Commissioner of Wealth Tax Vs Kum Kum Bagaria

WT Reference No. 23 of 1990

Court: Gauhati High Court

Date of Decision: May 5, 1995

Acts Referred:
Income Tax Act, 1961 â€" Section 210#Wealth Tax Act, 1957 â€" Section 16(3), 27(1)

Citation: (1995) 82 TAXMAN 44

Hon'ble Judges: D.N. Baruah, J; B.N. Singh Neelam, J

Bench: Division Bench

Advocate: D.K. Talukdar, for the Appellant; R.K. Joshi, for the Respondent

Judgement

Baruah, J.
This is a reference u/s 27(1) of the Wealth-tax Act, 1957 ("the Act"). The following question has been referred at the instance

of the department:

Whether, on the facts and in the circumstances of the case and on proper construction of sub-clause (e) of clause (ii) of Explanation II of rule 1D

of Wealth-tax Rules, 1957, the Tribunal was justified in upholding the order of the AAC holding that the amount of advance tax paid is not

deductible from the provision for taxation as appears in the balance sheet of a company, other than investment company and managing agency

company, the equity shares of which are unquoted?

For the assessment years 1979-80 to 1983-84, the assessee was assessed in the status of an individual u/s 16(3) of the Act. The assessee held

4,895 fully paid-up equity shares in Buildwell (Assam) (P.) Ltd. Company.

These shares were not the subject of dealing in recognised stock exchanges. They were not also shares in investment companies or in any

managing agency companies. These are called unquoted equity shares. While valuing the said shares in the assessment, the WTO as per his

calculation in the annexure to his order, first deducted the income tax advance from the total assets of the company, besides the liabilities such as

secured loans, current liabilities, gratuity provisions and income tax provisions included in the Government liabilities. The income tax provision was

restricted to tax on book profits wherefrom the advance tax paid and deducted already from the total assets was again deducted. Thus, the value

per share came to Rs. 142.56, Rs. 142.17, Rs. 144.37, Rs. 217.10 and Rs. 217.10, respectively, for the assessment years. 85 per cent thereof

was taken by the WTO as the break-up value determined per share being Rs. 121.56, Rs. 120.84, Rs. 122.71, Rs. 184.54, and Rs. 184.54,

respectively. The assessee, being aggrieved, went in appeal before the AAC, Dibrugarh. The AAC following the decision of the Gujarat High

Court in Commissioner of Wealth Tax, Gujarat-I Vs. Ashok K. Parikh, held that for the purpose of computation of the market value of the shares

of the company, advance tax paid u/s 210 of the income tax Act, 1961, and shown on the assets side of the balance sheet of the company, could

not be deducted from the tax payable in determining whether the provision for taxation was in excess of the tax payable with reference to the book

profits. The AAC, accordingly, over directed the WTO to recompute the break-up value of each share of the said company for all the years in

accordance with the principles laid down in the aforesaid decision. The revenue went in appeal against the said order of the AAC before the

Tribunal and the Tribunal dismissed the appeal. Thereafter, at the instance of the revenue the above question has been referred to this Court for

opinion.

2. Heard Mr. D.K. Talukdar, the learned standing counsel appearing on behalf of the appellant and Mr. R.K. Joshi, the learned counsel appearing

on behalf of the assessee. It is stated at the Bar that this case is squarely covered by a decision of this Court in Commissioner of Wealth Tax Vs.

Ramgopal Mahesh Kumar (HUF) and Another, . In the said decision this Court held thus:

...We, therefore, hold that, while the advance tax paid is ignored under Explanation II (i)(a) of the Rules, it is not ignored in arriving at the tax

liability under Explanation II (ii)(e) of the Rules. The amount of advance tax paid shall be deducted from the total tax liability in respect of which

provision is made, subject of course to the limit of the tax payable with reference to the book profits in accordance with the law."" (p. 626)

In the said case, this Court answered the reference in the negative, that is, in favour of the revenue and against the assessee.

3. We find that this case is squarely covered by the aforesaid decision. Therefore, following the aforesaid decision we answer the reference in the

negative, i.e., in favour of the revenue and against the assessee. On the facts and circumstances of the case, we make no order as to costs.