
(1988) 05 RAJ CK 0037

In the Rajasthan High Court

Case No : .W.T. References No"s. 124 and 134 of 1982

COMMISSIONER OF WEALTH-TAX

APPELLANT

Vs

MOTI CHAND DAGA.

RESPONDENT

Date of Decision : 21-05-1988

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)
Wealth Tax Rules, 1957 — Rule 2B(2)

Citation : (1988) 71 CTR 102 : (1988) 174 ITR 379 : (1988) 1 RLW 503

Hon'ble Judges : J. S. Verma, C.J

Bench : Division Bench

Judgement

JAIPUR BENCH

J. S. VERMA C.J. - Both these references relate to the same assessee. The relevant assessment years in these references are 1972-73, 1973-74 and 1974-75. The facts on which a common question of law arises being the same, this common order shall dispose of both these references.

At the instance of the Revenue, these references are made u/s 27(1) of the Wealth-tax Act, 1957, to answer the following common question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that when there is no other positive material to establish the market value of the closing stock with the Wealth-tax Officer, the gross profit rate alone shown by the assessee is not sufficient evidence to determine the market value and come to the conclusion that the market value of the closing stock of the firm in which the assessee is a partner exceeds more than 20% of its book value, as contemplated in rule 2B(2) of the Wealth-tax Rules, 1957 ?"

The assessee was a partner in the firm, Sagarmal Daga and Co. In the jewellery account of the said firm for the assessment year 1972-73, the assessee declared a profit of Rs. 2,31,450 on sales of Rs. 9,64,234 giving a gross profit rate of 24%. The Wealth-tax Officer adopted the mode of valuation in accordance with

clause (a) of sub-section (2) of section 7 for determining the net value of the business assets as a whole and took the view that since the gross profit rate was in excess of 20%, the provision contained in rule 2B(2) of the Wealth-tax Rules, 1957, was attracted. While reaching this conclusion, the Wealth-tax Officer conceded that the gross profit alone could not be made the basis for determining the market value of the closing stock even though it was an important factor and, therefore, some deduction should be made from the gross profit rate. The deduction allowed was 4%. The profit rate remaining above 20% even after this deduction, rule 2B(2) was applied. Accordingly, the Wealth-tax Officer estimated the market value of the closing stock in the jewellery account at Rs. 19,80,114 as against Rs. 15,04,887 declared by the assessee and after making deduction of 4%, the value of the closing stock was estimated at Rs. 19,00,910. There was thus a difference of Rs. 3,96,023 between the cost price taken for the purpose of Income Tax assessment and the market value estimated by the Wealth-tax Officer for the purpose of wealth-tax. The assessee's share was worked out at Rs. 1,58,409 for the assessment year 1972-73.

For the assessment years 1973-74 and 1974-75, a similar formula was adopted by the Wealth-tax Officer for computation of the market value on the basis of gross profit disclosed by the firm at 26.52% and 24.78%, respectively. After allowing deduction of 4% therefrom, the Wealth-tax Officer estimated the market value of the closing stock of the firm for the assessment year 1973-74 at Rs. 13,45,192 against the value declared by the firm at Rs. 10,44,952; and for the assessment year 1974-75, the Wealth-tax Officer estimated the market value of the closing stock of the firm at Rs. 7,60,375 against Rs. 5,95,980 declared by the firm. Thereafter, the Wealth-tax Officer worked out the difference between the book value and the market value of the closing stock at Rs. 3,00,240 for the assessment year 1973-74 and Rs. 1,64,395 for the assessment year 1974-75. The assessee's share therein was calculated by the Wealth-tax Officer at Rs. 1,20,096 for the assessment year 1973-74 and at Rs. 65,758 for the assessment year 1974-75. These amounts were then included in the net wealth of the assessee for these assessment years. Facts in the other reference relating only to the assessment year 1974-75 are similar.

The assessee preferred an appeal to the Appellate Assistant Commissioner who accepted the assessee's contention and held that there was no definite or positive material to hold that the actual profit on the closing stock would be more than 20% of the amount shown in the firm's balance-sheet and that, therefore, rule 2B (2) was not attracted. The additions made by the Wealth-tax Officer for all these years were, therefore, deleted by the Appellate Assistant Commissioner. The Revenue's appeal to the Tribunal has been dismissed. The Tribunal held that the burden was on the Wealth-tax Officer to show that the market value exceeded by more than 20% the valuation given in the balance-sheet in order to invoke the aid of rule 2B (2). It held that there being no definite evidence for that purpose, rule 2B (2) was not attracted. Aggrieved by the Tribunal's order, these references have arisen at the instance of the Revenue to answer the above quoted common

question of law.

Learned counsel for the Revenue contended that the burden was on the assessee and not on the Revenue to show that the market value did not exceed the valuation shown in the balance-sheet of the closing stock by more than 20%; even if the burden was on the Revenue, the same was discharged when the gross profit rate exceeding 20% was shown in the firms account books; the assessee had special knowledge of the facts and, therefore, also, the burden was on him; and that rule 2B (2) was attracted on these facts alone. In reply, it was contended on behalf of the assessee that the burden to prove the existence of facts attracting rule 2B (2) was on the revenue and not on the assessee. It was further contended that there being no positive material to hold that the market value exceeded by more than 20% the value shown in the balance-sheet, the Wealth-tax Officer could not reach that conclusion on the basis of mere surmises and the Tribunal was justified in upholding the assessee's contention. It was also contended that the Tribunal's finding on the question of market value being one of fact, the same could not be reopened in the reference and on that finding, it was obvious that rule 2B(2) is not attracted. It is common ground that the mode of valuation adopted by the Wealth-tax Officer was that provided in section 7(2) (a) and not u/s 7(1) of the Wealth-tax Act, 1957.

We may first refer to the relevant statutory provisions :

Wealth-tax Act, 1957 :

"2. In this Act, unless the context otherwise requires, -...

(m) net wealth means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than - ...

7. Value of assets how to be determined. - (1) Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date ...

(2) 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; ..."

Wealth-tax Rules, 1957 :

"2. Valuation of interest in partnership or association of persons. - (1) The value of the interest of a person in a firm of which he is a partner or in an association of persons of which he is a member, shall be determined in the manner provided herein. The net wealth of the firm or the association on the valuation date shall first be determined. That portion of the net wealth of the firm or association as is equal to the amount of its capital shall be allocated among the partners or members in the proportion in which capital has been contributed by them. The residue of the net wealth of the firm or association shall be allocated among the partners or members in accordance with the agreement of partnership or association for the distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits. The sum total of the amounts so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the firm or association.

2A. Determination of the net value of assets of business as a whole. - Where the Wealth-tax Officer determines under clause (a) of sub-section (2) of section 7 the net value of the assets of the business as a whole having regard to the balance-sheet of such business, he shall make the adjustments specified in rules 2B, 2C, 2D, 2E, 2F and 2G.

2B. Adjustments in the value of an asset disclosed in the balance-sheet. - (1) The value of an asset disclosed in the balance-sheet shall be taken to be -

(a) in the case of an asset on which depreciation is admissible, its written down value;

(b) in the case of an asset on which no depreciation is admissible, its book value;

(c) in the case of closing stock, its value adopted for the purposes of assessment under the Income Tax Act, 1961, for the previous year relevant to the corresponding assessment year.

(2) Notwithstanding anything contained in sub-rule (1), where the market value of an asset exceeds its written down value or its book value or the value adopted for purposes of assessment under the Income Tax Act, 1961, as the case may be, by more than 20 per cent., the value of that asset shall, for the purposes of rule 2A, be taken to be its market value."

The above quoted statutory provisions alone are relevant for the present purpose.

The mode of determining the value of a partners interest in the firm in accordance with these provisions is clearly indicated by the Supreme Court in *Juggi Lal Kamalapat Bankers and Another Vs. Wealth Tax Officer, Special Circle C-Ward, Kanpur and Others*, First, the net wealth of the firm has to be determined in accordance with section 7 of the Act and then, according to rule 2, the net wealth of the firm so determined is allocated amongst the partners of the firm, which allocated amount is to be regarded as the value of the interest of each partner in the firm. The Supreme Court has also clearly indicated that sub-

section (2) of section 7 is an enabling provision conferring discretion on the Wealth-tax Officer to determine the net value of the assets of the business as a whole having regard to the balance-sheet as on the valuation date, instead of proceeding under sub-section (1). It is, therefore, optional for the Wealth-tax Officer to resort to either of the methods provided in sub-section (1) and sub-section (2). Sub-section (2) of section 7 itself provides that in making the valuation according to the mode prescribed therein, the Wealth-tax Officer has to make such adjustments therein as may be prescribed. Rule 2A of the Wealth-tax Rules, 1957, prescribes that where determination of the net value of the assets of the business as a whole is made u/s 7(2)(a), having regard to the balance-sheet of such business, the Wealth-tax Officer shall make the adjustments specified in rules 2B, 2C, 2D, 2E, 2F and 2G. We are here concerned only with the adjustment required to be made in accordance with rule 2B (2), which lays down that where the market value of an asset exceeds its written down value or its book value or the value adopted for the purposes of assessment under the Income Tax Act, 1961, by more than 20 per cent., the value of that asset shall, for the purposes of rule 2A, be taken to be its market value. In other words, unless the determination of the market value on the basis of definite material is at an amount exceeding 20 per cent. of the value disclosed in the balance-sheet, no occasion arises for invoking rule 2B (2) and the value disclosed in the balance-sheet has to be accepted for the purpose of wealth-tax assessment. This, in short, is the cumulative effect of these statutory provisions.

The first question now is of onus of proof. When the assessee relies on the valuation Or the closing stock shown in the balance-sheet of the firm and the mode of determination of market value adopted is that provided u/s 7(2)(a) of the Act, it does appear obvious to us that the burden lies on the Revenue, if it seeks to invoke the aid of rule 2B (2), to show that the market value exceeds by more than 20 per cent. the valuation disclosed in the balance-sheet. Obviously, the onus lies on the party which would fail if no evidence is led by either side. If the balance-sheet and books of account of the firm on which the assessee relies are the only material present and the Wealth-tax Officer does not accept the valuation disclosed in the balance-sheet, then the burden lies on the Wealth-tax Officer to show that the market value exceeds by more than 20 per cent. the valuation given in the balance-sheet. This burden may, however, be discharged even by the facts and circumstances appearing from the material produced by the assessee, but the burden undoubtedly lies on the Wealth-tax Officer who seeks to rely on a valuation different from that shown in the balance-sheet, the mode of valuation adopted being in accordance with section 7(2)(a) of the Act.

In Commissioner of Wealth Tax, Calcutta Vs. Tungabadra Industries Ltd., Calcutta, it has been indicated that the onus of proof is on the person who claims that the balance-sheet value is not the true value where the mode of valuation adopted is in accordance with section 7(2)(a). That was a case in which the assessee claimed that the balance-sheet value was not the true value and, therefore, it was held that the onus of proof was on the assessee who wanted to

assail the correctness of the balance-sheet value by setting up some other value as the true value. Similar is the decision of the Supreme Court in *Commissioner of Wealth Tax, Calcutta Vs. Hindustan Motors Ltd.*, wherein it was held that the burden was on the assessee to show that the balance-sheet value was not the true value since it was the assessee who assailed the balance-sheet value. It is, therefore, obvious that where the mode of determination of the value adopted is that provided in section 7(2)(a), the basis is the balance-sheet value and the burden lies on the person assailing the balance-sheet value to show that it is not the true value. In a case like the present where the balance-sheet value is asserted to be the true value by the assessee, but is assailed by the Revenue, the burden lies on the Revenue to show that the balance-sheet value is not the true value and that the market value is higher; and when it is shown by the Revenue that the market value exceeds the balance-sheet value by more than 20 per cent., then only the aid of rule 2B (2) can be invoked. In other words, in a case like the present where the mode of valuation adopted is that provided in section 7(2) (a) of the Act and it is the Wealth-tax Officer and not the assessee who assails the correctness of the balance-sheet value, the burden lies on the Wealth-tax Officer to prove on the basis of relevant material that the real market value exceeds by more than 20 per cent. the balance-sheet value so as to justify invoking the aid of rule 2B (2). Unless this burden is discharged by the Revenue, the condition precedent for invoking the aid of rule 2B (2) is not satisfied. In our opinion, this is the correct position with regard to the question of burden of proof on which divergent stands have been taken by the two sides before us.

From the above conclusion relating to onus of proof, it follows that unless the Wealth-tax Officer determines the market value at an amount exceeding 20 per cent. of the balance-sheet value on the basis of relevant material, the occasion to invoke rule 2B (2) cannot arise. We have, therefore, to examine this position. The Wealth-tax Officer held rightly that the gross profit rate alone cannot be made the basis for determining the market value of the closing stock. Thus, even according to the Wealth-tax Officer, the gross profit rate was only a relevant factor and not by itself sufficient to hold that the market value can be determined by adding the gross profit rate straightaway to the value of the closing stock shown in the balance-sheet. The Wealth-tax Officer proceeded further to hold that from the gross profit rate certain deductions have to be made and it is only the remainder which can be added to the cost price for arriving at the market value. The Wealth-tax Officer estimated the deduction at 4% without indicating the basis on which the figure of 4% was calculated. After making this deduction from the gross profit rate, the remainder of more than 20% was held to be the addition permissible to the valuation disclosed in the balance-sheet and this is how the market value was determined at an amount exceeding by more than 20% the valuation shown in the balance-sheet. Having determined the market value in this manner u/s 7(2)(a), the same was accepted as the value of the closing stock by invoking rule 2B (2).

On appeal, the Appellate Assistant Commissioner held that there was no definite

material to hold that the value of the closing stock of the firm exceeded by more than 20% the valuation disclosed in the balance-sheet and that, therefore, rule 2B (2) was not attracted. The Tribunal has affirmed the view taken by the Appellate Assistant Commissioner. The Tribunal has pointed out that the burden of proving that the market value exceeded by more than 20%, the valuation of closing stock disclosed in the balance-sheet was on the Wealth-tax Officer and there being no positive material to reach this conclusion, the provisions of rule 2B (2) could not be attracted.

As earlier indicated, even the Wealth-tax Officer held that the gross profit rate appearing from the firms books of account was only a relevant factor and that by itself was not sufficient to prove the market value; and that certain deductions were required to be made therefrom after which the remainder alone could be added to the cost price for determining the market value. Admittedly, these deductions which are to be made are on account of the overhead expenses incurred and which are met out of the gross profit. These expenses may vary from one person to another depending on the actual expenses incurred by the particular person. The actual deduction to be made from the gross profit is, therefore, a question of fact in each case and the same has to be determined on the basis of actual figures. This position is not disputed before us.

It is, therefore, obvious that where the only material available is the gross profit rate and there is no positive material to indicate the extent of deduction which has to be made therefrom for the purpose of arriving at a figure which alone can be added to the cost price for determining the market value, there is no definite evidence to determine the market value on the sole basis of gross profit rate. This conclusion flows even from the reasoning adopted by the Wealth-tax Officer and the principle indicated in the Wealth-tax Officers order. It is, therefore, clear that unless there be any positive material or discernible principle justifying computation of the percentage of deduction at the figure applied, it has to be held that there is no positive material to hold that the market value exceeds by more than 20% the value of the closing stock disclosed in the balance-sheet even though the gross profit rate appears to exceed the figure of 20 per cent.

In the present case, no basis is indicated in the order of the Wealth-tax Officer for computing the deduction at 4% only and no material to justify that figure has been pointed out. Since the onus of proof is on the Revenue, the same has to be discharged by the Revenue by showing the existence of relevant material to support the finding. This has not been done. In such a situation, the conclusion reached by the Tribunal that there is no positive material to support the Wealth-tax Officers conclusion that the market value exceeded by more than 20% the value of the closing stock shown in the balance-sheet is fully justified and no fault can be found with this finding of the Tribunal.

It is obvious from the above conclusion that the condition precedent for the applicability of rule 2B (2) is not satisfied and that the Tribunal was, therefore, justified in holding that rule 2B (2) could not be invoked. In short, the burden

was on the Revenue to prove that the valuation of the closing stock given in the balance-sheet was not the true value and that the market value of the closing stock exceeded the valuation disclosed by more than 20%. It is only after this burden had been discharged by the Revenue by determining the market value u/s 7(2)(a) at an amount exceeding the valuation disclosed in the balance-sheet by more than 20% on the basis of positive or relevant material that rule 2B (2) could be invoked. Since even the very first step had not been reached in the present case, the question of attracting rule 2B (2) did not arise. The Tribunal's conclusion to this effect was, therefore, justified.

As a result of the above discussion, it must be held that the Tribunal's view is justified. Consequently, this reference is answered in the affirmative, against the Revenue and in favour of the assessee by holding that the Tribunal's view that the condition precedent for invoking the aid of rule 2B (2) of the Wealth-tax Rules, 1957, has not been satisfied, is justified. Both these references are answered accordingly.