
(1976) 12 AHC CK 0020

In the Allahabad High Court

Case No : Wealth-tax Reference No. 850 of 1973

Commissioner of Wealth-tax

APPELLANT

Vs

Sripat Singhania

RESPONDENT

Date of Decision : 14-12-1976

Acts Referred:

Wealth Tax Act, 1957 — Section 24, 24(5), 7(1)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1978) 112 ITR 363

Hon'ble Judges : R.M. Sahai, J;D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : Deokinandan and Ashok Gupta, for the Appellant; N.B. Upadhyya, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, has referred the following question for the opinion of this court.

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in approving the assessee's method of valuation in respect of unquoted shares in preference to the valuation adopted by the wealth-tax authorities as per provision of Rule 1(D) of the Wealth-tax Rules, 1957 ? "

2. The short facts giving rise to this reference are :

Proceedings out of which this reference has arisen related to the assessment to wealth-tax for the assessment year 1968-69. The assessee is an individual. He owned certain shares in companies belonging to J. K. group of companies. Those shares were not regularly quoted in recognised stock exchanges. He worked out the market value of the aforesaid shares by adopting the mean of their break-up value and the fair price of the shares arrived at by taking into account the average yield of the shares on the basis of dividends declared in the immediately preceding five years taking the value at par if the yield came to 8 per cent. The

Income Tax Officer did not accept the method of valuation. According to him, unquoted shares had to be valued as per Rule 1D of the Wealth-tax Rules introduced in the year 1967. The assessee filed an appeal but with no success. The assessee took up the matter in further appeal before the Tribunal which accepted the assessee's method of valuation of the shares which had been accepted by the Tribunal in earlier years.

3. Sri Upadhyaya, appearing for the assessee, has raised a preliminary objection that the question of law referred to this court does not arise out of the order passed by the Tribunal as that question is based on the findings recorded by it on the concession made on behalf of the revenue. In support of his submission he has relied upon the decision in *Surjidevi Kunjilal Jaipuria Charitable Trust Vs. Commissioner of Income Tax*, and *Commissioner of Income Tax Vs. Shiv Nath Prasad*, .

4. The principles laid down in these two decisions is beyond dispute. The question, however, is whether the findings recorded by the Tribunal in this case were based on any concession made on behalf of the revenue.

5. It appears that the learned counsel for the assessee, before the Tribunal, had contended that Rule 1D was ultra vires the provisions of the Wealth-tax Act. The argument of the learned counsel for the revenue, in reply to the above contention, has been summarised by the Tribunal as follows :

" Dr. Misra submitted that Section 7(1) of the Wealth-tax Act specifically mentions the Wealth-tax Officer, who alone is required to take into consideration of wealth accordingly. According to Dr. Misra, the provisions of Section 24(6) of the Act are independent and there is no conflict between the exercise of power by the Wealth-tax Officer u/s 7(1) read with Rule 1D and the exercise of its appellate power by Tribunal u/s 24(6) of the Act. He pointed out that the valuers may be required to conform to Rule 1D but this rule does not impose any fetters on the powers of the Appellate Tribunal to make a reference to them. He submitted that in that case the valuers will not be bound by Rule 1D and it is made clear by Section 24(6), which contemplates an enquiry, and determination of the value of an asset after enquiry need not take into consideration the provision of Rule 1D."

6. Sri Upadhyaya has laid great emphasis on the argument of Dr. Misra before the Tribunal that the Wealth-tax Officer alone is required to take into consideration Rule 1D in making computation of wealth-tax. From this he wanted us to infer that the revenue had conceded before the Tribunal that this rule was not binding on the Tribunal. We do not find any justification for such an inference. The above argument appears to have been advanced to highlight the respective powers of the Wealth-tax Officer u/s 7(1) and of the Tribunal u/s 24(6). As a matter of fact, the assessee was the appellant before the Tribunal and he did not object to the application of the provisions of Section 24(6) for valuation of his shares. But as the validity of Rule 1D was challenged on behalf the assessee, the learned

counsel for the revenue appears to have defended the validity of that rule by raising the argument that there was no conflict between Rule 1D and Section 24(6). We cannot, in the circumstances, read in the above argument any concession made on behalf of the revenue. The principles laid down in these two decisions, in our opinion, is not applicable to the present case. The preliminary objection, in the circumstances, is overruled.

7. The Tribunal held that Rule 1D and Section 24(6) of the Act operate in different spheres. It proceeded immediately thereafter to hold that the method of valuation adopted by the Tribunal for the earlier assessment year might be accepted for this assessment year also as the revenue appears to have been satisfied with the method of valuation adopted in earlier years and did not adopt the course provided in Section 24(6). We must confess our inability to appreciate the reasoning adopted by the Tribunal. Section 24(6) entitles an appellant to object to the valuation of any property and to require the Tribunal to refer the question to two valuers. This is a special power conferred on the Tribunal which can be exercised only if an objection to valuation is raised by the appellant. Admittedly, the course provided by Section 24(6) was not invoked by the assessee. The Tribunal which was hearing an appeal against the order passed by the Appellate Assistant Commissioner could u/s 24(5) pass such order it thought fit. The scope of the appellate power of the Tribunal is, no doubt, expressed in the widest terms in Section 24(5). Yet it is difficult to accept the submission of Sri Upadhyaya that the Tribunal can, in exercising its powers, ignore Rule 1D. That rule has been framed u/s 7(1). It has the force of law. The Tribunal constituted under the Act has to decide in accordance with the principles of the Act and the rules thereunder.

8. Counsel for the assessee further relied on the words " in the opinion of the Wealth-tax Officer " occurring in Section 7(1) and has argued that that rule applies only to the Wealth-tax Officer while he exercises his power under this section.

9. Rule 1D lays down the method of determination of the value of an unquoted equity share of any company other than an investment company or a managing agency company. There is nothing in this rule to indicate that it shall be followed only by the Wealth-tax Officer. The Act provided that so long as the rules are not framed, the Wealth-tax Officer shall estimate the price which it would fetch if sold in the open market on the valuation date. After the framing of the rules in 1967 the valuation of unquoted equity shares has to be determined u/s 7(1) read with Rule 1D.

10. Relying on the observation in *The Commissioner of Income Tax Vs. Mcmillan and Co.*, , counsel for the revenue has urged that the Tribunal exercises the same powers as are exercised by the Wealth-tax Officer u/s 7(1) while valuing an asset. He has urged that the mere use of the word " in the opinion " does not in any manner indicate that the rule is not binding on the Tribunal.

11. In *The Commissioner of Income Tax Vs. Mcmillan and Co.*, the Supreme Court while construing Section 31 of the Indian Income Tax Act, 1922, explained the powers of the Appellate Assistant Commissioner, at page 192, thus :

" Our attention has been drawn to the difference to language in which the two conditions for the application of the proviso have been expressed ; the first condition is fulfilled if no method of accounting is regularly employed ; the second condition, however, requires an opinion, viz., the opinion of the Income Tax Officer that the income, profits and gains cannot be properly deduced from the method of accounting regularly employed. It is pointed out that the first condition involves an objective determination--not by any named authority but by any and every authority which may have to consider whether the condition as to the regularity of the method employed has been fulfilled or not; whereas the second condition involves a determination by a named authority. The argument is that by reason of the aforesaid difference in language, the legislature clearly intended that the opinion of no other officer can be substituted for the opinion of the named authority, viz., the Income Tax Officer, with regard to the fulfilment of the second condition. Therefore, once the Income Tax Officer accepts the method of accounting as proper, the Appellate Assistant Commissioner has no jurisdiction to go behind that opinion. We are unable to accept this argument as correct. It is to be remembered that with regard to both conditions, the first and initial duty is that of the Income Tax Officer to determine whether the conditions or any of them are fulfilled, secondly, if the opinion of the Income Tax Officer with regard to the second condition is to be inviolate by reason of the difference in language, then it should be inviolate in all cases. Why should it be inviolate in one case and not so when the assessee appeals against a determination made adverse to him ? We feel that the second condition is expressed in the terms in which it has been expressed, because it involves an inferential process and the expression " in the opinion of the Income Tax Officer " is aptly used as that officer must in the first instance make the determination. It does not necessarily follow that the Appellate Assistant Commissioner cannot revise the determination and exercise the power which the Income Tax Officer could exercise."

12. We agree that the powers exercisable by the Tribunal u/s 24 are not different from that exercisable by the Wealth-tax Officer u/s 7(1). The words " as it thinks fit " occurring in Section 24(5) do not permit the exercise of power otherwise than in accordance with the principles of the Act, and the rule framed thereunder. Assessment, appeal to the Appellate Assistant Commissioner and further appeal to Tribunal are parts of an integrated process. It is well established that an appellate court or authority exercises the same power as the trial court or assessing authority. We do not agree that the use of the expression " as it thinks fit " in any manner takes away or whittles down the binding effect of Rule 1D. The Tribunal has to consider the orders passed by the authorities below in the light of the law applicable to those authorities.

13. For the reasons stated above our answer to the question referred is :

" The Tribunal was not justified in approving the assessee's method of valuation in respect of unquoted shares which was not in accordance with Rule 1D of the Wealth-tax Rules. "

14. The department shall be entitled to its costs which we assess at Rs. 300.