
(1991) 11 BOM CK 0044

In the Bombay High Court

Case No : Wealth-tax Application No. 2 of 1990 and connected applications

Commissioner of Wealth-tax

APPELLANT

Vs

Ramakrishna Bajaj (Huf)

RESPONDENT

Date of Decision : 18-11-1991

Acts Referred:

Income Tax Act, 1961 — Section 28

Wealth Tax Act, 1957 — Section 27(1), 27(3), 29(1), 46

Citation : (1992) 196 ITR 340

Hon'ble Judges : V.A. Mohta, J;G.D. Patil, J

Bench : Division Bench

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

Judgement

V.A. Mohta, J.—These are application u/s 27(3) of the Wealth-tax Act, 1957 ("the W. T. Act"), filed by the Commissioner of Wealth-tax, Vidarbha, Nagpur, requiring the Tribunal to state the case and to refer to the High Court the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in upholding the order of the Commissioner of Wealth-tax (Appeals), Nagpur, valuing the unquoted shares of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that gross liability including advance tax was to be deducted while working out the value of shares ?

(3) Whether, on the facts and in the circumstances of the case, while working out the value of shares, deduction on account of gross liability including advance tax was permissible within the meaning of rule 1D of the Wealth-tax Rules, 1957, and the valuation so made by the Tribunal was in accordance with the provisions of law ?"

2. The controversy arise about the computation of market value of unquoted equity shares of a company (other than an investment company or a managing

company agency) held by the assessee. Considering the practical difficulties in assessing the actual value of such shares, the Central Board of Direct Taxes, in terms of the authority conferred on it by section 46 of the Wealth-tax Act, made rule 1D of the Wealth-tax Rules, 1957 ("the Rules"), fixing a statutory formula for computation of the value for the purposes of the Wealth-tax Act. Rule 1D (minus the immaterial proviso, Explanation I, clauses (i) (b), (ii) (a) to (d) and (f) to Explanation II) read 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 the 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 share be 85 per cent. of the break-up value so determined : ...

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 Act, 1922 (11 of 1922), or u/s 210 of the Income Tax Act, 1961 (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..."

3. The substance of the matter is whether the expression "tax payable with reference to the book profits in accordance with the law applicable thereto", used in clause (ii) (e) of Explanation II to Rule 1D means the net tax after deducting the advance tax actually paid and shown on the assets side in the balance-sheet of the company, or the gross tax payable in its entirety in accordance with law. According to the Department, "tax payable" means actually payable after deducting advance tax; and, according to the assessee, it means gross tax imposable on the book profits in accordance with law without taking into consideration the advance tax.

4. That clause (ii) (e) to the Explanation II is somewhat clumsy is apparent. No wonder it has led to divergence of views between several High Courts.

5. Having heard Shri Chandurkar, learned counsel for the Department, and considered the conflicting view-points, it seems to us that, given the expression

"tax payable with reference to the book profits in accordance with the law applicable thereto", the literal meaning - which normally ought to be given to a taxing statute - it means the gross tax imposable on the book profits and not the net payable after deducting the amount representing the advance tax paid.

6. As the operative part of rule 1D indicates broadly the value of unquoted shares is computed by dividing the surplus assets over the liabilities by the number of fully paid up equity shares. In this computation, certain assets and certain liabilities (though real) are to be ignored if they are not provided for in the balance-sheet of the company. Clause (i) of Explanation II lists the assets in the balance-sheet which are not to be treated as assets, and clause (ii) of the Explanation II lists the liabilities in the balance-sheet which are not to be treated as liabilities for the purposes of the rule. Clauses (i) and (ii) operate upon two distinct fields and there is no scope for mixing one with the other. There is no controversy about the legal position that the amount representing the advance tax paid and appearing as an asset in the balance-sheet has to be excluded as per clause (i) (a). The dispute pertains to the liability representing the provision for taxation in sub-clause (e) of clause (ii). Scrutiny of that sub-clause would indicate that it merely to the amount representing the provision for taxation and not payment. Advance tax paid has no role to play in clause (ii) as the bracketed portion in clause (ii) (e) "other than the amount referred to in clause (i) (a)" indicates. In our view, this is what the rule requires the Wealth-tax Officer to do to compute the break-up value of the shares :

- (a) firstly to ascertain the book profits shown by the company in the balance-sheet,
- (b) secondly to ascertain the tax chargeable on that profit in accordance with law,
- (c) thirds to ascertain whether the provision for taxation made on the liabilities side of the balance-sheet is excessive on that basis,
- (d) fourthly to ignore the said excess, if any, and
- (e) fifthly to disregard the provision for advance tax.

7. It is true that the advance tax paid u/s 210 of the Income Tax Act is fictionally not to be treated as assets as per clause (i) (a) and, therefore, to that extent, the assets side of the company get reduced. But there is no scope for reducing the provision for taxation in clause (ii)(e). It is almost a settled practice in accountancy to show advance tax paid as an asset. This practice has been judicial noticed and recognised in clause (i) (a). In the balance-sheet, if advance tax is shown as an asset, the provision for taxation has of necessity to be only of gross tax leviable with reference to the book profits. The submission made on behalf of the Department that once the assets side is fictionally reduced by excluding the advance tax, corresponding reduction of the said amount in the provision for tax liabilities is inevitable, cannot be accepted. The provisions for computation either of assets or of liabilities are artificial and there is no scope to

introduce considerations based on actually in interpreting the same. Tax laws are dry and prosaic, having no place for equity or sentiments and have to strictly construed. There is no room for any intendment or presumption. Nothing is to be read in, nothing is to be implied. One has fairly to look at the plain language used and if it is ambiguous and capable of two constructions, the construction favorable to the subject ought to be adopted.

8. The Gujarat High Court in *Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh*, had occasion to deal with the controversy first. It accepted the view-point put forth on behalf of the assessee and stated (at page 52) :

"In our opinion, sub-clause (a) of clause (i) of Explanation II is intended to give a benefit to the (holders of) shares to those companies, who have been prompt in making payment of their advance tax under the provisions of the law relating to Income Tax. Once having granted that benefit to such companies, the rule-making power wants to indicate in sub-clause (e) of clause (ii) of Explanation II that excess provision to the extent of the excess, when making the provision for liabilities for taxation, other than the provision for advance tax, it to be disregarded and only the provision on the liabilities side by way of provision for taxation to the extent of the tax payable with reference to the book profits in accordance with the law applicable thereto is to be treated as part of the liabilities of the company. It is obvious that under the operative part of rule 1D, the main provision, the balance-sheet of the company so ordinarily to be taken on its face value for the purpose of arriving at the break-up value of share on the basis of net worth. If there is any undue provision for taxation made and thus there is an inflated figure of liabilities shown by making an excess provision for taxation on the liabilities side, to the extent of the excess that provision is to be disregarded by the operation of sub-clause (e) of clause (ii) of Explanation II and that is sound common sense. But because of the words "other than the amount referred to in clause (i) (a)" occurring in parenthesis in sub-clause (e) of clause (ii), if any advance tax is already paid, that has not to be brought back, as the Wealth-tax Officer and the Appellate Assistant Commissioner seek to do in the instant case. Sub-clause (e) of clause (ii) and sub-clause (a) of clause (i) of the rule operate in two different fields altogether. Clause (i) (a) operates in the field at actual payment of advance tax. Clause (ii) (e) operates in the field of excess provision for taxation other than the provision for taxation regarding advance tax, and it is in this light that rule 1D has to be approached."

9. The aforesaid decision has been followed in the case of *CWT v. Pratap Bhogilal* [1987] 167 ITR 501 by this court. It analysed clause (ii) (e) thus (at page 504) :

"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 books profits in accordance with the law applicable thereto."

10. 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."

11. In the above decision, contrary views supporting the Department taken by the Punjab and Haryana High Court in the case of Ashok Kumar Oswal Vs. Commissioner of Wealth-tax, and the Karnataka High Court in Commissioner of Wealth Tax Vs. N. Krishnan, have been noticed and dissented from. The Bombay High Court decision is not only binding upon us but in and the Gujarat High Court decision commend themselves to us. Conclusion is thus inevitable that the liability mentioned in clause (ii) (e) has to be treated in its entirety.

12. This court is the jurisdictional court for the Tribunal. The Tribunal has refused the reference on the ground that the point was settled in favour of the assessee by the above binding decision of the Bombay High Court. The Tribunal is plainly right there. This court had already expressed an opinion on that law point after taking into consideration differing and conflicting views of various High Court and no useful purpose would have been served by making a reference u/s 27(1) of the Wealth-tax Act, because that would be a futile and unnecessary effort for the Tribunal to undertake, since the answer would have been a foregone conclusion. In situations like this, it should also be deemed that the case was stated to the High Court and, following the earlier decision, the High Court answered the questions in favour of the assessee. Thus, the decision of the Tribunal, under the circumstances, cannot be faulted on any ground.

13. It is true that the controversy has not come to an end with the above Bombay High Court decision. The Madras High Court in L.G. Balakrishnan and Others Vs. Commissioner of Wealth-tax, , preferred the views taken by the Gujarat and Bombay High Court and differed from the views taken by the Punjab and Haryana and Karnataka High Courts. Within a few days thereafter, the Andhra Pradesh High Court, in the case of Commissioner of Income Tax Vs. M. Lakshmaiah and Another, , decided the point in favour of the Revenue, disagreeing with the views of the Gujarat and Bombay High Court and agreeing with the views of the Punjab and Haryana and Karnataka High Courts, but not noticing the above Madras High Court decision. It has held (at page 8) :

"Now, the entire exercise, as we see, is to ensure that the total amount of tax payable by an assessee on the income, profits and gains for the relevant assessment year is allowed as a deduction. The deduction is allowed partly by excluding the advance tax already paid from the assets side and partly by allowing the balance by way of provision for taxation on the liabilities side."

14. For the reasons already noticed, we respectfully disagree with the above view. Controversy is going on. We are informed that the Department has challenged the Gujarat High Court decision in the Supreme Court. The Andhra Pradesh High Court has granted leave to appeal to the Supreme Court u/s 29(1)

of the Wealth-tax Act. The point is thus pending in the Supreme Court, but that pendency, under the circumstances, is no ground to earlier entertain these applications or to keep them pending.

15. Under the circumstances, the applications are summarily rejected without issuing notice to the assesseees.