
(1990) 01 DEL CK 0019

In the Delhi High Court

Case No : Wealth-tax Case No. 114 of 1989

Commissioner of Wealth Tax

APPELLANT

Vs

R.K. Gupta

RESPONDENT

Date of Decision : 24-01-1990

Acts Referred:

Citation : (1990) 87 CTR 93 : (1990) 183 ITR 640 : (1990) 52 TAXMAN 373

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : R.C. Pandey, for the Appellant; K.K. Wadhera, for the Respondent

Final Decision : Dismissed

Judgement

Kirpal, J.—This is an application u/s 27(3) of the Wealth-tax Act, 1957, whereby the petitioner seeks a direction to the Tribunal to state the case and refer the following question of law to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in upholding the order of the Commissioner of Wealth-tax (Appeals) who directed the valuation of shares of the private limited company by adopting the yield method as against rule 1-D of the Wealth-tax Rules?"

2. Briefly stated, the facts are that the wealth-tax Officer was concerned with the valuation of the shares of Messrs. Doorvani cables (P.) Ltd. which were held by the respondent. The Wealth-tax Officer valued the said shares by applying rule 1-D of the Wealth-tax Rules. An appeal was filed against this order and, following the decision of this court in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, , the Commissioner of Wealth-tax (Appeals) directed that the said shares should be valued by applying the yield method.

3. The Wealth-tax Officer filed an appeal before the Tribunal. The Tribunal, following the decision of this court in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, , dismissed the appeal. Thereafter, an

application u/s 27(1) was filed but the same was also dismissed by the Tribunal. Hence, this petition u/s 27(3).

4. The contention of learned counsel for the petitioner is that, on the question regarding the applicability of rule 1D, there is divergence of opinion among the different High Courts and, Therefore, this court should direct the Tribunal to state the case and refer the question of law. According to learned counsel, the Allahabad and Kerala High Courts have taken the view that rule 1D is applicable (see Commissioner of Wealth-tax Vs. Padampat Singhania, , Bharat Hari Singhania Vs. Commissioner of Wealth-tax, , Commissioner of Wealth-tax Vs. Sripat Singhania, , Commissioner of Wealth-tax Vs. Laxmipat Singhania, , COMMISSIONER OF WEALTH-TAX Vs. MAMMAN VARGHESE and OTHERS., and Mrs. Grace Collis and Others Vs. Commissioner of Wealth-tax, . Apart from Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, , the Bombay High Court has also held that the share should be valued by applying the yield method in the case of Smt. Kusumben D. Mahadevia V. N. C. Upadhyaya and Others Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I, . In that case, however, rule 1D was not under consideration. Nevertheless, the only other decision which is relevant is that of D. Renuka Vs. Commissioner of Wealth-tax, , where the view expressed by the Delhi High Court in Sharbati Devi's case [1986] 156 ITR 549 was followed in preference to the view of the Allahabad and Kerala High Courts.

5. The contention of learned counsel for the petitioner is that there being difference of opinion amongst the different High Courts, the question of law which has been proposed should be ordered to be referred. According to Shri Pandey, the matter is now pending adjudication in the Supreme Court because special leave petitions against the decision of the Allahabad High Court have been admitted and a SLP against the decision of Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, has been filed in the Supreme Court. Learned counsel has relied on a decision of the Kerala High Court in State Bank of Travancore Vs. Commissioner of Income Tax, and contended that, in that case also, the Kerala High Court had given a decision on a point for an earlier year and in respect of the subsequent year, when a similar question once again arose, the High Court directed that reference should be called for. Learned counsel submits that in the case of State Bank of Travancore Vs. Commissioner of Income Tax, , in respect of the earlier year, a SLP was pending before the Supreme Court and this was the factor which had weighed with the court. The case of State Bank of Travancore Vs. Commissioner of Income Tax, , is clearly distinguishable. The earlier decision of that court had not been followed by another decision of the same High Court. In other words, there were two conflicting decisions of the Kerala High Court on the point in issue. Appeals were pending in the Supreme Court and as the correctness of the earlier decision had been doubted by some other High Courts, an application u/s 256(2) was allowed. In the present case, with regard to the interpretation of rule 1D, qua the method to be followed for valuation of the shares, the ratio of Sharbati Devi Jhalani Vs.

Commissioner of Wealth Tax, Delhi-VII, and others, , has not been differed from by any other High Court. While the Andhra Pradesh High Court has followed the ratio of the decision of this court, Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, has not been referred to in the decision of the other High Courts. Our attention has, however, been drawn to a decision of the Punjab High Court in the case of Raj Paul Oswal Vs. Commissioner of Wealth-tax, , but that is only concerned with section 16A of the Wealth-tax Act and is not concerned with the interpretation of rule 1D.

6. It is submitted by learned counsel for the petitioner, while relying upon a number of decisions, that, in dealing with an application u/s 256(2), the court is not required to go into the merits of the question proposed to be raised. All that the court should see is whether a question of law arises or not. The contention urged by Shri Pandey is, in our opinion, basically correct but if the answer to the question proposed is self-evident or it is academic, then the court will not direct a question to be referred. Shri Pandey submits that a question of law can be regarded as academic only if, on that point, there is a decision of the highest court of the land, namely, the supreme Court. We are unable to agree with this wide proposition. As far as this court is concerned, the matter stands concluded by the decision in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, . That decision is final and binding as far as the Income Tax Appellate Tribunal is concerned with regard to those cases which fall within the jurisdiction of Delhi. As far as this court is concerned, unless it is persuaded to hold that the earlier decision requires reconsideration, as was the case which arose before the Kerala High Court in State Bank of Travancore Vs. Commissioner of Income Tax, , the answer to the question which will be referred to this court would be academic or self-evident. If the application u/s 27(3) is allowed and a reference is made to this court, what will happen to the reference when it is heard? As far as this court is concerned, following the decision in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, , the answer will have to be in favor of the assessee. At this stage, Therefore, it is known that the question which will be referred is bound to be answered against the Revenue. In other words, the answer to the question proposed is self-evident. As we have already observed, it is possible that, in a particular case, notwithstanding an earlier decision of the court, the petitioner may be able to persuade the Bench hearing an application u/s 27(3) of the Wealth-tax Act or section 256(2) of the Income Tax Act that, for good reasons, the earlier decision may require reconsideration. In that event, the Bench issuing a reference would be in a position to observe that the case should be heard by a larger Bench, in which case, one will not be able to say that the answer to the proposed question is self-evident or academic. In the present case, we are not persuaded to hold that the earlier decision needs reconsideration. As we have already observed, the decision in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, with regard to the interpretation of rule 1D is referred to in only one decision, namely, that of the Andhra Pradesh High Court and the same has been followed.

Though curiously enough the Andhra Pradesh High Court has not cited the decision yet, they stated that the Delhi High Court has taken the view which has been expressed by us in *Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII*, and others, . The decision in *Commissioner of Income Tax, Punjab Vs. Jai Parkash Om Parkash Company Ltd.*, and *Commissioner of Income Tax, Ernakulam Vs. Managing Trustee, Jalakhabai Trust*, , which are to effect that it is not for a court to decide an application u/s 256(2) without going into the merits of the case, is of no assistance to the petitioner's counsel for, as we have already observed, though a question of law does arise, the answer to it is self-evident or academic. To this limited extent, the court is entitled to go into the merits of the question which is proposed in order to see whether the answer to the question proposed is a academic or is self-evident.

7. For the aforesaid reasons, the petition is dismissed. There will be no order as to costs.