

(1994) 12 MAD CK 0084

In the Madras High Court

Case No : Tax Case No. 1204 of 1981 (Reference No. 648 of 1981)

Commissioner of Wealth-tax

APPELLANT

Vs

Malini Srinivasan

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Wealth Tax Act, 1957 — Section 7
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1995) 215 ITR 749

Hon'ble Judges : S.M. Ali Mohamed, J; Mishra, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

1. After seeing the reference, we are inclined before answering the questions, to observe that whatever little determination was necessary to clear any doubt or ambiguity as to rule 1D and Explanations I and II thereto of the Wealth-tax Rules, 1957, is removed by the judgment of the Supreme Court in the case of Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, . The Supreme Court has held in the said case that rule 1D is perfectly valid and effective and it has to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued. Rule 1D is exhaustive on the subject. Explanation I to rule 1D is a perfectly valid piece of delegated legislation and has to be followed and Explanation II in rule 1D contains two clauses : clause (i) provides that two items shown as assets in the balance-sheet shall not be treated as assets for the purpose of rule 1D and clause (ii) says that six items shown as liabilities in the balance-sheet shall not be treated as the liabilities for the purpose of rule 1D; in other words, the balance-sheet of the company with the aforesaid modifications shall be the basis for working the rule.

2. The instant case, however, is concerned with Explanations I and II(ii)(b) which

have been adverted to by the Tribunal in these words :

"It is not necessary to reproduce the entire rule but it is relevant to reproduce Explanations I and II to rule 1D;

Explanation I. - For the purposes of this rule "balance-sheet" in relation to any company, means the balance-sheet of such company as drawn up on the valuation date and where there is no such balance-sheet, the balance-sheet drawn up on a date immediately preceding the valuation date and in the absence of both, the balance-sheet drawn up on a date immediately after the valuation date.

Explanation II. - For the purposes of this rule, -

(i)(a) any amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922 (11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961);

(b) any amount shown in the balance-sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

(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 profit and loss account;

(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."

3. Explanation I fixes the balance-sheet that is to be taken into account for the purpose of arriving at the break-up value. It postulates the balance-sheet drawn up on a date immediately preceding the valuation date and in the absence of both, the balance-sheet drawn up on a date immediately after the valuation date. Explanation II provides for the assets which are to be excluded, so also the liabilities to be excluded. We are concerned with Explanation II(ii)(b) which speaks of the treatment to be given to the amount set apart for payment of dividends on equity shares. It says that where such dividends at a general body meeting of the company are set apart the proposed dividends shall not be

regarded as liabilities. That is to say if the dividends were declared before the valuation date at a general body meeting of the company, then the proposed dividends would be treated as liabilities. The principle embedded is not far to seek. Since it is not possible at the end of the previous year of a company to declare dividends, sometimes it takes place between the date of the close of the accounting year of a company and sometimes it takes place after the date for declaration and this amount set apart becomes liability on the part of the company.

4. The Revenue, however, has insisted that the amounts set apart for payment of dividends shall not be treated as liability and maintained that the Wealth-tax Officer was right in adopting the break-up value of the shares on the valuation date of the assets of the company, India Motor Parts and Accessories Limited. The assessee, Malini Srinivasan, has claimed that on the valuation date for the assessment year 1978-79, that is, March 31, 1978, she is entitled to a deduction of the dividends of Rs. 2,40,000 which the company had declared on September 26, 1977. The Wealth-tax Officer as well as the Commissioner (Appeals) disallowed the claim of deduction as, according to them, the proposed dividends could not be taken as a liability as per rule 1D. The Tribunal has analysed and interpreted rule 1D in terms of the Explanations aforementioned and, in our opinion, rightly. Explanation II(ii)(b) clearly says that the amount set apart for the payment of dividends on preference shares and equity shares are not included in the liabilities, but qualifies by saying that where such dividends have not been declared before the valuation date at a general body meeting of the company. It conveys nothing but the rule that if dividends on preference shares and equity shares are declared before the valuation date at a general body meeting of the company and the amount payable as dividend is set apart, the same will be included in the liabilities and, accordingly, be deductible.

5. For the reasons aforementioned, the two questions under reference, that is, whether, on the facts and in the circumstances of the case, the Wealth-tax Officer was not justified in adopting the break-up value of the shares of India Motor Parts and Accessories Ltd., Madras, at Rs. 120.49 against Rs. 1.99 adopted by the assessee for the assessment year 1978-79 and whether having regard to the provisions of Explanations I and II to rule 1D of the Wealth-tax Rules, the Appellate Tribunal was right in holding that the dividends of Rs. 2,40,000 declared on September 26, 1977, should be deducted for arriving at the break-up value of the shares based on the balance-sheet as at March 31, 1977, for the assessment year 1978-79 have to be answered in the way the Tribunal has answered them, that is, the Wealth-tax Officer was required to take notice of the declaration of dividends by the company before the valuation date at a general body meeting of the company and deduct the same from the value of the assets of the company for the purpose of working out the break-up value as contemplated under rule 1D.