
(1985) 10 KAR CK 0035
In the Karnataka High Court
Case No : Tax Referred Case No. 57 of 1979

Commissioner of Wealth Tax

APPELLANT

Vs

N. Krishnan

RESPONDENT

Date of Decision : 09-10-1985

Acts Referred:

Income Tax Act, 1922 — Section 18 A, 210
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1986) 50 CTR 75 : (1986) 162 ITR 309 : (1986) 24 TAXMAN 269

Hon'ble Judges : S.A. Hakeem, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : K. Srinivasan and H. Raghavendra Rao, for the Appellant; G. Sarangan, for the Respondent

Judgement

Hakeem, J.—The Income Tax Appellate Tribunal, Bangalore Bench, Bangalore ("the Tribunal"), at the instance of the Revenue, has referred for the opinion of this court the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 35 lakhs representing the advance tax paid by the company and shown on the assets side of the balance-sheet should not be deducted from the excess provision for taxation in valuing the shares of M/s. International Instruments (P) Ltd. ?"

2. In order to appreciate the question, it is necessary in the first instance to notice the facts as found by the Tribunal.

3. The assessee as an individual held equity shares in M/s. International Instruments Pvt. Ltd. For the assessment year 1974-75, the assessee declared in his return under the Wealth-tax Act, 1957 ("the Act"), before the Wealth-tax Officer the value of the equity shares held by him at Rs. 220.24 per share. On January 22, 1977, the Wealth-tax Officer completed the assessment determining the share value at Rs. 315. 26 per share and subjected the same to tax under

the Act on that basis.

4. Aggrieved by the said order of the Wealth-tax Officer, the assessee appealed to the Appellate Assistant Commissioner who by his order dated July 30, 1977 (annexure-B), Allowed the same, inter alia, holding that under rule 1D of the Wealth-tax Rules, 1957 ("the Rules"), the amount of advance-tax paid was not to be disallowed out of the provision for taxation which was in excess of the tax payable with reference to the book profits.

5. Aggrieved by the said order of the Appellate Assistant Commissioner, the Department filed a second appeal before the Tribunal which by its order made on January 30, 1979, upheld the said order of the Appellate Assistant Commissioner. Hence this reference.

6. Sri K. Srinivasan, learned senior standing counsel for the Revenue, has contended that rule 1D of the rules properly interpreted makes it clear that for purposes of determining the break-up value of unquoted shares, the advance tax paid in the accounting year which was shown as an asset in the balance-sheet of the company, has to be deducted from the figure for provision only for such taxation shown on the liabilities side of the balance-sheet or make provision only for such taxation actually payable after deducting the advance tax already paid by the company and not the whole of the tax on the book profits. In support of his contention, Sri Srinivasan strongly relied on the Division Bench ruling of the Punjab and Haryana High Court in Ashok Kumar Oswal Vs. Commissioner of Wealth-tax,

7. Mr. G. Sarangan, learned counsel appearing for the assessee, laying great emphasis upon the words "other than the amount referred to in clause(i)(a)" occurring in rule 1D of the Rules and the meaning attached to the words "other than" in the law lexicon contended that it refers to the provision for taxation other provision for advance tax and they do not mean the amount paid as advance tax under the Income Tax Act. In support of his contention, Mr. Sarangan has strongly relied on a Division Bench ruling of the Gujarat High Court in Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh,

8. Rule 1D of the Rules that is material reads thus :

"1D. The market value of an unquoted equity share of any company, other than an investment company or a managing agency company, shall be determined as follows : -

The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance-sheet. The resultant amount multiplied by the paid-up value of each equity share shall be the break-up value of each unquoted equity share. The market value of each such share shall be 85 per cent. of break-up value so determined.....

Explanation II. - For the purposes of the rule -

(i) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely : -

(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, (43 of 1961)....

(ii) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely : -

(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."

9. Clause(i)(a) of rule 1D of the Rules deals with assets. Advance tax is an asset in the balance-sheet as it should be because the advance tax is the deposit made with the Government which is adjusted against the total liability as determined on completion of an assessment. Now, coming to clause(ii)(e) of Explanation II, it is clear that it deals with liability. Exclusion of advance tax from the total assets under clause(i)(a) is not to be confused with the provision for the total tax payable by the company, which is referred to in clause(ii)(e) as a liability. The advance tax has to be paid during the accounting year and all that remains is its adjustment against the total tax due. Advance tax paid is one the assets side of the balance-sheet and that amount is embedded in the full provision for tax which appears on the liabilities side. If the advance tax as an asset is taken out, there has to be a corresponding reduction from the tax liability, which appears as a provision for tax due at a gross figure from which the Government will collect only the net tax after adjusting the advance tax already paid by the company. When the assets side is already reduce under clause(i)(a) by excluding the advance tax from the assets side of the balance-sheet, there cannot be any other way of interpretation of clause(ii)(e) than to correspondingly reduce the provisions for taxes by the amount of advance tax paid. In our opinion, the provisions for tax payable with reference to the book profits in the balance-sheet has to be reduced by the amount of advance tax paid. What clause(ii)(e) seeks to achieve is not to overload the liabilities side of the balance-sheet with the total tax payable, while the total tax payable in fact and in law is the gross tax as determined on book profits less the advance tax already paid. On this view, the Tribunal and the Appellate Assistant Commissioner were not right in determining the break-up value of the share by deleting from the assets side advance tax paid by the company and at the same time not reducing the amount of provision for taxes appearing in the balance-sheet on the liabilities side.

10. We are of the view that the construction suggested by Sri Sarangan on rule 1D of the Rules is too artificial and will not carry out the purposes of the Act and the Rules. We are also of the view that the dictionary meanings ascribed to "other than" in Black's Law Dictionary, 5th edition, and Stroud's Judicial Dictionary (III volume, IV Edition) cannot be properly applied in the context of

the Rules.

11. In *Ashok Kumar Oswal Vs. Commissioner of Wealth-tax*, the High Court of Punjab and Haryana had occasion to examine a similar question and expressed thus (at p. 624) :

"In sub-clause(e), the words "the tax payable with reference to the book profits" are important. These words connote the amount of tax due from a company after deducting the advance tax and not the whole of the amount of tax worked out on the book profits. A provision for taxation is made in the balance-sheet under rules of accountancy and not under any rule of law. The liability of a company to pay tax is the amount of tax worked out on its profits minus the payment made as advance tax. It cannot be said that the advance tax paid is not relevant for determining the tax liability of a company. Therefore, under sub-clause(e) out of the provision for taxation, the actual amount payable after deducting the advance tax will be taken as the liability of the company and not the whole of the tax on the book profits."

12. We are in respectful agreement with this view.

13. In *Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh*, the Gujarat High Court had expressed a contrary view, which has been dissented from by the Punjab and Haryana High Court in *Ashok Kumar Oswal Vs. Commissioner of Wealth-tax*, For the very reasons on which the High Court of Punjab and Haryana has dissented, with great respect we regret our inability to con-cur with the view of their Lordships of the Gujarat High Court.

14. On the foregoing discussion, we hold that the question referred to us must be answered in the negative. We, therefore, answer the question referred to us in the negative, against the assessee and in favour of the Revenue. But, in the circumstances of this case, we direct the parties to bear their own costs in these proceedings.