(1996) 01 KL CK 0046

In the High Court Of Kerala

Case No : IT Ref. No. 205 of 1989, 23rd January, 1996

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

N. J. CHANDY. — RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Citation : (1996) 131 CTR 469

Hon'ble Judges : V. V. Kamat, J

Bench : Division Bench

Judgement

V. V. KAMAT, J. :

The question referred is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the advance tax paid by the company and shown on the asset side of the balance sheet, should not be deducted from the provision for taxation while valuing the unquoted equity shares held by the assessee ?"

Obviously what is required is to find out the character of the advance tax paid by the company and consequently shown on the asset side of the balance sheet should be taken into consideration or is required to be deducted in the process of taxation while valuing the unquoted equity share value in regard thereto as far as the assessee is concerned. It is well known that in the matter of unquoted equity shares there is a process of fixation of valuation. Under r. 1D of the WT Rules, 1957 the break-up value of the unquoted equity shares is to be computed. In this matter the assessee claimed in the matter of computed value of the shares in question, contending that the advance tax already shown in the balance sheet would be required to be reduced. It is contended that this amount of advance tax computed in the above process would be a liability.

2. On first principles it is not possible to accept the contention and this is the course adopted by the WTO who refused to reduce the tax liability by the amount

of advance tax as shown in the balance sheet.

3. It has to be seen that r. 1D of the WT Rules has an Explanation and if the said provision is referred to, it would be seen that with reference to the balance sheet in question the amount of advance tax paid cannot be required to be reduced from the value of the assets reached on the basis of calculation relating to the value of unquoted equity shares. The advance tax already paid shown in the balance sheet would not really amount to an asset but would be in the nature of the pro forma of balance sheet as per the provisions of the Companies Act being required to be shown as such. The relevant provision of the clause of Expln. to r. 1D would show that this amount would be required to be removed from the list of the assets and in this sense only that amount which is still remaining to be paid would have to be treated as a liability on the concerned valuation. Whatever confusion that occurs in the approach in regard thereto is on the basis of a situation that the preparation of the balance sheet is at a future date and even though the amount of payment of advance tax already paid appears to be shown as a liability in the balance sheet, it cannot partake the character as such. As submitted by the senior counsel for the Department the question is neatly covered by the decision of the Supreme Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, . It is for the proposition that on an interpretation of r. 1D and Expln. thereto it is not possible to deduct the amount of advance tax already paid, whatever may be its place as shown in the balance sheet. In fact in IT Refs. Nos. 59 to 61 of 1989 decided on 19th Jan., 1996 by us [since reported at CWT vs. George Dominic (1996) 131 CTR (Ker) 468] the same question was involved and relying on the above decision of the Supreme Court we have already taken a similar view to the effect that the advance tax paid is really an asset but the pro forma of balance sheet in Schedule VI of the Companies Act requiring it to be shown as such. For the above reasons the question referred is answered in the negative in favour of the Revenue and against the assessee.