(1990) 01 DEL CK 0017

In the Delhi High Court

Case No : Wealth-tax Case No. 108 of 1989

Commissioner of Wealth Tax APPELLANT

Vs

Sharbati Devi Jhalani RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Citation : (1990) 84 CTR 133 : (1990) 182 ITR 487 : (1990) 52 TAXMAN 12

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

Bench : Division Bench

Advocate : P.N. Misra and R.C. Pandey, for the Appellant;

Judgement

B.N. Kirpal, J.—The petitioner seeks reference of the following question of law to this court :

"Weather, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the order of the Commissioner of Wealth-tax (Appeals) directing the valuation of shares of M/s. Gedore Tools India P. Ltd. on yield basis as against the value of the shares worked out in accordance with rule 1D of the Wealth-tax Rules ? "

2. The question involved is, in our opinion, covered by a Division Bench authority of this court in the case of the assessed herself, namely, Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, .

3. Learned counsel for the petitioner states that the said decision of this court has not been accepted by the Department and a SLP is pending in the Supreme Court. Be that as it may, as far as this court is concerned, the decision in the aforesaid case clearly covers the present controversy before us and, as far as this court is concerned, the question sough to be raised is academic.

4. Learned counsel for the petitioner then sought to contend that even if Sharbati Devi Jhalani''s case [1986] (Delhi) 159 is correct, nevertheless it has not been correctly applied by the Tribunal. It is sought to be contended that this court

never meant that rule 1D would not apply if the valuation date of the company, whose shares are not quoted, and the valuation date of the assessed do not coincide. We don not agree with this submission. At page 559, this court observed as follows :

"In order to uphold the validity of rule 1D and at the same time not to do violence to the language of the relevant provisions, we are of the opinion that where the valuation date of the company and of the assessed is the same, then the application of rule 1D is mandatory. Where, however, the two dates to not coincide, then the applicability of rule 1D would be directory and not mandatory. In the letter case, it will be open to the assessed to show to the Wealth-tax Officer that on his valuation date the value of the unquoted shares was different from the value as arrived at by applying rule 1D. In the former case, where the dates of valuation are identical, the Wealth-tax Officer will have to compute the value of the unquoted shares by applying rule 1D. Where, however like the present, the valuation dates are not the same, even the Wealth-tax Officer may not be bound to take recourse to the provisions of rule 1D.

5. The meaning of the aforesaid passage is very clear. It is this that rule 1D will apply compulsorily if the valuation date of the company and of the assessed is the same. If the two dates are different, then the assessed can show to the Wealth-tax Officer that on his valuation date, the value of the unquoted shares arrived at by the yield method is the one which should be adopted. By saying that in such a case, namely, where the two dates are different, rule 1D is directory what is meant is that if the assessed choose not to take recourse to valuing the shares as per the yield method, then it is open to the Wealth-tax Officer to apply rule 1D. It is in this sense that it was observed by this court that rule 1D is directory where the valuation date of the company and the valuation date of the assessed do not coincide. In such a case, if the Wealth-tax Officer proposes to invoke rule 1D, it will be open to the assessed either to accept it, in which case the shares will valued as per rule 1D, or to dispute the valuation and if the assessed chooses not to accept the valuation as per rule 1D, then the shares have to be valued according to the yield method as has been specified by the Supreme Court in the cases of Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., and Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, . This is exactly what we have said in Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, .

6. Reference to section 16A was made because if there is difference in the value as returned by the assessed and the value estimated by the Wealth-tax Officer and that difference is more than what is prescribed by the Rules, then reference has to be made u/s 16A to the Valuation Officer. How the Valuation Officer is to value has been indicated at page 561 in the following words :

"Once such a reference has been made, the valuation has then to be determined by the Valuation Officer. The value of the asset which has to be determined by the Valuation Officer has to be arrived at according to section 7(3) of the Act.

Sub-section (3) of section clearly provides that the asset is to be valued by the Valuation Officer by determining what will be its price if sold in the open market on the valuation date. In case the asset is a house, then the determination is to be of its market value on the valuation date as specified in sub-section (4). Sub-section (3) opens with the words ''notwithstanding anything contained in sub-section (1)''. This will mean that notwithstanding there being anything contrary in sub-section (1), the Valuation Officer is to estimate the value of an asset in the manner specified in sub-section (3). In other words, the powers of the Valuation Officer are not subject to any rules which may be made in determining the value of an asset. The Valuation Officer, Therefore, is not bound to value the unquoted shares by adopting the method prescribed by rule 1D. The Valuation Officer is to value the unquoted shares by estimating what it would fetch if sold in the open market on the valuation date. How such shares are to be valued has been specified by the Supreme Court in Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., and Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, ."

7. The Valuation Officer is not bound by the provisions of section 7(1) and the rules framed there under and has to value the shares u/s 7(3) and in the case of unquoted shares, the valuation is to be in the manner specified in the aforesaid decisions of the Supreme Court. This is what is evident from the aforesaid observation in our judgment.

8. In our opinion, even through a question of law arises in this case, the same is academic because of our earlier decision in the assessed own case. Dismissed. There will be no order as to costs.

9. Petition dismissed.

