

(1973) 02 MAD CK 0017

In the Madras High Court

Case No : Tax Case No. 133 of 1967 (Reference No. 46 of 1967)

Commissioner of Wealth Tax

APPELLANT

Vs

K.M. Desikar

RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:

Wealth Tax Act, 1957 — Section 7(1), 7(2)

Citation : (1973) 92 ITR 101

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; S. Padmanabhan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case filed wealth-tax returns for the assessment years 1959-60 and 1960-61 admitting a net wealth of

Rs. 14,65,569 and Rs. 15,72,944, respectively. The Wealth-tax Officer determined the net wealth for the first year at Rs. 14,91,678 and for the

second year at Rs. 15,77,003. The net wealth of the assessee in those two years included the value of certain shares held by the assessee. The

assessee had valued the shares on the basis of their book value on December 29, 1959, and October 19, 1960, respectively. The value of the

shares as furnished by the assessee had been originally accepted by the Wealth-tax Officer.

2. Later, the Wealth-tax Officer, in the proceedings for assessment for the year 1961-62 did not accept the value of the shares returned by the

assessee on the basis of their book value, but adopted the actual market value as the basis of valuation. The result was while the net wealth

furnished by the assessee for that year based on the book value of the shares

was Rs. 15,57,068, the net wealth as determined by the Wealth-tax

Officer on the basis of the market value of the shares came to Rs. 20,33,117. At that stage, the Wealth-tax Officer took the view that the valuation

of the shares in the earlier assessment years 1959-60 and 1960-61 was not correct, and in that view, he reopened the original assessments for the

said two years u/s 17(1)(b) of the Wealth-tax Act. The assessee submitted a return in answer to the notice issued u/s 17(1)(b) and furnished

details of the market value of the shares on the relevant dates in respect of both the assessment years. Based on the said market value furnished by

the assessee, the Wealth-tax Officer determined the wealth of the assessee for these two years as under :

Rs.

1959-60 15,85,393

1960-61 18,74,357

3. The assessee preferred appeals to the Appellate Assistant Commissioner, who, however, confirmed the assessments. There were further

appeals to the Appellate Tribunal, where the assessee contended that the Wealth-tax Officer was not justified in invoking the jurisdiction u/s 17(1)

(b) and in reopening the assessment and that the reopening has been done merely as a result of change of opinion. The Tribunal, after consideration

of the materials on record, held that the assessee is a dealer in shares, that, therefore, the Wealth-tax Officer had a discretion to value the

shareholding either u/s 7(1) based on the market value, or u/s 7(2)(a) based on the book value of the shares, and that the Wealth-tax Officer had

at the stage of the original assessment having exercised his discretion and adopted the method provided for u/s 7(2) for valuing the shares, he

cannot change his opinion and seek to value the shares u/s 7(1). According to the Tribunal, the Wealth-tax Officer having earlier exercised his

discretion to proceed on the basis of Section 7(2) by adopting the book value of the shares, which constituted the business assets of the assessee,

he cannot by invoking Section 17(1)(b) seek to adopt the alternative method provided for in Section 7(1). The Tribunal, therefore, held that the

Wealth-tax Officer was not justified in reopening the assessments u/s 17(1)(b) and revaluing the shares by adopting a different method. At the

instance of the revenue, the following question has been referred :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in cancelling the reassessments for 1959-60

and 1960-61 made u/s 17(1)(b) of the Wealth-tax Act as illegal ?

4. We are of the opinion that on the finding given by the Tribunal that the assessee is a dealer in shares, the Tribunal's view is correct. The Wealth-

tax Officer had admittedly a discretion in the case of the assessee who is a dealer in shares either to value the shares on the basis provided for u/s

7(1) or on the alternative basis provided for u/s 7(2)(a). Therefore, the Wealth-tax Officer at the stage of the original assessment having exercised

his discretion in adopting the basis provided u/s 7(2)(a), it is not open to him to reopen the assessment, merely because the tax effect will be more

if the basis provided for u/s 7(1) is adopted. It cannot be in dispute that Sections 7(1) and 7(2) provide for two alternative modes of valuation in

relation to the business assets. The Wealth-tax Officer had earlier accepted the book value of the shares as per Section 7(2)(a) as the shares

constituted the business assets of the assessee. It cannot, therefore, be said that the said valuation of the shares had not been done in accordance

with law. The fact that, later, the Wealth-tax Officer thought that the valuation of the shares by adopting the method provided for in Section 7(1)

will be beneficial to the revenue is not a ground for invoking Section 17(1)(b).

5. The learned counsel for the revenue would contend that Section 7(2)(a) will apply to the valuation of the assets of a business run by a

partnership, and not of the assets of a business run by an individual. The learned counsel refers to Section 7(2)(b), where reference has been made

to a company carrying on business. But we are of the view that the said contention has to be rejected outright. Section 7(2)(a) refers to ""asset held

by the assessee in such business"", and the word ""assessee"" has to be understood as including an individual, a firm or association of persons.

Section 7(2)(a) runs as follows :

Notwithstanding anything contained in Sub-section (1),--

(a) where the assessee is carrying on a business for which accounts are maintained by him regularly, the Wealth-tax Officer may, instead of

determining separately the value of each asset held by the assessee in such business, determine the net value of the assets of the business as a

whole having regard to the balance sheet of such business as on the valuation

date and making such adjustments therein as may be prescribed,

6. It refers to an assessee ""carrying on business for which accounts are maintained by him regularly"". The word ""him"" suggests that the word

assessee"" should also include an individual who carries on business. We are not, therefore, inclined to construe Section 7(2)(a) in the manner

Suggested on behalf of the revenue. If Section 7(2)(a) had been properly applied by the Wealth-tax Officer at the stage of the original assessment,

the original assessment order cannot be said to proceed on a wrong basis. We are of the view that the Tribunal is right in taking the view it did in

this case. The question is, therefore, answered in the affirmative and against the revenue. The revenue will pay the costs of the assessee. Counsel's

fee Rs. 250.