

(1997) 12 MAD CK 0056

In the Madras High Court

Case No : Tax Case No"s. 325 and 326 of 1989

Commissioner of Wealth Tax

APPELLANT

Vs

M.V. Arunachalam and Another

RESPONDENT

Date of Decision : 11-12-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

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

Citation : (2000) 241 ITR 686

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—The Tribunal, at the instance of the Revenue, has referred the following common question of law with reference

to the two assesseees, for our opinion under s. 27(1) of the WT Act, 1957 (hereinafter referred to as the "Act") :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the sum of Rs. 22,83,000 being the sales-tax

penalty should be allowed as a liability while valuing the unquoted equity shares under r. 1D of the WT Rules ?

2. The assessment year involved in respect of both the assesseees is 1980-81. The assesseees hold certain shares in several companies which are not

quoted in the regular stock exchange. The assesseees claimed before the WTO that the shares held by them should be valued on yield basis. The

WTO, in completing the assessment, rejected the claim of the assesseees and held that the valuation of the shares held by the assesseees should be

done under r. 1D of the WT Rules (hereinafter referred to as the "Rules"). The

WTO while valuing the shares excluded the liability towards the sales-tax penalty not shown in the balance sheet amounting to Rs. 22,83,000 and after excluding other items, he enhanced the value of the shares of the companies as disclosed in the orders of assessment.

3. Aggrieved by the orders of assessment, the assessees preferred appeals before the AAC of Wealth-tax. The AAC was of the opinion that the liability though not shown in the balance sheet but shown in the notes appended thereto should be taken into account and the amount shown

towards sales-tax liability should be taken into account as a liability in determining the value of the shares under r. 1D of the Rules. Dissatisfied with the order of the AAC, the Revenue preferred appeals against the order of the AAC regarding the allowance of sales-tax liability, while the

assessees filed cross-objections against the directions of the AAC regarding other items. The Tribunal considered the appeals preferred by the

Revenue as well as the cross-objections filed by the assessees. We are not here concerned with the order of the Tribunal regarding the cross-

objections filed by the assessees as the order of the Tribunal with reference to those items is not the subject-matter of the present reference.

However, the Tribunal held that the sales-tax penalty shown in the notes attached to the balance sheet should be taken into account for the

purpose of valuation of shares in terms of r. 1D of the Rules. The Tribunal, following an earlier order of its own in the case of M. A. Murugappan

(Individual) & Ors. in WTA No. 606/Mad/1986, etc. dt. 12th May, 1987, held the sales-tax penalty is liability under the statute and till they are

wiped out, they continue to exist as liabilities and it cannot be regarded as a contingent liability. In this view of the matter, the Tribunal upheld the

orders of the AAC. At the time of hearing the appeal before the Tribunal, it was submitted on behalf of the Department that the sales-tax penalty

was subsequently cancelled and therefore, there was no justification for treating the same as the liability for determining the value of the shares in

terms of r. 1D of the Rules. The Tribunal, however, rejected the contention urged on behalf of the Department on the ground that the liability as on

the date of valuation has to be taken into account irrespective of the subsequent course of event that may take place after the valuation date. In this

view of the matter, the Tribunal dismissed the appeals preferred by the Revenue.

It is this order of the Tribunal that is the subject-matter of the present tax case reference.

4. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the order of the Tribunal is erroneous in point of law as the Tribunal has overlooked that the Sales-tax Appellate Tribunal subsequent to the valuation date has cancelled the penalty and once the penalty stands cancelled, there was no liability at all to be taken note of for determining the value of the shares in terms of r. 1D of the Rules. He strongly placed reliance on the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Madras Vs. K.S.N. Bhatt, and Commissioner of Wealth-tax, Gujarat Vs. Smt. Vimlaben Vadilal Mehta, and submitted that the ultimate quantification of the liability has to be taken into account for the purpose of the determination of the value of the shares in terms of r. 1D.

5. Mr. R. Janakiraman, learned counsel for the assessee, strenuously urged that value of the shares has to be determined on the valuation date and on the valuation date the liability towards tax liability was existing and that was the proper amount that should be taken into in determining the value of the shares under r. 1D of the Rules. He further submitted that it is not correct to say that the entire sales-tax penalty was cancelled. He, therefore, submitted that the Tribunal should be directed to consider the question whether any liability towards the sales-tax existed on the valuation date.

6. We have carefully considered the rival submissions of the learned counsel for the parties. The question involves the proper interpretation of r. 1D of the WT Rules. Under r. 1D of the Rules, the market value of an unquoted equity share of any company shall be determined in the manner prescribed in the said Rules. Under the Rules, the value of all the liabilities as shown in the balance sheet of the company shall be deducted from the value of the assets shown in the net balance sheet and then the value of the shares shall be determined. The crucial words found in r. 1D of the Rules, in so far as they are relevant for the purpose of the case are, "value of all liabilities as shown in the balance sheet". The Rule emphasises that the liability shown in the balance sheet should be valued and that the value of the liability should be deducted from the value of the assets of the company on the valuation date. It is no doubt true and it is not disputed that on

the relevant valuation date, there was a sales-tax liability towards the penalty amounting to Rs. 22,83,000 existing on that date. The Company against whom the sales-tax penalty was imposed has not accepted the liability but carried the matter in appeal before the authorities constituted under the relevant Sales-tax Act and it is seen from the order of the Tribunal that the sales tax penalty was cancelled by the Tamil Nadu Sales-tax Appellate Tribunal. Though the exact quantum for the amount of penalty which was cancelled is not clear from the reading of the order of the Tribunal, it is seen that there was a subsequent modification as regards the quantum of the liability of the sales-tax liability of the company towards penalty. Though the order of the Sales-tax Appellate Tribunal was passed subsequent to the relevant valuation dates, the order would have the effect in valuing the liability as such and the order of the Sales-tax Appellate Tribunal cannot be ignored in determining the quantum of the liability of the company. More or less, a similar situation came up for consideration before the Supreme Court with reference to the deduction of statutory liabilities under the direct tax laws under the head "debt" under the provisions of s. 2(m) of the WT Act. The Supreme Court in CWT vs. K. S. N. Bhatt (supra) held that in computing the net wealth of the assessee for the sales-tax, the liabilities towards the Income Tax, wealth-tax and gift-tax which crystallise on the relevant valuation date as determined in the respective assessment orders as liabilities are to be deducted even though those assessment orders are finalised after the valuation date. Where the said assessment order was the subject-matter of appeal and the superior authority ultimately found there was no liability at all, it must be taken in law, there was never any tax liability. The apex Court laid down the proposition that there was no liability on the valuation date if by virtue of any appeal or reference it was found there was no tax liability at all. The observations of the apex Court which are relevant for the purpose of the case, read as under :

If however, it is found on such ultimate determination that there is no tax liability, it cannot be said that merely because originally a tax liability had been determined and stood existing on the valuation date there was a debt owed by the assessee. The fact cannot be ignored that when the case was carried in appeal or reference it was found by the superior authority that in

fact there was no tax liability at all. That final determination, eventhough rendered after the valuation date, directly relates to the question whether on the valuation date there was a debt owed by the assessee.

If the finding is that there was no tax liability, it must be held that there was no debt owned by the assessee on the valuation date"".

7. Applying the principles of law laid down by the Supreme Court, we are of the opinion that the final determination of the tax liability, whether by

way of appeal or revision cannot be ignored as the final order determining the ultimate tax liability would directly relate to the question whether on

the valuation date, there was any liability at all owed by the company towards the sales-tax. It is seen that the Tamil Nadu Sales-tax Appellate

Tribunal has cancelled the penalty and though the order of the said Tribunal was passed subsequent to the valuation date, that order would be a

relevant piece of evidence to determine the value of liabilities as provided in r. 1D of the Rules. Therefore, the view of the Tribunal that the liability

as on the valuation date should be taken into account though is correct, but the events that happened subsequent to the valuation date should be

ignored, is not correct in law. There may be cases of enhancement of tax liability or enhancement of penalty and if this view of the Tribunal is

accepted, then valuation of the shares under r. 1D of the Rules will be done in a distorted manner. Therefore, we are of the view that the view of

the Tribunal that the events that happened subsequent to the valuation date regarding the determination of the value of the liability should be

completely eschewed for the determination of the shares in terms of r. 1D of the Rules is not correct in law, though the Tribunal was correct in

holding the liability towards the sales-tax cannot be regarded as a contingent liability. However, if they are wiped out, they cannot be regarded as

liabilities at all.

8. It is stated by Mr. R. Janakiraman, learned counsel for the assessee that the Tribunal has not determined the exact quantum of liability towards

the Sales-tax penalty. The Tribunal apparently has proceeded on the basis that the subsequent event should be ignored and in this view of the

matter, it has not determined the question as to the exact quantum of the liability on the valuation date. Therefore, we are of the opinion that the

Tribunal should go into the question again and determine what was the exact

quantum of sales-tax liability towards penalty on the valuation date

and on that basis, direct the WTO to determine the value of the shares in terms of r. 1D of the Rules. In this view of the matter, though we answer

the common question of law referred to us in the negative and in favour of the Revenue, the Tribunal is directed to go into the question afresh in the

light of the observations made by us. No costs.