

(2002) 11 MAD CK 0192

In the Madras High Court

Case No : Tax Case (Reference) No. 390 of 1999 27 November 2002.

CWT

APPELLANT

Vs

Gnanagiri Ganesan

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Citation : (2003) 260 ITR 161

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Full Bench

Advocate : T. Ravikumar, for the Revenue None appeared, for the Assessee, for the Appellant;

Judgement

N. V. Balasubramanian, J.

In pursuance of the directions of this court, the Income Tax Appellate Tribunal has stated a case and referred the following questions of law for our consideration :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in treating the shares of Pondicherry Papers Ltd., as unquoted on the valuation date relevant for the assessment year 1985-86 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in directing that the shares of the aforesaid company must be valued on yield basis when the assessee himself had sold 15,000 shares of the said company on 10-4-1984, at the rate of Rs. 10 per share as against the quoted value of Rs. 10.75 per share ?"

2. The assessment year involved is 1985-86. The assessee owned certain shares in Pondicherry Papers Limited and the assessee filed the return under the Wealth Tax Act, 1957, for the assessment year 1985-86 admitting the net wealth of Rs. 4,24,300. As far as the shares owned by the assessee in Pondicherry Papers Ltd. are concerned the assessee has declared the value of the share as nil". However,

the Wealth Tax Officer found that the shares in Pondicherry Papers Limited were listed in the Madras Stock Exchange and he valued the shares at the price quoted in the stock exchange, namely, Rs. 10.75 per share. The Commissioner of Income Tax (Appeals-I), Madurai, on appeal allowed the appeal preferred by the assessee on the ground that the shares though quoted in the Madras Stock Exchange and the certificate from Madras Stock Exchange revealed that the official rate on the value of the share as on 31-3-1985, 31-3-1986 and 31-3-1987 was Rs. 10.75, yet the value of the shares was a negative figure in view of the poor financial results of the company in which the assessee held the shares. He, therefore, held that the price quoted in the stock exchange did not give the correct market value of the shares and directed that the shares should be valued on yield basis. The revenue carried the matter in appeal before the Appellate Tribunal. The Tribunal relied upon rule 1A(1) of the Wealth Tax Rules, which defines the expression of "unquoted share" and also clause (ka) of the said rule 1A of the Wealth Tax Rules which defines the expression "share regularly quoted on the stock exchange" to record a finding that the shares of the company are not quoted shares. The Tribunal, therefore, held that the value quoted in the stock exchange need not be adopted as the market value of the share, in view of the fact that there was no transaction from 1979 and the value of the share was a negative figure. The Tribunal directed the Wealth Tax Officer to value the shares on yield basis. This order of the Tribunal is challenged by the department and on the basis of the directions of this court, the two questions referred to earlier have been referred to us.

3. Notice was served on the respondent, but in spite of the same, the respondent has not appeared either in person or through his counsel. We heard Mr. T. Ravikumar, learned junior standing counsel appearing for the revenue, and perused the records carefully. We find that the Tribunal has committed a serious error in relying upon clause (ka) of rule 1A of the Wealth Tax Rules, 1957. The said clause (ka) is a draft rule which was proposed to be inserted but it is stated by learned counsel for the revenue that the said rule was not brought in force and did not come into effect. Hence, the reliance placed by the Tribunal on a non-existing rule, viz., clause (ka) of rule 1A as if it was inserted by notification dated 31-3-1986, to hold that the shares were unquoted shares is not proper. We hold that the basis for the conclusion of the Tribunal that the shares are unquoted shares is based on a non-existing rule and it has influenced the mind of the Tribunal to arrive at its decision. It is not clear how much the non-existing rule influenced the mind of the Tribunal to arrive at its decision. We, therefore, hold that the Tribunal should consider the matter afresh ignoring clause (ka) of rule 1A of the Wealth Tax Rules and arrive at its conclusion independently whether the shares in question are quoted shares or unquoted shares. It is also made clear that it is open to the parties to lead further evidence in this matter. Accordingly, we are not answering both the questions of law referred to us, but we remit the matter to the Appellate Tribunal to consider the matter afresh. It is also open to the Tribunal to remit the matter to the assessing authority for fresh

consideration to determine the value of the shares. In the circumstances of the case, there will be no order as to costs.

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