

(1987) 04 BOM CK 0057

In the Bombay High Court

Case No : Wealth-tax Reference No. 1 of 1975

Commissioner of Wealth-tax

APPELLANT

Vs

Pratap Bhogilal and another

RESPONDENT

Date of Decision : 07-04-1987

Acts Referred:

Income Tax Act, 1961 — Section 271(1)

Wealth Tax Act, 1957 — Section 2

Wealth Tax Rules, 1957 — Rule 1D

Citation : (1987) 63 CTR 51 : (1987) 167 ITR 501

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—The only question of law to us in this case at the instance of the Revenue is :

"Whether, on the facts and in the circumstances of the case, the liabilities as shown in the balance-sheet of Batliboi & Co. Pvt. Ltd., asset(sic) March 31, 1969 should be further reduced by the sum of Rs. 66,95,020 aforesaid while determining the market value of unquoted equity shares of the company in terms of rule 1D of the Wealth-tax Rules, 1957 ?"

2. The assessee, inter alia, held shares of M/s. Batliboi & Co. Pvt. Ltd. (for short "the company"). The shares were not quoted at any stock exchange and were required to be valued in accordance with the provision of rule 1D of the Wealth-tax Rules, 1957. For the purpose of valuing the shares for the involved assessment year 1970-1971, the pertinent balance-sheets of the company is that as on March 31, 1969.

3. The assets side of the balance sheet of the company, inter alia, disclosed an asset in the sum of Rs. 66,95,020 representing advance tax paid by the company. On the liabilities side, there appeared a liability in the sum of Rs. 1,19,17,163 representing provision for taxation. There is no dispute that for the purpose of valuing the shares of the company, the sum of Rs. 66,95,020,

representing advance tax paid appearing as an asset in the balance-sheet is to be ignored in terms of Explanation II(i)(e) to rule 1D of the Wealth-tax Rules, 1957. The dispute is regarding the liability representing provision for taxation. According to the Revenue, the provision for taxation in excess of the actual liability for taxation is to be excluded from the liabilities. The case of the assessee, on the other hand, is that the excess of provision over the tax payable with reference to the book profits only requires to be ignored in terms of Explanation II(ii)(e) to rule 1D and that there is no scope for reducing the provision for tax payable with reference to book profits by the amount of Rs. 66,95,020 paid as advance tax.

4. Shri Jetley, learned counsel for the Revenue strongly relied on the Punjab and Haryana High Court decision in *Ashok Kumar Oswal Vs. Commissioner of Wealth-tax*, and the Karnataka High Court decision in *Commissioner of Wealth Tax Vs. N. Krishnan*, for the proposition that the excess of provision for taxation over the net tax payable by the assessee is to be excluded from the liabilities as distinct from the excess over the tax payable with reference to the profits as such. Fairly stating that the Gujarat High Court has taken a contrary view in its decision in *Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh*, which was followed by the said Court in *Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai*, , Shri Jetley referred to a Supreme Court decision in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, for the proposition that the expression "tax payable" meant the actual amount of tax payable, i.e., the amount payable on the basis of the book profits as reduced by the advance tax and self-assessment tax already paid and tax deducted at source.

5. Shri Kolah, learned counsel for the assessee, on the other hand, relied on the Gujarat High Court decision in *Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh*, and *Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai*, . He also referred to the Madras High Court decision in the case of *T.V. Srinivasan Vs. Commissioner of Wealth-tax*, in support.

6. In order to appreciate rival contentions, it is desirable to refer to the provisions of rule 1D of the Wealth-tax Rules :

"1D. The market value of an unquoted equity shares of any company, other than an investments 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 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 the break up value so determined :

Provided that where,.....

Explanation II. - For the purposes of this 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, 1922 (11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961);

(b) any amount shown in the balance-sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

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

(a) the paid-up capital in respect of equity shares;

(b) the amount set apart for payment of dividends on preference shares and equity where such dividends have not been declared before the valuation date at a general body meeting of the company;

(c) reserves, by whatever name called, other than those set apart towards depreciation;

(d) credit balance of the profit and loss account;

(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;

(f) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares."

7. Broadly speaking, the value of the equity shares is computed by dividing the surplus of assets over the liabilities by the number of the fully paid up equity shares. However, for this purpose, certain assets are not to be treated as assets and similarly certain liabilities are not to be treated as liabilities. That the above computation is artificial is evident from the fact that there is no provision in the Rules for inclusion of any liability in the liabilities, however real the same might be, if not provided for in the balance-sheet and, similarly, there is also no provision for inclusion of any assets not appearing in the balance-sheet. As stated earlier, we are concerned in this case with the liabilities referred to in sub-clause (e) of clause (ii) of Explanation II above.

8. The sub-clause (e) has two main parts :

"(i) any amount representing provision for taxation [other than the amount referred to in clause (i)(a)] to the extent of the excess over;

(ii) the tax payable with reference to the book profits in accordance with the law

application thereto".

9. To the extent the provision for taxation in the first part is in excess over the tax payable contemplated in the second part, it is not to be treated as liability. We take up the second part first. On the face of it, it means the amount of the tax payable with reference to the book profits as total income.

10. The Supreme Court in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, was concerned with the interpretation of the expression "the amount of tax, if any, payable by him" as used in section 271(1)(a)(i) of the Income Tax Act, 1961. The penalty under that provision is levied with reference to and for the tax payable as determined on regular assessment. The situation envisaged is, thus, post-assessment. In that context, the amount of tax, if any, payable could only mean the tax payable with reference to the assessed profit as reduced by the advance tax paid, tax paid on the basis of self-assessment and taxes deducted at source etc. The above decision has, thus, no bearing on the question posed before us.

11. The bracketed portion in the sub-clause is to be read with the first part as (i) bracket starts immediately after the expression "provision for taxation" and (ii) the expression "to the extent of excess over" precedes the words "the tax payable". Therefore, the bracketed portion will have a bearing on the first part only. The first part has, it appears to us, two limbs. The first limbs, namely, "any amount representing provision for taxation" refers to a factual aspect of the balance-sheet and there cannot possibly be any dispute or debate about it. The second limb i.e., the bracketed portion which starts with the words "other than" to our mind, means and can only mean "except". The words "other than" are followed by the words "the amount referred to in clause (i)(a)" which is the amount paid as advance tax. The bracketed portion, thus, means other than advance tax paid. Putting it differently, the first part of the clause would read as any amount representing provision for taxation other than or except the amount paid as advance tax. Such an interpretation certainly does not support the contention of the Revenue.

12. To show advance tax paid as an asset is a convenient and well-recognised accountancy practice. It has been recognised by sub-clause(a) of clause(i) of Explanation II referred to above. Section 219 of the Income Tax Act, 1961, which envisages adjustment of advance tax paid towards the tax payable on completion of regular and/or provisional assessment lends further support to this practice. If advance tax paid is shown as an asset, the provision for taxation has, of necessity, to be of gross tax payable with reference to the book profits. We are fortified in this view by the Gujarat High Court decisions in *Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh*, and *Commissioner of Wealth-tax, Gujarat-III Vs. Arvindbhai Chinubhai*, squarely. The Madras High Court decision in *T.V. Srinivasan Vs. Commissioner of Wealth-tax*, also Supports this view indirectly. In the case before the Madras High Court, the assessee was an individual. He had paid a sum of Rs. 11,676 as excess advance tax. This sum

was treated as an asset. The entire amount of advance tax paid and not merely excess advance tax paid was held to represent the asset of the assessee. At the same time, the entire accrued income tax liability was treated as a debt owed by the assessee. The decision was in the context of section 2(m) of the Wealth-tax Act, 1957. For the purpose of the present reference, the question whether the advance tax paid is or is not an asset is not relevant. What is relevant is the conclusion that the entire accrued income tax liability was a debt owed by the assessee in the valuation date.

13. The Punjab and Haryana and Karnataka High Courts in *Ashok Kumar Oswal Vs. Commissioner of Wealth-tax*, and *Commissioner of Wealth Tax Vs. N. Krishnan*, have taken a contrary view. The Karnataka High Court has followed the Punjab and Haryana High Court's decision. Both the Courts equated the expression "tax payable with reference to book profits" with the tax payable thereon less advance tax paid. With respect, there does not seem to us to any warrant for such view.

14. In the circumstances, we are in agreement with the Tribunal that for the purpose of determining excess of provision for taxation over the tax payable with reference to book profits in terms of Explanation II (ii)(e) to rule 1D, the tax paid. Accordingly, we answer the question of law referred to us the negative and in favor of the assessee.

15. No order as to costs.