(1992) 06 CAL CK 0029

In the Calcutta High Court

Case No : Matter No. 2235 of 1991

COMMISSIONER OF WEALTH TAX APPELLANT

Vs

T. BHASKARAN. RESPONDENT

Date of Decision : 29-06-1992

Acts Referred:

Citation : (1993) 111 CTR 245 : (1993) 68 TAXMAN 20

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

Bench : Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 27(3) of the WT Act, 1957, the following questions of law have been referred to this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that for the purpose of valuation of unquoted shares application of r. 1D of the WT Rules is directory and not mandatory in that view, the order of the WTO wherein the valuation of unquoted shares was determined on yield method was not erroneous and prejudicial to the interest of the Revenue ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the CWT wrongly assumed jurisdiction under s. 25(2) of the WT Act in the case and thereby cancelling the order of the CWT ?"

2. Shortly stated the facts are that the assessee, Mr. T. Bhaskaran, is an individual. The assessment year involved is 1982-83, the valuation date being 31st March, 1982. The net wealth of the assessee on the aforesaid valuation date included share of M/s. Otto India Pvt. Ltd. The WTO valued the above shares on yield basis as per the order of the AAC dt. 30th September, 1982.

3. The CWT, Calcutta initiated proceedings under s. 25(2) of the WT Act as in his opinion the WTO should have taken the value of shares of M/s. Otto India Pvt.

Ltd. under r. 1D of the WT Rules and not on yield basis. The CWT accordingly issued show-cause notice to the assessee. Before the CWT, the assessee relied upon the decision of the Delhi High Court in the case of Sharbati Devi Jhalani Vs. Commissioner of Wealth Tax, Delhi-VII, and others, of the Bombay High Court in the case of Smt. Kusumben D. Mahadevia V. N. C. Upadhya and Others Kusumben D. Mahadevia Vs. Commissioner of Wealth-tax, Bombay City-I, , and also the decision of the Supreme Court in the case of Commissioner of Wealth Tax Vs. Mahadeo Jalan and Mahabir Prasad Jalan and Others etc., and also on some other decisions of the Tribunal and contended that the provisions of r. 1D were directory and not mandatory and as such there was no error in the assessment order.

4. The CWT considered the submissions advanced before him. He held that the decisions of the Delhi and Bombay High Courts need not be followed. With reference to the observations of the Supreme Court the CWT observed that the above case was not relevant to decide the applicability of r. 1D of the WT Rules. In the above circumstances, he set aside the assessment and directed the WTO to make fresh assessment by applying r. 1D of the WT Rules for valuation of unquoted shares of M/s. Otto India Pvt. Ltd.

5. The assessee challenged the above order in appeal before the Tribunal and reiterated the submissions advanced before the CWT. The Tribunal set aside the order of the CWT and allowed the assessees appeal with the following observations :

"On examination of the decisions of different High Courts and the orders of this Tribunal relied on by the authorised representatives of the parties and on consideration of the materials on record, facts and circumstances of the case, we are of the opinion that there is divergence of opinion between different High Courts as to whether r. 1D is mandatory or directory. If the WTO followed the view that r. 1D was directory as held by some of the High Courts, it cannot be said that the assessment order was erroneous. The CWT did not set aside the assessments for the reasons that the WTO failed to consider the applicability of r. 1D. He directed the WTO to apply r. 1D as, according to him, it was mandatory. So we do not think that the order of the CWT can be modified. On careful consideration of the totality of the circumstances we are of the opinion that the order of this Tribunal dt. 18th November, 1986, should be followed by us as it was given on similar circumstances. Following the said decision of this Tribunal dt. 18th November, 1986, we are of the opinion that the assessment orders framed by the WTO cannot be said to be erroneous. As such the orders of the CWT under s. 25(2) of the Act cannot be sustained. We, therefore, set aside the impugned order made by the CIT."

6. It is not in dispute that this question is concluded by the decision of the case of Commissioner of Wealth Tax Vs. India Exchange Traders'' Association,

Following the said decision, we answer the first question by saying that r. 1D of the WT Rules is mandatory and in that view the order of the WTO determining the valuation of unquoted shares on yield methods was erroneous and prejudicial to the interest of the Revenue.

7. The second question is answered in the negative and in favour of the Revenue.

8. Miss Sil appearing for the assessee has orally asked for a certificate that it is a fit case to appeal before the Supreme Court inasmuch as leave has already granted to the assessee in the case of India Exchange Traders Association (supra) on 25th November, 1991. Such leave is granted in this case as we think that it is a fit case for appeal to the Supreme Court under s. 29 of the WT Act, 1957.

Let the certificate be issued separately. Leave is given to file vakalatnama within two weeks.

SHYAMAL KUMAR SEN, J. :

I agree.

