(1993) 08 CAL CK 0025

In the Calcutta High Court

Case No : Matter No. 1463 of 1987

Jit Paul (Huf) APPELLANT

Vs

Commissioner of Wealth Tax RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:
Income Tax Act, 1961 — Section 40A(7)
Wealth Tax Act, 1957 — Section 27(1), 36(1)(v)

Citation : (1995) 79 TAXMAN 47

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

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''), the following questions of law have been referred to this Court for the assessment years 1976-77 and 1977-78: 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the market value of unquoted shares should be valued only 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 right in holding that the provision for gratuity made by the company was deductible from the assets of the company for computing market value of unquoted shares of the company in accordance with rule 1D of the Wealth-tax Rules, 1957 ?

It is not in dispute that the first question is concluded by the decision of this Court in Commissioner of Wealth Tax Vs. India Exchange Traders'' Association, . Accordingly, the first question is answered in the affirmative and against the assessee and in favour of the revenue.

2. The facts relating to the second question are that the WTO while computing the value of unquoted shares of Surrender Overseas Ltd. excluded the provision for gratuity from the liability of the said company on the ground that the provision was for a contingent liability. The Commissioner (Appeals), however,

directed the ITO to take the provision for gratuity as eligible liability outside the scope of clause (ii)(f) of Explanation II to rule 1D of the Wealth-tax Rules, 1957. In the second appeal before the Tribunal reliance was placed on behalf of the revenue on the decision of the Supreme Court in Shree Sajjan Mills Ltd. Vs. Commissioner of Income Tax, M.P., Bhopal and Another, Before the Tribunal, the counsel for the assessee relied upon the judgments of the Madras High Court in Commissioner of Wealth-tax, Madras and Others Vs. S. Ramaswami and Others, and Commissioner of Wealth-tax and Others Vs. S. Ram and Others, . In those cases the WTO did not consider the liability for gratuity as a present liability. In S. Ramaswami''s case (supra), the Madras High Court held that when the Commissioner had granted his approval to the gratuity fund, the contributions made by the respective concerns to the gratuity fund must be regarded as certain liabilities and not as contingent liabilities and, consequently, these liabilities were to be deducted for arriving at the net worth of the concern for the purpose of working out the valuation of the shares in the company. In S. Ram''s case (supra), the Madras High Court has taken a more general view that payment of gratuity, when provided for on a scientific and actuarial estimate, is a deductible provision and such provision is a present direct and minimum liability of the company for the reason that it represents the present discounted value of the employer''s commitment as a whole to pay the workmen gratuity and it becomes a liability. Therefore, according to the Madras High Court, Explanation II (ii)(f) to rule 1D will not apply in respect of such provision for gratuity in valuing unquoted shares.

3. Unlike the earlier decision, the Madras High Court took a broader view in the latter one. In deciding the issue it has taken notice of Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, where the Supreme Court held that gratuity is a contingent liability so long as there is no interposition of the gratuity trust to whom the company is under an obligation to pay yearly contribution towards gratuity liability.

4. The said ratio was distinguished by the Madras High Court by saying that there the Supreme Court was not concerned with the case of a provision for gratuity. The Court further observed as follows:

... It is also necessary to remember that the Supreme Court''s decision was rendered on the Wealth-tax Act as it stood then, when even companies were liable to pay wealth-tax on their net wealth. Incidentally, from 1960-61 onwards, the wealth-tax on companies has been abolished. Thereafter, the only purpose for which the company''s balance-sheets are to be looked into by the Taxing Department is in connection with the ascertainment of the market value of unquoted shares, either on general principles or in terms of rule 1D of the Standard Mills Co. Ltd. Vs. Commissioner of Wealth-tax, Bombay City, therefore, is doubly distinguishable from the present cases." (p. 288)

5. We have, however, to keep in mind that the decision in Standard Mills Co. Ltd.''s case (supra) was reaffirmed by the Supreme Court in Bombay Dyeing and

Manufacturing Co. Ltd. Vs. Commissioner of Wealth Tax, Bombay, It was held in the said decision that there is no conflict between the decisions in Standard Mills Co. Ltd.''s case (supra) and Metal Box Company of India Ltd. Vs. Their Workmen, which represent the authority for the proposition that the actuarial value of the liability for gratuity could be a revenue deduction in computing the allocable surplus for the purpose of payment of bonus. As a matter of fact, the Supreme Court in Bombay Dyeing & Mfg. Co. Ltd.''s case (supra) was urged to reconsider the decision in Standard Mills Co. Ltd.''s case (supra) in the light of Metal Box Co. of India Ltd''s case (supra), but the Supreme Court in Bombay Dyeing & Mfg. Co. Ltd''s case (supra) held that the decision of Standard Mills Co. Ltd.''s case (supra) was noticed and distinguished by the Supreme Court in Metal Box Co. of India Ltd''s case (supra). The final observation of the Supreme Court in Bombay Dyeing & Mfg. Co. Ltd.''s case (supra) is: "In our opinion, there is no conflict between the two decisions".

6. Thus, the principle in Standard Mills Co. Ltd.''s case (supra) still prevails. In that view of the matter, it must be held that in the earlier case, i.e., S. Samaswami''s case (supra) the Madras High Court has taken the correct decision that the contribution payable to an approved gratuity fund alone can be said to be an ascertained liability and not a contingent liability and, consequently, the same has to be deducted for arriving at the net worth of the company for the purpose of working out the valuation of its shares.

7. From the facts stated, it is not clear whether the provision for gratuity represents the liability which is covered by section 36(1)(v), read with section 40A(7), of the income tax Act, 1961. It is only in that case the gratuity liability could be a deduction from the net worth of the company of which the shares are to be valued. As this vital fact is missing in the statement of facts prepared by the Tribunal, we decline to answer the second question and remand the matter to the Tribunal for deciding it afresh in the light of our foregoing observations and the further facts to be found. The Tribunal is also directed to let the parties lead evidence as they may find necessary. There will be no order as to costs.

Shyamal Kumar Sen, J.

I agree.

