(1995) 05 GAU CK 0027

In the Gauhati High Court

Case No : WT Reference No. 20 of 1990

Commissioner of Wealth Tax APPELLANT

Vs

Gaurishankar Agarwal RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Wealth Tax Act, 1957 — Section 16(3), 27(1)

Citation : (1995) 82 TAXMAN 97

Hon'ble Judges : D.N. Baruah, J;B.N. Singh Neelam, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; R.K. Joshi, for the Respondent

Judgement

D.N. Baruah, J.—This is a reference u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''). The following question has been referred at the instance of the department: "Whether, on the facts and in the circumstances of the case and on a proper construction of sub-clause (e) of clause (ii) of Explanation II of rule 1D of Wealth-tax Rules, 1957, the Tribunal was justified in upholding the order of the AAC who held that the amount of advance tax paid is not deductible from provision of taxation as appearing in the balance sheet of a company, the equity shares of which are unquoted?"

This matter relates to two different assessees, the former having the status of HUF and the latter that of individual, belonging to the same Agarwalla Group, and having the valuation date of March 31. They were assessed u/s 16(3) of the Act. The assessees held 1,000 fully- paid equity shares in Steelsworth Ltd. Company. These shares were not the subject of dealing in recognised stock exchanges. They were also not shares in investment companies or in any managing agency. These were called unquoted equity shares. While valuing the said shares in the assessment, the WTO as per his calculation in the Annexure to his order, first deducted the income tax advance from the total assets of the company, besides the liabilities such as secured loan, trade credits, profit sharing scheme amounts, as the case may be, unsecured loans, gratuity provisions and income tax provision made. The income tax provision was restricted to tax on book profits wherefrom the advance-tax paid and deducted already from total assets was again deducted, and, accordingly, the assessment was completed. Being aggrieved, the assessees preferred an appeal before the AAC contending, inter alia, that the WTO had erred in the assessment of valuation of the said shares as while he had deducted the income tax advance from the total assets of the company, he had again deducted the income tax advance in computing the liabilities so that in computing the break-up value of each share the liability was reduced by the WTO resulting in the increase of the value of each share. 2. In the appeal, the AAC directed the WTO to recompute the break-up value of each share of the said company for all the years in accordance with the principles laid down in the decision in Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, . Being dissatisfied with the appellate order, the revenue came in appeal before the Tribunal. The Tribunal after going through its earlier order dated 28-6-1988 passed in WT Appeal No. 35 (Gauhati) of 1986 upheld the order of the AAC. Hence, the present reference.

3. Heard Mr. D.K. Talukdar, the learned counsel for the revenue and Mr. R.K. Joshi, the learned counsel appearing on behalf of the assessees.

4. It is submitted that this case is squarely covered by the decision in CWT v. Ram Gopal Mahesh Kumar (HUF) and Ram Gopal Krishna Kumar Saharia (HUF) [1993] 1 GLR 392. Following the said decision, we answer the question in the negative and in favour of the revenue and against the assessees. On the facts and circumstances of the case, there will be no direction as to costs.

