

(1996) 02 MP CK 0053

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 231 of 1990

Commissioner of Wealth-tax

APPELLANT

Vs

Janakraj Soni

RESPONDENT

Date of Decision : 16-02-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1996) 136 CTR 501 : (1996) 222 ITR 316

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; S.C. Bagadia, for the Respondent

Judgement

A.R. Tiwari, J.—At the instance of the applicant-Department, the Tribunal has stated the case and referred the undernoted questions of law arising out of the consolidated order dated November 22, 1989, passed in W. T. As. Nos. 41 to 44/ (Ind) of 1989 on the Applications Nos. 9 to 12/ (Ind) of 1990 u/s 27(1) of the Wealth-tax Act, 1957 (for short, "the Act") :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the Commissioner of Wealth-tax order u/s 25(2) and restoring that of the Wealth-tax Officer when the valuation of shares held by the assessee in Metalman Pipe Mfg. Co. Ltd. should have been made by applying mandatory provisions of Rule 1D of the Wealth-tax Rules, 1957, for the assessment years 1983-84 to 1986-87 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that action u/s 25(2) of the Wealth-tax Act did not lie when two opinions were possible in the matter and the Wealth-tax Officer preferred the opinion which is prejudicial to the interests of the Revenue and hence erroneous ?"

2. Briefly stated, the facts of the case are that the assessment years are 1983-84

to 1986-87. The date of valuation is March 31 in each year. The assessee has been assessed in the status of an individual. The Wealth-tax Officer completed the assessment for all the aforesaid years, u/s 16(1) of the Act and thereby accepted the value of the unquoted equity shares of Metalman Pipe Manufacturing Company Limited as shown by the assessee. The valuation was supported by the approved valuer's report which was based on profit-earning capacity of the company. The copies of the assessment orders are from annexures-"A/1" to "A/4" and the copy of the approved valuer's report" is annexure-"B". The Commissioner of Wealth-tax was of the view that the shares should have been valued by the Wealth-tax Officer as per Rule 1D of the Wealth-tax Rules after obtaining the balance-sheet of the company. He, therefore, took the assessment order as erroneous and prejudicial to the interests of the Revenue. He, therefore, set aside the assessment orders with the direction to the Wealth-tax Officer to determine the value of the shares afresh. The copy of the order dated March 6, 1989, is annexure "C". Aggrieved by the order of the Commissioner, the assessee came up in appeal before the Tribunal. The Tribunal set aside the order of the Commissioner of Wealth-tax on November 22, 1989 (annexure "D"). The appeals (W. T. A. Nos. 41 to 44/(Ind) of 1989) for the assessment years 1983-84 to 1986-87 filed by the assessee, were allowed on November 22, 1989. Aggrieved by the orders passed by the Tribunal in favour of the assessee, the Department filed the applications u/s 27(1) of the Act. On these applications, registered as R. A. Nos. 9 to 12/(Ind) of 1990, the Tribunal stated the case and referred the aforesaid two questions of law.

3. We have heard Shri D. D. Vyas, learned counsel for the applicant-Department, and Shri S. C. Bagadia, learned counsel for the non-applicant-assessee.

4. Shri Bagadia very frankly submitted that in view of the controversy set at rest by the apex court in *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, the questions as noted above, are required to be answered in favour of the Department and against the assessee.

5. In the aforesaid decision, it is held as under (at page 15) :

"The next argument that Rule 1D is not mandatory but directory proceeds upon a certain misconception. A provision is said to be directory when the absence of a strict or literal compliance with it--and in some cases, even non-compliance with it--may not vitiate the thing done. On the other hand, a mandatory provision is one which has to be obeyed in its letter and spirit and anything done without such compliance stands vitiated. Counsel for the assessee, however, do not understand the said expression in the above sense. What they really say is that following Rule 1D should be optional. According to them, in all cases, except in the case of companies ripe for winding-up, Rule 1D ought not to be followed and that only the yield method should be. This is really substituting a rule of the choice of the assessee in the place of the rule made by the rule-making authority u/s 46 of the Act. If the rule is good and valid, as we find it to be, it has to be followed in each and every case. It is not a matter of choice or option.

The rule-making authority has prescribed only one method for valuing the unquoted equity shares. If this method were not to be followed, there is no other method prescribed by the rules. The acceptance of the assessee's contention would mean that it would be open to the Wealth-tax Officer to adopt such other method of valuation as he thinks appropriate in the circumstances. This is bound to lead to vesting of uncalled for wide discretion in the hands of the Wealth-tax Officers/valuing authorities. It would lead to uncertainty and may be arbitrariness in practice. Where there is a rule prescribing the manner in which a particular property has to be valued, the authorities under the Act have to follow it. They cannot devise their own ways and means for valuing the assets. It is equally well to remember that Rule 1D does not treat the break-up value as the market value. A deduction of 15 per cent. is made in the break-up value to arrive at the market value. It is equally relevant to notice that Rule 1D uses the expression "shall", which prima facie indicates its mandatory character,"

6. It is, thus, clear that the aforesaid provision is held to be mandatory in nature. That being so, it becomes clear that the Tribunal was not justified in setting aside the order of the Commissioner of Wealth-tax and restoring that of the Wealth-tax Officer. Action u/s 25(2) is tenable.

7. Accordingly, we answer both the questions in the negative, i.e., in favour of the Department and against the assessee.

8. The reference application is decided in terms indicated above, but without any orders as to costs. Counsel fee shall, however, be fixed at Rs. 750, for each side, if certified.

9. Transmit a copy of this order to the Tribunal for information and further action as may be necessary in accordance with rules.