
(1994) 08 CAL CK 0035
In the Calcutta High Court
Case No : Matter No. 1025 of 1993

Commissioner of Wealth Tax

APPELLANT

Vs

Vikram Swarup

RESPONDENT

Date of Decision : 26-08-1994

Acts Referred:

Wealth Tax Act, 1957 — Section 2
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1997) 224 ITR 698

Hon'ble Judges : K.C. Agrawal, C.J.;Mukul Gopal Mukherji, J

Bench : Division Bench

Advocate : Joydeb Saha, for the Appellant; N.K. Poddar, Senior Advocate and Debashis Mitra, for the Respondent

Judgement

K.C. Agrawal, C.J.—At the instance of the Revenue, the following two questions have been referred by the Income Tax Appellate Tribunal u/s 27(3) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), for the opinion of the High Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that liabilities towards (i) provision for Income Tax except to the extent of proposed dividend (sic) (ii) provision for gratuity, and (iii) proposed dividend were to be deducted from the value of assets of the company for the purpose of determining the value of unquoted shares of Paharpur Cooling Towers Pvt. Ltd. on the basis of break-up value method in accordance with Rule 1D of the Wealth-tax Rules, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the order of the Commissioner of Wealth-tax (Appeals) to the effect that the tax deducted at source appearing on the assets side of the balance-sheet should be deducted from the total value of the assets in computing the value of unquoted shares of Paharpur Cooling Towers Pvt. Ltd. on break-up value method in accordance with the provisions of Rule 1D of the

Wealth-tax Rules, 1957 ?"

2. The reference relates to the valuation of shares corresponding to the assessment years 1979-80 and 1983-84.

3. The question involved in this case relates to the valuation of unquoted equity shares held by the assessee in Paharpur Cooling Towers Pvt. Ltd.

4. Rule 1-D of the Wealth-tax Rules reads as follows :

"1D. The market value of an unquoted equity share of any company, other than an investment company or a managing agency company, shall be determined as follows :

The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet. The resultant amount multiplied by the paid up value of each equity share shall be the break-up value of each unquoted equity share, The market value of each such share shall be 85 per cent. of the break-up value so determined :

Provided that where, in respect of any equity share, no dividend has been paid by such company continuously for not less than three accounting years ending on the valuation date or in a case where the accounting year of that company does not end on the valuation date, for not less than three continuous accounting years ending on a date immediately before the valuation date the market value of such share shall be as indicated in the Table below :

TABLE

Number of accounting years ending on the valuation date or in a case where the accounting year does not end on the valuation date, the number of accounting years ending on a date immediately preceding the valuation date, for which no dividend has been paid.

Market value

(1)

(2)

Three years

82½ per cent. of the break-up value of such share

Four years

80

-do-

Five years

77%

-do-

Six years and above

75

-do-

Explanation I.--For the purposes of this rule, "balance-sheet", in relation to any company, means the balance-sheet of such company as drawn up on the valuation date and where there is no such balance-sheet, the balance-sheet drawn up on a date immediately preceding the valuation date and in the absence of both, the balance-sheet drawn up on a date immediately after the valuation date.

Explanation II. -- For the purposes of this rule --

(i) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely : --

(a) any amount paid as advance tax u/s 18A of the Indian Income Tax Act, 1922(11 of 1922), or u/s 210 of the Income Tax Act, 1961 (43 of 1961) ; . . .

(ii) the following amount shown as liabilities in the balance-sheet shall not be treated as liabilities, namely :--

(a) the paid-up capital in respect of equity shares ;

(b) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company ;

(c) reserves, by whatever name called other than those set apart towards depreciation ;

(d) credit balance of the profit and loss account ;

(e) any, amount representing provision for taxation other than the amount referred to in Clause (i)(a) to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto ;

(f) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares."

5. Rule 1D had been incorporated in Schedule III to the Act by the Direct Tax Laws (Amendment) Act, 1989.

6. The assessee raised before us its entitlement to claim, deduction in respect of liabilities provided and appearing in the balance-sheets of the said company towards . . .

(i) provision for Income Tax ;

(ii) provision for gratuity ; (iii) proposed dividend.

7. The assessee even conceded that it would not be entitled to get any adjustment on the score of proposed dividend. Also in *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, , the Supreme Court negated the claim of dividend. The Supreme Court held that the rule-making authority has under Rule 1D chosen the break-up method, undoubtedly one of the recognized methods of valuing unquoted shares.

8. This decision has considered all aspects about determination of value of unquoted shares and laid down as to whatever required to be done by the Wealth-tax Officer for the purpose of reaching at the conclusion. This rule is mandatory and was the best suited method for the purpose of the Wealth-tax Act.

9. Reliance has been placed by learned counsel for the Revenue on paragraphs 33 (at page 27) and 41(2) at page 34) of the said judgment. The, relevant portions of these paragraphs 33 and 41(2) are extracted below :

"33. The sub-section speaks of the market value of the asset and not the net income or the net price received by the assessee. This is not a case where a fiction is created by Parliament. It is only a case of prescribing the basis of determination of market value. On the same reasoning, it must be held that no other amounts like provision for taxation, provident fund and gratuity, etc., can be deducted. The contention of learned counsel for the assessee is, therefore, wholly unacceptable."

"41. (2) While valuing the unquoted equity shares under Rule 1D, no deductions on account of capital gains tax which would have been payable in case the said shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. Rule 1D is exhaustive on the subject. "

10. He submitted that the controversy about deduction in respect of liability provided and appearing in the relevant balance-sheet towards gratuity having been decided and the claim not accepted by the Supreme Court, this question is no longer open to argument. It is ingenious to suggest that the question of gratuity under Rule 1D is to be decided in favour of the assessee.

11. For the submission of the assessee's counsel that the Supreme Court did not consider the various relevant arguments for negating the claim of gratuity, he contended that the decision of the Supreme Court was a law declared under Article 141 of the Constitution and that the correctness of decision could not be challenged on the ground on which the petitioner wants to assail it.

12. In *Ambika Prasad Mishra v. State of U. P.* reported in, : [1980]3SCR1159 , the Supreme Court observed (headnote) :

"Every new discovery or argumentative novelty cannot undo or compel

reconsideration of a binding precedent. It is fundamental that the nation's Constitution is not kept in constant uncertainty by judicial review every season because it paralyses, by perennial suspense, all legislative and administrative action on vital issues deterred by the brooding threat of forensic blow-up. This, if permitted, may well be a kind of judicial destabilisation of State action too dangerous to be indulged in save where national crisis of great moment to the life, liberty and safety of this country and its millions are at stake, or the basic direction of the nation itself is in peril of a shake-up.

It is wise to remember, that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned".

13. We may also refer to the decisions in the following cases ;

(1) *Ambica Quarry Works v. State of Gujarat* (2) *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 :

The aforesaid observations have been set in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, Clause (ii) of Section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides, and not what logically follows from it (see Lord Halsbury in *Quinn v. Leatham* [1901] AC 495). But in view of the mandate of Article 141 that the ratio of the decision of this court is a law of the land, Shri Govind Dass submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this court, however, was cautious in expressing the reasons for the said decision in *State of Bihar Vs. Banshi Ram Modi and Others*, . This court observed in that decision that the result of taking the contrary view would be "that while digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operation in winning mica. That would lead to the unreasonable result which will not in any way subserve the object of the Act." There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving the right to collect those. The new lease only permitted utilisation or collection of the said other minerals."

(3) *Gopal Upadhyaya and Others Vs. Union of India (UOI) and Others*, (headnote of AIR 1987 SC):

"When a question is answered expressly or by necessary implication by the Supreme Court the answer cannot be ignored by referring to the decisions

appealed against and holding that the real question that must be considered to have been answered was something else. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the judges themselves are what constitute precedents."

14. The assessee contended that as the facts of the case before the Supreme Court which arise for decision in the present reference had not been a subject-matter of analysis, the Supreme Court decision was not binding. We are unable to accept the submission. The authority of the Supreme Court being at the apex of the entire judiciary in the country, is laid down in the Constitution. Any law declared by the Supreme Court shall be binding on all courts within its territory.

15. Once a point is decided by the Supreme Court, it becomes law declared and cannot be reopened on the ground that some arguments have not been raised or considered by the court. *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, .

16. The controversy that if some argument has not been made and the decision given by the Supreme Court will still be considered as law declared has been a subject-matter of the Supreme Court decision in *St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc.*, , the Supreme Court said :

"Was it so ? Could the Government take up this stand ? Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In *Halsbury's Laws of England* (Fourth edition, Vol. 9, page 35, paragraph 55) the law on orders improperly obtained is stated thus :

"The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order."

Any order passed by a court of law, more so by the higher courts and especially this court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding."

17. Counsel for the assessee contended that the duty of the court is to interpret the words that the Legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited. *Mayor and St. Mellons R. D. C. v. Newport Corporation* [1951] 2 All ER 839.

18. Article 141 of the Constitution empowers the Supreme Court to "declare" the law. In the course of its functioning, the Supreme Court interprets the legislation in order to bring the law in harmony with the statute.

19. Reliance was placed on two other decisions of the Supreme Court and other decisions of the various High Courts but they are not applicable to the point in controversy. Hence, reference of these cases is not necessary to be made. What we have said above is that even at a point the argument was not made and the decision of the Supreme court was given. It is that decision which will constitute the ratio decidendi or the law declared within the meaning of Article 141 of the Constitution and that would be binding on all the parties. The Supreme Court had considered all aspects relevant to the controversy in question and found that Rule 1D was valid and mandatory, It has interpreted as to what had to be taken into account for the purpose of ascertaining the liabilities and assets. In view of the language of Section 7(1) of the Wealth-tax Act and Rule 1D of the Rules being plain and unambiguous not admitting two meanings of the same, the construction could be no other than what had been found.

20. It is admitted on all hands that the judgments of the Supreme Court are binding on persons not even parties to the proceedings (see *Dr. Jagannath Mishra Vs. State of Bihar and Others*,). It is the duty of High Courts to obey the Supreme Court order without finding fault with it. In *Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others*, , it was laid down that the decisions of the Supreme Court cannot be ignored on the ground that relevant provisions were not brought to its notice.

21. In *Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others*, , questions Nos. 2 and 4 cover the controversy involved in this case fully.

22. Questions Nos. 2 and 4 framed by the Supreme Court have its judgment read with its view that the formula or method devised to ascertain the valuation of unquoted shares is exhaustive. 85 per cent. of such break-up value shall be treated as the market value of the shares (at page 12) :

" Question No. 2 :

Whether the Valuation Officer is bound by Rule 1D when valuing the unquoted equity shares of the companies ?"

"Question No. 4 ;

Where the date of a balance-sheet of the company is earlier to the valuation date of the assessee, is it obligatory to follow Rule 1D ? (The same question arises where in the absence of such a balance-sheet, the balance-sheet drawn up on a date immediately following the valuation date is taken as the basis). "

23. The Supreme Court might not have referred to the decisions pointed out by the assessee's counsel specifically, but that does not lead us to a conclusion that the Supreme Court's present decision is in conflict with the earlier decision in Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, or other cases relied on by the assessee.

On behalf of the assessee, counsel urged that if a question is neither raised nor argued, a decision by the court without pondering over the issue in depth would not be a precedent. Lord Denning dealing with the doctrine of precedent said in his book on *The Discipline of Law*, at page 312 :

"The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young v. Bristol Aeroplane Co. Ltd.* [1944] KB 718, offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom . . ."

24. We have seen above that the construction and interpretation of Rule 1D was decided by the Supreme Court. At places more than one, it has been clarified that the applicability of Rule 1D was the question considered and decided. The decision of *Rajput Ruda Meha and Others Vs. State of Gujarat*, , relied on by counsel for the assessee, does not apply to the controversy before us. In a different context, the observations quoted above were made. In *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*, , the controversy was different.

25. That interpretation of a statute should be given which harmonizes with the object of the statute.

26. It is a recognised rule of construction or interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.

27. A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. A statute is to be construed according "to the intent of them that make it" and "the duty of judicature is to act upon the true intention of the Legislature--the mens or sententia legis".

28. We are of the opinion that the interpretation sought to be placed by the assessee's counsel is not tenable.

29. The meaning of the expression, "contingent liability" has been given in Black's Law Dictionary as :

"One which is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event. Warren Co. v. CIR, C.C.A., Ga., 135 F. 2d 679, 684, 685, a potential liability ; e.g., pending law suit, disputed claim, judgment being appealed, possible tax deficiency."

30. Clause (f) of Explanation II to Rule 1D read with the opening sentence leaves no doubt that "any amount representing contingent liabilities ... in respect of preference shares shall be treated as liabilities".

31. Interpreting this provision, the Supreme Court held that gratuity being a contingent liability has to be ignored.

32. Counsel for the assessee distinguished the Supreme Court decision in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, , by submitting that all these cases which had been relied on by the Revenue were distinguishable.

33. Those cases were :

1. Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, .

2. Bombay Dyeing and Manufacturing Co. Ltd. Vs. Commissioner of Wealth Tax, Bombay, .

3. P. Sathrughan Pillai Vs. Commissioner of Wealth Tax, .

34. The sum and substance of his argument was that Rule 1D had not been considered by the Supreme Court in these cases and further that it had no occasion to examine the Payment of Gratuity Act, 1972.

35. He distinguished these cases by saying that the question raised before the Supreme Court was as to whether liability for gratuity could be considered as a "debt owed" within the meaning of Section 2(m) of the Wealth-tax Act, 1957, which was not the issue before this court in the present reference.

36. On behalf of the Revenue, reliance has been placed on Vazir Sultan Tobacco Co. Ltd., Hyderabad and Others Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, , referred to above, as well as the case reported in Seth Mukund Das Rathi Vs. Commissioner of Wealth-tax, and Commissioner of Wealth-tax Vs. Smt. Suman Rathi and Others, . These two decisions of the Rajasthan High Court cover the controversy squarely and it had been found in these cases that gratuity was not permissible to be deducted for the purpose of Rule 1D. We agree with the views taken on these cases.

37. Counsel for the assessee tried to distinguish the cases since facts had not

come on record and the law laid down was "per incuriam". We are unable to accept this submission. What was in issue then in these cases and what is in issue before us is a question of law as to whether gratuity was a contingent liability within the meaning of Clause (f) of Explanation II to Rule 1D of the Wealth-tax Rules. That was so found after taking into consideration various judgments referred to before it. The strength of the law laid down in that case is not weakened by the submission made by the assessee's counsel.

38. For what we have said above, we find that the Supreme Court judgment of Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, covers the controversy squarely. That is the law declared.

39. Merely because of the fact that the Payment of Gratuity Act has been passed under which there is a liability to pay the amount, that does not in any way whittle down the interpretation placed by the Supreme Court on Rule 1D.

Counsel for the assessee made a submission to the following effect :

Section 2(m) of the Wealth-tax Act, 1957, provides ;

" (m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than--

(i) debts which u/s 6 are not to be taken into account;

(ii) debts which are secured on, or which have been incurred in relation to, any property in respect of which wealth-tax is not chargeable under this Act ; and

(iii) the amount of the tax, penalty or interest payable in consequence of any order passed under or in pursuance of this Act or any law relating to taxation of income or profits, or the Estate Duty Act, 1953 (34 of 1953), the Expenditure-tax Act 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958),-

(a) which is outstanding on the valuation date and is claimed by the assessee in appeal, revision or other proceeding as not being payable by him ; or

(b) which, although not claimed by the assessee as not being payable by him, is nevertheless outstanding for a period of more than twelve months on the valuation date.

Explanation 1, --A. building or part thereof referred to in Clause (iii), Clause (iiia) or Clause (iiib) of Section 27 of the Income Tax Act shall be includible in the net wealth of the person who is deemed under the said clause to be the owner of that building or part thereof.

Explanation 2.--Where a debt falling under Sub-clause (ii) is secured on, or has been incurred in relation to, any asset which is not to be included wholly or partly

in the net wealth by virtue of the provisions of Subsection (1A) of Section 5, the amount of such debt shall, for the purposes of the said sub-clause, be limited to the value of the said asset which is not includible in the net wealth under Subsection (1A) of Section 5,"

40. Each Act as mentioned above has to be read in the context of its background and object. Even if payment of gratuity has become statutory, that does not change the interpretation of Rule 1D made by the Supreme Court. What has been said by the Supreme Court on Rule 1D is the law declared and is binding. The emphasis of learned counsel for the petitioner that Commissioner of Wealth Tax Vs. Vikram Swarup, has since not been overruled by the Supreme Court, should be held to govern the field still. That decision has been materially reversed by the Supreme Court and, therefore, it can be held to be good only to the extent that the Supreme Court has affirmed it. Whether this decision is binding on the parties or not, is a separate and distinct question, not to be confused by asking the court to treat it as binding.

41. What appears in this case is that a reference had been made to this court u/s 27(3) of the Wealth-tax Act, in respect of the years 1979-80 and 1983-84. The decision of that case has since not been challenged by the Revenue in the Supreme Court, it has become final and binding on the parties. This would be binding only in respect of the year 1979-80. Having found the decision to have become final, we decline to answer question No. 1 regarding this year.

42. In Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, it defined the meaning of the clause "debt owed" appearing in "net wealth" within the meaning of Section 2(m) of the Act that "a liability to pay in praesenti or in future an ascertainable sum of money". A sum payable upon a contingency, however, is not a debt or it does not become a debt until the contingency has happened.

43. Their Lordships of the Supreme Court in Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, while considering the issue, whether in computing the "net wealth" of the assessee, liabilities of the assessee to pay gratuity to its employees cannot be considered as a "debt owed" within the meaning of Section 2(m) of the Act, held that a liability depending upon a contingency is not a debt in praesenti or in future, till the contingency happens.

44. Sub-clause (f) of Clause (ii) to Explanation II under Rule 1D also prohibits any amount representing contingent liabilities appearing in the balance-sheet for deduction from the value of assets shown in the balance-sheet in determining the value of the unquoted shares of a company.

45. In view of the above, it is held that a liability and/or debt owed which is in the nature of a contingent one is not a permissible deduction from the aggregate value of the assets in both the cases either in determining the net wealth of an assessee within the meaning of Section 2(m) or in determining the value of unquoted shares of a company within the meaning of Rule 1D.

46. So far as the years other than 1979-80 are concerned, the said question is answered in favour of the Revenue and against the assessee.

47. Question No. 2 : This question is answered against the assessee and in favour of the Revenue.

48. Under the circumstances, the parties shall bear their own costs.

Mukul Gopal Mukerji, J.

49. I agree.