(2002) 07 GUJ CK 0116

In the Gujarat High Court

Case No : WT Ref. No. 12 of 1991

Indukumar C. Patel APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Citation : (2003) 183 CTR 572

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Division Bench

Advocate : None, for the Appellant; Manish R. Bhatt and Mona Bhatt, for the Respondent

Judgement

M.S. Shah, J.—In this reference at the instance of the assessee, the following questions are referred for our opinion in respect of the asst. yr. 1979-80 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in making additions on account of compulsory deposit with interest in the total wealth ?

"2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not deducting gross amount of provisions for taxation as a liability while applying Rule 1D of the WT Rules for determining the break-up value of shares of private limited companies?"

2. At the hearing of the reference, none appears for the assessee though served. Mrs. Mona Bhatt, the learned standing counsel appears for the Revenue.

3. As far as question No. 1 is concerned, our attention is invited to our decision dt. 27th June, 2002 of this Court WT Ref. No. 2 of 1939 (reported as CWT v. Smt. Avaniben Ajaybhai) wherein this Court pointed out that the provisions of Section 7A inserted in the Compulsory Deposit Scheme (income tax Payers) Act, 1974 w.e.f. 1st April, 1975. provides that for the purposes of exemption u/s 5 of the WT Act. 1957 (''the Act''), the amount of compulsory deposit shall be

deemed to be a deposit with a banking company to which the Banking Regulation Act. 1949 applies. This Court accordingly held in the aforesaid decision that the amount standing to the credit of the assessee as compulsory deposits (which would also include interest accrued on the deposit) would not be liable to wealth-tax.

Following the aforesaid decision, our answer to question No. 1 is in the negative, i.e., in favour of the assessee and against the Revenue.

4. Coming to question No. 2, our attention is invited to the decision of the apex Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, wherein the apex Court held as under :

"If in the case of the balance sheet of the company, the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by Clause (1)(a) of Expln. II to Rule 1D, is also shown as a liability, i.e. if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities and this is also what Clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to Clause (i)(a). The advance tax paid is not really an asset but the proforma of balance sheet in Schedule VI to the Companies Act requires it to be shown as such. What Clause (i)(a) does is to remove the said amount from the list of assets for the purpose of Rule 1D. It is then that Clause (ii)(e). which speaks of liability, says that only that amount which is still remaining to be paid, shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the sub-clauses."

Following the aforesaid decision, our answer to question No. 2 is that Rule 1D of the WT Rules for determining the break-up value of shares of private limited companies shall be applied in the light of the aforesaid principles laid down by the apex Court in Bharat Hari Singhania''s case (supra).

5. The reference, accordingly, stands disposed of with no order as to costs.

