

(1967) 12 GAU CK 0001

In the Gauhati High Court

Case No : Wealth-Tax Ref. No's. 3 and 4 of 1966

Mahadeo Jalan

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 12-12-1967

Acts Referred:

Wealth Tax Act, 1957 — Section 7

Citation : AIR 1969 Guw 103

Hon'ble Judges : C. Sanjeevarao Naidu, C.J.; P.K. Goswami, J

Bench : Division Bench

Advocate : S.K. Ghose and J.K. Barua, for the Appellant; J.P. Bhattacharjee, for the Respondent

Judgement

C. Sanjeeva Row Nayudu, C.J.—The question as recast by us, that has been referred to us in these proceedings by the Income Tax Appellate Tribunal, A Branch, Calcutta, is as follows:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law to follow the method involving the principle of "break-up value" instead of the method involving the principle of "yield value" in determining the value of the shares in question u/s 7 of the Wealth-tax Act?

2. Section 7 of the Wealth-tax Act, as it stood on the date when the question came to be considered, which arises for decision in this case, was as follows:-

7. Value of assets, how to be determined.—(1) The value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price" which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date.

It is unnecessary to refer to the remaining portion of the section, which has no bearing on this case.

3. In answering the question referred to us, it is necessary to consider as to

which is the correct method to be applied in this, case,. namely, whether it is the method of break-up value" or it is the method of the "yield value". The former is generally regarded as applicable to a case where the company concerned is in a breaking-up condition, that is, reaching the stage of liquidation or winding up, in which case the entire assets of the company are determined on the date in question, and on that-basis the value of the shares held by the deceased person whose wealth is being assessed," has to be determined. The second method, namely, the method based on the Vied value", is based on the income derived from the shares held by the deceased and is normally applied to a company, which is a going concern.

It may be noticed that when the Tribunal dealt with and determined the amount representing the wealth for the assessment for-the years 1957-58 and 1958-59, which was the subject-matter of Wealth-tax Appeals Nos. 1013 and 1014 of 1961-62, the yield value" method was accepted by the Tribunal and adopted for the purpose of calculation. But strangely enough, in the instant case, that is, for the succeeding year, the Tribunal adopted the "break-up value" method and in that context the Tribunal observed as follows in their order:

Incidentally it was apparently not brought to the notice of the Tribunal that being private limited companies, the dividend declared would be controlled by poisons controlling the companies so as to suit heir own purpose, and as such the maintainable profits rather than the dividends declared, would afford a reasonable basis. We need not notice this point further, since the, objection before us is only of principle, about the adoption of the break-up value method. Even in the case cited by the learned Counsel, the Tribunal has categorically held that the break-up value was undoubtedly one of the recognised methods of valuation of shares of private companies. For the purpose of the present appeal, we hold that the adoption of the break-up value was in order.

4. It is not disputed that "break-up value" is also one of the methods for the purpose of calculation. But the point for consideration is-"in what circumstances is this method to be adopted?" Mr. Ghose, the learned Counsel for the Assessee Petitioner, contends that the "break up value method would only be applied to a company, which has reached the stage of liquidation and winding up. In support of this he placed reliance on the case of AIR 1921 50 (Privy Council) . While agreeing that the Board would not interfere with any question of valuation unless it can be shown that some item has improperly been made the subject of valuation or excluded there from, or that there is some fundamental principle affecting the valuation which renders it unsound, their Lordships of the Judicial Committee of the Privy Council in this case observed as follows:-

Now in the present instance the case lodged by the Respondents complains only of the character of the valuation as a valuation and does not attempt to impeach it on any of the grounds to which reference had been made. It is quite true that counsel for the Respondents, recognising the difficulty in which he is thus placed, has attempted to raise an argument based upon an assertion that the valuation

has proceeded upon an erroneous footing.

Mr. Ghose invited our attention to the Oxford English Dictionary, Vol. I, where that expression has been shown to mean dissolution or disruption. He also placed reliance on the following passage in "Halsbury's Laws of England", 3rd Edn., Vol. 15 at p. 74, Para 150 in support of the proposition that the more appropriate method is to arrive at the value of the share as obtaining in the market and not when the business is about to be disposed of:

A price based on the net value of the company's assets is appropriate where the company has disposed of its business and is in effect in course of winding up; where a purchaser of the share holding would be in a position to put the company into voluntary liquidation.

We are satisfied that the expression "break-up" is inextricably connected with the situation where the company has reached the stage of winding up and that expression cannot be applied to a company, which is a going concern and there is nothing ostensibly wrong with it. Mr. Ghose also placed reliance on 1944 69 Com WLR 1, *M Carthie v. Federal Commissioner of Taxation*, where the High Court of Australia held that the real value of shares which a deceased person held in a company at the date of his death depends more upon the profits which the company has been making and should be capable of making, having regard to the nature of its business, than upon the amounts which the shares would be likely to realise upon a liquidation. Again he invited our attention to "The Valuation of Company Shares and Businesses" by A. V. Adamson, where this decision has been relied on and this very passage has been extracted.

5. We do not consider it necessary to refer to the various English cases cited at the Bar by Mr. Ghose, for instance, the cases, of *Short v. Treasury Commissioners*, (1948) 2 All ER 509 and *Attorney-General of Ceylon v. Maclede*, (1952) 2 All ER 775.

6. Mr. Bhattacharjee, the learned Counsel for the Respondent himself has advanced the argument that these English decisions or the observations in these decisions cannot be Stripped of the Finance Act provisions, under which or with reference to which these were made.

7. We are satisfied that so far as the application of Section 7 of the Wealth-Tax Act in determining the value of the shares of a deceased person on the date of his death is concerned, where those shares pertain to a going concern, the only proper method to adopt was the "yield value" method and we think that the Tribunal was not justified in making the assumption that in the case of a private company the dividend would be controlled by the persons controlling the company to suit their own purposes and that consequently the "main trainable profits" should be accepted as the basis and not the dividends. Unless there was some substantial material before the Tribunal to draw a different inference, the Tribunal, in our opinion, is not justified in doing so.

8. We are constrained to note that although the Tribunal had adopted the yield value method in its decisions in reared to the previous years, the Tribunal had taken a new path and adopted the "break-up value" method as the basis of the assessment. We feel that there is no material placed on the record to justify this change in the method to be adopted in Calculation.

9. We accordingly answer the question referred to us in the negative and hold that the correct method to be adopted in the Case and in similar cases would be the principle of "yield value" to determine the value of the shares u/s 7 of the Wealth-Tax Act. There shall be no order as to costs.

Wealth-Tax Reference No. 4/66. 10.

10. The decision in Wealth Tax Refer-once No. 3 of 1966, as indicated above also covers the decision in Wealth Tax Refer-once No. 4 of 1966.