(1990) 11 CAL CK 0006

In the Calcutta High Court

Case No : WT Matter No. 925 of 1990

Commissioner of Wealth Tax APPELLANT

Vs

Surrendra Paul RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:
Wealth Tax Act, 1957 — Section 16(3), 25(2), 25(3), 27(1), 27(3)

Citation : (1994) 76 TAXMAN 267

Hon'ble Judges : Bhagabati Prasad Banerjee, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Sengupta, J.—In this application u/s 27(3) of the Wealth-tax Act, 1957 (''the Act''), the following questions have been raised for the assessment year 1982-83:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the value of unquoted shares could be determined either by applying rule 1D of the Wealth-tax Rules, 1957 or by the yield method and not in accordance with the mandatory provisions of rule 1D, ibid, alone ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the wealth-tax assessment order dated 10-3-1987 passed by the Assessing Officer for the assessment year 1982- 83 was neither erroneous nor prejudicial to the interests of the revenue ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order u/s 25(2) of the Wealth-tax Act, 1957 dated 15/23-3-1989 passed by the Commissioner (Central-I), Calcutta ?

It is necessary to state the facts to appreciate the contentions raised.

The WTO in the assessment order dated 10-3-1987 has observed as follows:

The assessee has shown the value of unquoted share in respect of one Indian company at Rs. 38,3 89. In respect of other five companies the value has been shown at Rs. nil. The assessee has furnished fair market value of unquoted shares in respect of five companies on the basis of profit-earning method. The value of unquoted shares is to be determined u/s 7(1) of the Wealth-tax Act, 1957 read with rule 1D which is mandatory. I, therefore, adopted the value of unquoted shares at Rs. 91,685 as in last year for want of any break-up value under rule 1D.

2. Net wealth is computed as below: Movable property:

(1) Shares in Indian companies :

(a) Unquoted shares as discussed

Rs. 91,685

(b) Quoted shares as per statement filed

Rs. 5,112

Rs. 96,797

Against the said order of assessment an appeal was preferred by the assessee before the AAC. The order of the AAC dated 11-1-1988 is as follows:

Ground No. 3 relates to the valuation of unquoted equity shares at Rs. 91,685 against the appellant''s valuation at Rs. 38,389. The appellant applied the yield method and the ITO applied the break-up value method as per rule 1D of the Wealth-tax Rules, 1957. The appellant relied on the case laws of Mahadeo Jallan and Smt. Kusumben D. Mahadevia. I have already held in my orders in appellant''s other group cases that the above cases are not applicable in present case. Mahadeo Jallan case relates to assessment year 1964-65 and the rule 1D come into existence with effect from 6-10-1967. Present case is for assessment year 1982-83. Kusumben D. Mahadevia case relates to investment company. Rule 1D is not applicable in investment company. Present case is not related to investment company. Thus, the Kusumben D. Mahadevia case also becomes irrelevant. Thus, I uphold WTO''s order in applying rule 1D. His order is confirmed on this point. However, he will reconsider the latest balance sheet while recomputing the break-up value properly after giving appellant a due opportunity of being heard.

Thereafter, no further appeal was preferred by the assessee.

3. On 3-3-1989, the Commissioner issued notice u/s 25(2) of the Act for the assessment year 1982-83. In the said notice he observed as follows :

...On scrutiny of your wealth-tax assessment records, it has been seen that in the assessment order for the assessment year 1982-83 in your case, the value of 10 shares of Amin Chand Payarelal (P.) Ltd. held by you was assessed at Rs. nil.

It is seen that the valuation of shares of Amin Chand Payarelal (P.) Ltd. was not correctly made for the purpose of said assessment made by the Wealth-tax Officer u/s 16(3) of the Wealth-tax Act, 1957 passed on 10th March, 1987.

The proper method of valuation of shares of Amin Chand Payarelal (P.) Ltd. should be the average of the value of assets of the wholly-owned subsidiary companies as per assets backing methods and the value of the assets of the holding as per yield method. This method of valuation finds support from para 519.7 of Taxman''s Direct Taxes Law and Practice by Dr. Vinod Kr. Singhania 1988-89, pages 968 and 969. According to this method the value of each share of Amin Chand Payarelal (P.) Ltd. works out to Rs. 9,919 as per calculation given below:

(Rs. 9,00,59,525 + Nit) divided by 4540

= Rs. 4,50,29,762 divided by 4540

= Rs. 9,918,45 say Rs. 9,918."

The method by which the said amount of Rs. 9,99,59,525 has been worked out was also mentioned in the said show-cause notice. Thereafter the Commissioner in the said notice stated as follows:

The nil value as shown in para 3 above represents the value of the shares of Amin Chand Payarelal (P.) Ltd. as per yield method.

Since the value of 10 shares of Amin Chand Payarelal (P.) Ltd. has not been assessed properly in the wealth-tax assessment order for the assessment year 1982-83 passed on 10-3-1987 the said wealth-tax assessment order for the year 1982-83 has been erroneous insofar as it is prejudicial to the interests of the revenue.

After hearing the assessee on 15/23rd March, 1989, the Commissioner passed an order u/s 25(3) of the Act. In the said order the Commissioner indicated reasons why he initiated proceeding u/s 25(2).

He mentioned in the said order, inter alia, as follows :

On going through the wealth-tax assessment record of the assessee it has been seen that the wealth-tax assessment order for the assessment year 1982-83 in the case of the assessee was passed on 10-3-1987 u/s 16(3) of the Wealth-tax Act, 1957. It has further been noticed that the assessee had 10 shares of Amin Chand Payarelal (P.) Ltd. which had wholly-owned subsidiary company styled as Park Hotel (P.) Ltd. which was again the holding company in respect of its wholly-owned subsidiary company styled as Flury''s Confectionery (P.) Ltd. Flury''s Confectionery (P.) Ltd. in turn was the holding company in respect of its wholly-owned subsidiary company styled as Aruna Estate (P.) Ltd.

In the wealth-tax assessment for the assessment year 1982-83 the value of 10 shares of Amin Chand Payarelal (P.) Ltd. held by the assessee was taken at " Nil " as computed by the assessee in the statement attached to the Return of wealth for the assessment year 1982-83. It has been seen that the value of 10 shares of Amin Chand Payarelal (P.) Ltd. should not be ''Nil''. On the contrary, the value of its shares ought to have been determined with reference to the value of assets of the parent company and the subsidiary companies which were wholly-owned indirectly by Amin Chand Payarelal (P.) Ltd. The wealth-tax assessment in respect of the valuation of the shares of Amin Chand Payarelal (P.) Ltd. has been considered erroneous insofar as it is prejudicial to the interests of the revenue. Accordingly, the proceedings u/s 25(2) of the Wealth-tax Act, 1957 have been started in this case.

He held and directed as follows:

The balance sheets of the subsidiary companies, namely, Park Hotel (P.) Ltd., Flury''s Swiss Confectionery (P.) Ltd. and Aruna Estates (P.) Ltd. as on 30th June, 1981 which is the balance sheet on a date nearest to the valuation date relevant for the assessment year 1982-83 in the case of the assessee, clearly show that these subsidiary companies had substantial amount of net assets and the terms of para 6 of the said circular can be applied to determine the value of the unquoted equity shares of Amin Chand Payarelal (P.) Ltd. for the wealth-tax assessment for the assessment year 1982-83. The WTO obviously did not make the valuation of the shares of Amin Chand Payarelal (P.) Ltd. in accordance with the terms of the said circular of the Central Board of Direct Taxes while making the wealth-tax assessment for the assessment year 1982-83. It is obvious that in the assessment order dated 10th March, 1987 the value of shares of Amin Chand Payarelal (P.) Ltd. has been incorrectly taken at nil by the Wealth-tax Officer. As discussed earlier, the powers u/s 25(2) of the W.T. Act have been lawfully invoked in the present case. The present proceedings u/s 25(2) of the W.T. Act are being concluded by passing the present order. By this order, I direct the Assessing Officer to determine the correct value of 10 shares of Amin Chand Payarelal (P.) Ltd. in accordance with the directions given by the Central Board of Direct Taxes in Circular No. 332A [F. No. 326/2/80-WT, dated 31st March, 1982] which is binding on the Assessing Officer. The Assessing Officer will also modify the wealth-tax assessment order dated 10th March, 1987 for the assessment year 1982-83 by adopting the value of 10 shares of Amin Chand Payarelal (P.) Ltd. so determined and raise and recover the revised wealth-tax demand in consequence of modification of the wealth-tax assessment order in question.

Against the said order passed u/s 25(2), the appeal was preferred before the Tribunal. The Tribunal after considering the submission of the parties observed as follows :

The Commissioner has exercised his jurisdiction u/s 25(2) on the ground that the assessee did not disclose correctly the value of 10 shares held in Amin Chand Payarelal (P.) Ltd. The assessee was holding shares in 6 companies which were not quoted. The assessee valued these shares at Rs. 38,389 and a detailed statement was filed before the Assistant Commissioner. The value of shares in 5 companies was taken at nil and the shares in one of the companies was valued at Rs. 38,389. The same was taken by the Assistant Commissioner at Rs. 91,685. The assessee was aggrieved and the dispute was before the appellate authority. It is not very clear either from the order of the Assistant Commissioner or from the appellate authority which has been filed before the Tribunal whether the appeal was in respect of one of the values of shares or the value of all the unquoted shares. As the matter is not clear, the benefit of doubt can be given to the assessee and, if so, the value of shares was the subject-matter of dispute before the appellate authority and, therefore, the Commissioner was not justified in taking action u/s 25(2) of the Wealth-tax Act. The view is supported by the decision of the Calcutta High Court in General Beopar Co. (Pvt.) Ltd. Vs. Commissioner of Income Tax, and Hindustan Aluminium Corpn. Ltd. v. CIT [1989] 178 ITR 75. The second issue is that even otherwise it appears that the order passed by the Assistant Commissioner was neither erroneous nor prejudicial to the interests of the revenue. The departmental representative has taken that the Assistant Commissioner did not accept the value of shares in one of the companies which was the subject-matter of appeal. If this argument of the revenue is accepted, it becomes clear that the Assistant Commissioner has applied his mind to the statement filed by the assessee and he was satisfied for the value declared by the assessee in respect of shares held in five companies and consequently he only disturbed the value of shares of one of the companies and, therefore, it could not be said that the order passed by the Assistant Commissioner was erroneous and prejudicial to the interests of the revenue. The third point is that the value of unquoted shares can be determined either by applying rule 1D or by the yield method. Even the circular on which reliance has been placed by the CWT does not say that the average value should be taken by applying break-up and yield method. This view is further strengthened by the decision of the Special Bench of the Tribunal in the case of WTO v. Anik Pal Chowdhury [1988] 25 ITD 287(Cal.) . Therefore, if the assessee has valued the shares on yield method, it could not be said that the method applied by the assessee was incorrect. Even on this ground the action cannot be justified. Considering the totality of the circumstances, it is held that the order passed by the Assistant Commissioner was neither erroneous nor prejudicial to the interests of the revenue and consequently the order passed by the Commissioner is set aside.

4. Thereupon an application was made by the revenue u/s 27(1) of the Act which was rejected by the Tribunal by observing as follows:

The assessee was aggrieved and the dispute was before the appellate authority. It is not very clear either from the order of the Assistant Commissioner of Wealth-tax or from the appellate authority which has been filed before the Tribunal whether the appeal was in respect of one of the values of shares or the value of all the unquoted shares. As the matter is not clear, the benefit of doubt can be given to the assessee and, if so, the value of shares was the subject-matter of dispute before the appellate authority and, therefore, the Commissioner was not justified in taking action u/s 25(2) of the Wealth-tax Act. The view is supported by the decision of the Calcutta High Court in General Beopar Co. (Pvt.) Ltd. Vs. Commissioner of Income Tax, and Hindustan Aluminium Corpn. Ltd. v. CIT [1989] 178 ITR 75.

The above finding of the Tribunal has not been challenged by the department and no question has been raised to this effect; rather, this position has been accepted by the Department. The Commissioner has suggested three questions out of the other findings of the Tribunal. The questions suggested by the Commissioner are academic in nature because the first finding given by the Tribunal has not been challenged. Even if the first question is in the negative, the finding of the Tribunal remains the same because the first finding has not been challenged. As the questions suggested by the Commissioner are academic in nature, in view of the first finding of the Tribunal, the question do not merit reference.

5. At the hearing of this rule the main contention of Dr. Pal is that the order of the WTO had merged with the order of the Assistant Commissioner Prima facie we are of the view that this contention is not correct. The question how the valuation of unquoted equity shares of an investment company which is wholly owned subsidiary should be worked out, was not before the AAC who heard the appeal. It was neither considered by the WTO nor by the AAC.

6. For the reasons aforesaid, the questions are reframed as follows:

Whether, on the facts and in the circumstances of the case, the order of the Commissioner of Wealth-tax passed u/s 25(2) of the Wealth-tax Act, 1957 is valid in law?

7. The rule is made absolute on the re-framed question. Let a xerox copy of the judgment be forwarded to the Tribunal who shall submit the statement of case within two months after service of the xerox copy of the judgment. Let a copy of this judgment be made annexure to the statement of case for being included in the paper book. Before the xerox copy of the judgment is served, the amendment as directed by the order dated 13-9-1990 shall be effected. The xerox copy of the judgment shall be served upon the Tribunal within two weeks from date. Having regard to the facts and circumstances of the case, the drawing up of rule nisi is also dispensed with.

Banerjee, J.

I agree.

