(1996) 01 KL CK 0053

In the High Court Of Kerala

Case No : Income-tax Reference No''s. 59 to 61 of 1989

Commissioner of Wealth-tax APPELLANT

Vs

George Dominic RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1996) 219 ITR 570

Hon'ble Judges : V.V. Kamat, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; K.N. Sivasankaran and V.V. Asokan, for the Respondent

Judgement

G. Sivarajan, J.—These three references made u/s 27(1) of the Wealth-tax Act, 1957, raise the following question :

" 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 ?"

2. The assessee, a shareholder in a private limited company, claimed that in computing the value as per the balance-sheet of the company, the advance tax paid by the company should not be adjusted against the provision for payment of taxes. The Wealth-tax Officer and the Appellate Assistant Commissioner did not accept the said claim. On second appeal before the Income Tax Appellate Tribunal, Cochin Bench, the Tribunal held that the value must be determined by taking the provision for taxation as shown in the balance-sheet as a liability and without adjusting the same against the advance Income Tax paid. Since there was a conflict of judicial opinion among various High Courts, the question mentioned hereinabove was referred to this court for our decision.

3. The same question came up for consideration before the Supreme Court in

Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, and the Supreme Court observed that (headnote) ; "If in the case of the balance-sheet of the company the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by Clause (1)(a) of Explanation II to rule ID, is also shown as a liability, i.e., if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities--and this is also what Clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to Clause (i)(a). The advance tax paid is not really an asset but the pro forma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such. What Clause (ia) does is 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. This is the true function of both the sub-clauses."

4. It is conceded by the counsel on either side that the question referred to this court is covered by the aforesaid decision of the Supreme Court. Following the said decision, the question referred is answered in the negative, i.e., in favour of the Revenue and against the assessee. No costs.

5. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, Cochin, for passing consequential orders.

