
(1991) 07 CAL CK 0024
In the Calcutta High Court
Case No : Matter No. 634 of 1991

Commissioner of Wealth Tax

APPELLANT

Vs

Smt. Manorama Devi Birla

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Wealth Tax Rules, 1957 — Rule 1D

Citation : (1993) 199 ITR 250

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(3) of the Wealth-tax Act, 1957, the following questions of law have been referred to this court for the assessment year 1981-82:

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in directing the Assessing Officer to value the unquoted shares by applying the yield method ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the valuation of the coffee estate made by the Wealth-tax Officer on the basis of the Board's Circular No. 357 dated March 26, 1983 (see [1983] 143 ITR 4)?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the Assessing Officer to accept the valuation of shares of the assessee in the coffee estate as shown by the assessee on the basis of the report of a registered valuer?"

2. The facts relating to the first question are that the assessee had shares of the following companies :

1. Birla Bros. Pvt. Ltd.,

2. Hyderabad Agencies Pvt. Ltd.,

3. Kores India Ltd.,
4. Birla Consultants Ltd.,
5. Jayant Investment Corporation Pvt. Ltd., and
6. Central India General Agents Ltd.

3. The said shares are unquoted. The Wealth-tax Officer valued the shares of the first four companies on the break-up method. So far as the other two companies are concerned, the Wealth-tax Officer adopted the maintainable profit method in determining the valuation of the shares.

4. In Matter No. 149 of 1987 in the case of Commissioner of Wealth Tax Vs. India Exchange Traders' Association, where the judgment was delivered on March 21, 1991, it has been held that Rule 1D is mandatory. Therefore, the value of the unquoted shares of the first four companies has to be made on the break-up method as was done by the Wealth-tax Officer. Since the Wealth-tax Officer himself adopted the maintainable profit method in determining the value of shares of the other two companies, e.g., Jayant Investment Corporation Pvt. Ltd. and Central India General Agents Ltd., and there being no challenge to such valuation, we cannot interfere with such determination.

5. We, therefore, answer the first question in the negative so far as the shares of the first four companies are concerned.

6. The facts relating to the second and third questions are that the assessee held a share in a coffee plantation known as Billigiri Rangan Estate. The value of the above assets disclosed was supported by the valuation reports. He valued the interest of the assessee in the coffee estate on the basis of the circular of the Central Board of Direct Taxes dated March 26, 1983 (see [1983] 143 ITR 4), and allowed deductions as provided in the above circular.

7. The assessee challenged the assessment order in appeal before the Commissioner of Wealth-tax (Appeals) and contended that the Wealth-tax Officer should have accepted the value of tea estates as shown in the valuation reports. The Commissioner of Wealth tax (Appeals) examined the valuation reports as also the value taken by the Wealth-tax Officer. He was of the view that, in view of the difference in valuation of the agricultural assets of Billigiri Rangan Estate, the Wealth tax Officer should have referred the matter of valuation to the Departmental Valuation Officer u/s 16A of the Wealth-tax Act. He, therefore, set aside the assessment and directed the Wealth-tax Officer to refer the matter of valuation of unquoted shares other than shares of Messrs. Birla Brothers Pvt. Ltd. and agricultural estate to the Departmental Valuation Officer u/s 16A of the Wealth-tax Act.

8. Both the assessee and the Revenue filed appeals against the order of the Commissioner of Wealth-tax (Appeals) before the Appellate Tribunal. Before the Tribunal, it was contended that the matter in issue stood fully covered as per the

decision of the Tribunal dated April 21, 1988, in the case of K.K. Birla (HUF). The learned Departmental Representative also conceded that the matter in issue was fully covered by the said decision. The Tribunal then issued the following directions :

" We have carefully considered the rival contention for the parties. In our view, the decision of the Tribunal, B-Bench, Calcutta, cited before us fully covered all the issues raised before us. The arguments advanced before us have already been considered in the above decision. We do not see any reason for taking a view other than what was taken in the above case. In the above case, in paragraph 4, the Bench in the case of K. K. Birla (HUF) for the assessment year 1981-82 held as follows :

The assessee's argument is correct that the first appellate authority cannot direct the Assessing Officer to refer the matter of valuation to the Departmental Valuation Officer when this power was not exercised by the Assessing Officer. The argument taken by the assessee in this behalf is supported by the decision in M. Vs. KIBE v. COMMISSIONER OF WEALTH-TAX., . Further, the matter of valuation of shares in private limited companies is covered by the decision of the Tribunal (Special Bench) in W. T. A. No. 478/(Cal) of 1987 and W. T. A. No. 440/(Cal) of 1987, wherein it has been held that Rule 1D is not mandatory, and it was directed that the shares should be valued on the yield method. Consequently, the Assessing Officer is directed to value the shares of private limited companies by applying the yield method and the valuation shown by the assessee on the basis of the registered valuer's report, should not be accepted. So far as the assessee's share in the coffee estate is concerned, the same has been accepted by the Tribunal in the case of K. K. Birla (HUF) for the assessment years 1979-80, 1980-81 and 1981-82 (supra). Following the said orders of the Tribunal, the valuation of the share of the assessee in the coffee estate as shown by it is accepted."

The above directions shall equally apply to the case of the assessee for the valuation of the share of the assessee in the coffee estate as also the unquoted shares of limited companies are concerned. Accordingly, the order of the Commissioner of Income Tax (Appeals) is set aside and the Wealth-tax Officer is directed to make reassessment as per directions referred to above. Only as a matter of clarification, we may point out that while valuing unquoted shares of an investment company by the yield method the rate of capitalisation is to be taken at 15 per cent. as per decision in the case of Smt. Sushila Devi Birla (supra)."

9. At the hearing before us, Mr. Bajoria, learned counsel has contended that the circular dated March 26, 1983, is not binding on a quasi-judicial authority. He has also submitted that there is no rationale behind the determination of the valuation as made in the aforesaid circular. He has very fairly submitted that, in view of the decision of this court in Raja Baldeodas Birla Santatikosh Vs. Commissioner of Wealth Tax, , the Tribunal was competent to give a direction for

referring the valuation u/s 16A of the Act to the Departmental Valuation Officer. Mr. Bajoria has drawn our attention to the decision of this court in the case of Commissioner of Wealth Tax, Central Vs. Balbhadradas Bangur, , where a Division Bench of this court held that the circular issued by the Central Board of Direct Taxes is binding on the revenue authorities but they are not binding on the Tribunal or on the assessee.

10. On the other hand, learned counsel for the Revenue justified the action of the lower authority.

11. We have considered the rival contentions.

12. The circular which has been referred to by the Tribunal is as follows (see [1983] 143 ITR 4) :

"Circular No. 357, dated March 26, 1983

Subject : Valuation of agricultural land comprised in tea, coffee, rubber and cardamom plantations--Guidelines regarding.

Attention is invited to the Board's Circular No. 326 dated February 6, 1982, issued from file No. 319/15/80-WT (reported in [1982] 134 ITR 167) on the above subject. In view of various practical difficulties in implementing this circular, the Board makes the following broad guidelines for the valuation of lands comprised in coffee plantations in order to have some uniform procedure for speedy completion of the pending assessments as far as Karnataka charges are concerned.

2. The plantation land in the coffee plantations may be classified into the following three categories, namely :

(a) lands covered by plants which have started yielding ;

(b) virgin land which is in the process of being developed and land covered by plants which have not started yielding ;

(c) virgin land capable of being planted but which has not been planted and lands not falling in any of the above specified categories.

3. In valuing lands at 2(a) above, the value will be determined on the basis of yield per acre. As far as coffee plantations are concerned, the following yield/ value pattern was considered reasonable :

Yield per acre in Kgs. Valuation Rs.

250 and below 5,000

251 - 350 6,000

551 - 450 7,000

451 - 550 9,000

551 - 650 11,000

651 - 750 13,000

751 and above 15,000

The average of six years" production of the yielding area is to be arrived at on this basis. Where, however, six years data is not available, the average is to be worked out with reference to the number of years for which yield is available.

4. In respect of lands at 2(b) above, the value may be taken at Rs. 3,000 per acre with due consideration to peculiar factors in individual cases. With regard to value of lands at 2(c) above, no value need be taken as the value of such virgin lands may be negligible.

5. Regarding the stock of coffee, value of the same may be separately determined on the basis of the average of the preceding three years" dividends and added to the value of the land.

6. With regard to the other assets, such as land utilised for constructing roads, paths, farm houses, store houses, yards, buildings for processing, building for housing the coolies and the supervisory staff, etc., no separate addition need be made.

7. Pending wealth-tax assessments involving valuation of coffee plantations may be finalised on the above basis.

(Sd.) (P. Ranganathan) Under Secretary, C. B. D. T. (F. No. 319/9/83-WT)."

13. According to the submission of Mr. Bajoria, valuation cannot equated with taxation and there is no reasonable basis for holding that wherever the yield per kg. would exceed even by 1 kg. the next higher value has to be adopted. As for example, if the yield per acre is 250 kgs. and below, the valuation would be Rs. 5,000, whereas if the yield is 251 kgs., the value will be taken as Rs. 6,000. This, according to Mr. Bajoria is arbitrary and there is no basis for determining the value in accordance with the said circular.

14. We have already noted that the assessee filed the valuation made by a Registered Valuer. Since the Wealth-tax Officer was of the view that the aforesaid circular is binding on him, he did not consider the valuation report of the registered valuer at all. The Commissioner of Wealth-tax (Appeals) was of the view that, having regard to the difference between the valuation made by the Wealth-tax Officer on the basis of the circular and the valuation made by the Registered Valuer, the matter should be referred to the Valuation Officer u/s 16A of the Act. The Tribunal was, however, of the view that since the Wealth-tax Officer did not exercise that jurisdiction by referring the matter of valuation to the Valuation Officer, having regard to the fact that there was a difference in the two valuations--one made by the Wealth-tax Officer and the other by the Registered Valuer, at this stage, this power could not be exercised by the Wealth-tax Officer pursuant to the direction of the Commissioner of Wealth tax

(Appeals). In other words, the Commissioner of Wealth-tax (Appeals) did not have any jurisdiction to ask the Wealth-tax Officer to refer the matter of valuation to the Valuation Officer. In *Raja Baldeodas Birla Santatikosh Vs. Commissioner of Wealth Tax*, , a Division Bench of this court considered this aspect of the matter. It was held that the appeal was a continuation of the original proceedings. The bar of limitation is on the Wealth-tax Officer's power to make an assessment. It will be applicable only to the initial order to be made by him and not to an order that would be made by him pursuant to a direction from the appellate authority. Accordingly, the Commissioner of Income Tax (Appeals) was competent to give the direction as he did.

15. So far as the question regarding the acceptance of the valuation on the basis of the circular is concerned, it is no doubt true that the circular is not binding on the assessee if it is not accepted by the assessee. The valuation can always be challenged by the assessee even if it is made on the basis of the circular unless it is consented to by the assessee. In this case, as we have indicated, the assessee asked the Wealth-tax Officer to accept the valuation made by the Registered Valuer. But since the Wealth-tax Officer was of the view that he was bound by the said circular, he did not consider the valuation report at all. It is not necessary for us to go into the question whether the circular is arbitrary or not. It is no doubt true that there has been linkage of the yield per acre and the valuation of the coffee estate. In our opinion, no valuation can be made in arithmetical precision. The circular purports to give a broad guideline as to how the valuation of coffee plantation has to be made. The Registered Valuer has also valued the plantation. In such a case, it would have been proper for the authorities to refer the matter to the Valuation Officer for determination of the valuation. Having regard to the facts and circumstances of this case, we are of the view that the matter should be remitted to the Tribunal for fresh determination of the valuation of the coffee estate taking into account the circular of the Board dated March 26, 1983, as well as the valuation made by the Registered Valuer and all other relevant factors for determination of such valuation. The Tribunal may, if it considers fit and proper, refer the matter to the Valuation Officer and thereupon decide the issue after allowing the parties an opportunity of being heard.

16. We, therefore, decline to answer questions Nos. 2 and 3 and send back the matter on remand to the Tribunal to decide the question of valuation of the coffee estate in the light of the observations made in the judgment.

17. There will be no order as to costs.

Shyamal Kumar Sen, J.

18. I agree.