(1995) 05 GAU CK 0028

In the Gauhati High Court

Case No : WT Reference No. 17 of 1990

Commissioner of Wealth Tax APPELLANT

Vs

Master Anurag Bagaria RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:
Income Tax Act, 1961 — Section 212
Wealth Tax Act, 1957 — Section 16(3), 27(1)

Citation : (1995) 82 TAXMAN 47

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 wealth-tax reference u/s 27(1) of the Wealth-tax Act, 1957 (''the Act'') has been made at the instance of the revenue. The following question has been referred for opinion of this Court: "Whether, on the facts and in the circumstances of the case and on a proper construction of sub-clause (e) of clause (a) of Explanation II of rule 2 of Wealth-tax Rule, 1957, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner of income tax holding 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?"

In this case a minor represented by his father and natural guardian, having the valuation date of March 31 for the assessment years 1979-80 to 1982-83, was assessed in the status of individual u/s 16(3) of the Act. The assessee was holding certain number of shares in certain companies. Those shares were not the subject of dealing in recognised stock exchanges. They were also not shares in investment companies or in any managing agency company. Those were called unquoted equity shares which were in the nature of shares held by the assessee. He held about 1,900 shares of Steelsworth Ltd. value of which was shown by the assessee as Rs. 3,58,100, Rs. 3,43,900 and Rs. 3,28,700, respectively, for the assessment years in question. The WTO worked out the break-up value as per the Wealth-tax Rules, 1957 and assessed the value of 1,900 shares at Rs. 4,14,485, Rs. 4,60,978 and Rs. 5,13,570, respectively, for the assessment years in question. The assessee, being aggrieved, went in appeal before the AAC, Dibrugarh Range, Dibrugarh. The AAC following the decision of the Gujarat High Court in Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, held that for the purpose of computation of the market value of the shares of the company, advance tax paid u/s 212 and shown on the assets side of the balance-sheet of the company could not be deducted from the tax payable, in determining whether the provisions for taxation was in excess of the tax payable with reference to the book profits. The AAC, accordingly, over directed the WTO to recompute the break-up value of each share of the said company Steelsworth P. Ltd. on the basis of his observation for all the years. The revenue went in appeal against the said order of the AAC before the Tribunal and the Tribunal dismissed the appeal. Thereafter, at the instance of the revenue, the above question has been referred to this Court for opinion. 2. Heard Mr. D.K. Talukdar, the learned standing counsel appearing on behalf of the appellant and Mr. R.K. Joshi, the learned counsel appearing on behalf of the assessee. It is stated at the bar that this case is squarely covered by a decision of this Court in CWT, North Eastern Region v. Ramgopal Mahesh Kumar (HUF) [1993] 1 GLR 392. In the said decision, this Court held thus -

"... We, therefore, hold that while the advance tax paid is ignored under Explanation II (i)(a) of Rules, it is not ignored in arriving at the tax liability under Explanation II (ii)(e) of the Rules. The amount of advance tax paid shall be deducted from the total tax liability in respect of which provision is made, subject of course to the limit of the tax payable with reference to the book profits in accordance with the law."

In the said case, this Court answered the reference in the negative, that is, in favour of the revenue and against the assessee.

3. We find that this case is squarely covered by the aforesaid decision. Therefore, following the aforesaid decision we answer the reference in the negative, that is, in favour of the revenue and against the assessee. On the facts and in the circumstances of the case, we make no order as to costs.