

(1985) 07 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 58 of 1977

Darshan Kumar Oswal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Income Tax Act, 1961 — Section 52(2)

Citation : (1986) 159 ITR 513

Hon'ble Judges : S.P. Goyal, J;G.C. Mittal, J

Bench : Division Bench

Advocate : D.K. Gupta and Hemant Kumar Gupta, for the Appellant; Ashok Bhan, Senior Advocate and Ajay Mittal, for the Respondent

Judgement

S.P. Goyal, J.—The assessee sold 1,300 shares of Messrs Vardhman Spinning and General Mills Limited on February 8, 1971, at the rate of Rs. 26 per share. The face value of these shares being Rs. 25 per share, he disclosed a capital gain of Rs. 1,300 at the rate of Re. 1 per share during the accounting period ending on March 31, 1971. The Income Tax Officer, being of the view that the value of these shares was Rs. 51.54 per share when calculated as per break-up method provided in Rule 1D of the Wealth-tax Rules, 1957, held that the provisions of Section 52(2) of the Income Tax Act, 1961 (hereinafter called "the Act"), would govern the case.

2. Consequently, after allowing the permissible deductions, an amount of Rs. 9,027 was added to the returned income of the assessee. The order of the Income Tax Officer was reversed by the Appellate Assistant Commissioner but was restored by the Tribunal, vide order dated September 29, 1976. On an application by the assessee u/s 256(1) of the Act, the following questions have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the fair market value of one equity share held by the assessee in M/s. Vardhman Spinning and General Mills Ltd. as on the date of

transfer was Rs. 51.54 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 52(2) of the Income Tax Act, 1961, were applicable in the present case?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that an income of Rs. 33,292 under the head "Capital gains" could be included in the total income of the assessee for the assessment year 1971-72 ? "

3. The assessee before the Tribunal had urged that the provisions of Section 52 of the Act would apply only where consideration received was in fact more than that stated and not to a case where the market price of the shares was alleged to be more than the price at which they were transferred but there was no allegation that the consideration received was understated. The Tribunal rejected this plea relying on a majority judgment of the Full Bench of the Kerala High Court in Income Tax Officer, B-Ward and Another Vs. K.P. Varghese, . The said Full Bench has since been overruled by the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and the plea of the assessee was upheld in the following terms (headnote) :

"Sub-section (2) of Section 52 of the Income Tax Act, 1961, can be invoked only where the consideration for the transfer of a capital asset has been understated by the assessee, or, in other words, the full value of the consideration in respect of the transfer is shown at a lesser figure than that actually received by the assessee, and the burden of proving such tinder statement or concealment is on the Revenue. The sub-section has no application in the case of an honest and bona fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him."

4. In the light of the law settled by the Supreme Court, questions Nos. 2 and 3 are answered in the negative, i.e., against the Revenue and in favour of the assessee. In view of the answer to questions Nos. 2 and 3, question No. 1 need not be answered and is accordingly left unanswered. No costs.