

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

- (a) the paid-up capital in respect of equity shares;
- (b) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;
- (c) reserves, by whatever name called, other than those set apart towards depreciation;
- (d) credit balance of the P&L a/c;
- (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;
- (f) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares."

From the reading of the aforesaid clause, it is absolutely clear that if the amount of dividend on preference shares has not been declared before the valuation date at a general body meeting of the company, the same cannot be allowed as deduction towards liability. Likewise, if the amount has not been set apart towards depreciation in the balance sheet, the amount of such depreciation also cannot be allowed as deduction while valuing the unquoted equity shares under

Rule 1D of the Rules. From perusal of the order of the Tribunal, it appears that before the Tribunal, the claim of the respondent-assessee was regarding unprovided depreciation which would be clear from the statement noted in para 6 of the order of the Tribunal that in working out, deduction should be allowed for unprovided depreciation as per IT Rules. Thus, the depreciation which has not been provided in the balance sheet cannot be allowed as deduction towards liability under Rule 1D of the Rules. So far as the question of dividend on preference shares is concerned, it may be mentioned here that from the assessment order as also from the order of the Tribunal it does not appear that the Tribunal has examined this question as to whether the dividend on preference shares has been declared before the valuation date at a general body meeting or not. If the dividend has not been declared in a general body meeting of the company before the valuation date, arrears cannot be allowed as deduction. In the absence of any such finding, the Tribunal has committed an error in directing the allowing of deduction of arrears of dividends on preference shares.

7. In view of the forgoing discussion, we answer the question No. 2 in the negative, i.e., in favour of the Revenue and against the assessee. In view of the answer to the question No. 2, it is not necessary to answer the question No. 1. Since nobody has put in appearance on behalf of the respondent-assessee, there shall be no order as to costs.