Commissioner of Wealth Tax Vs M.S. Oberoi

Court: Calcutta High Court

Date of Decision: April 25, 1994

Acts Referred: Wealth Tax Act, 1957 â€" Section 25(2), 27(3)

Citation: (1994) 76 TAXMAN 280

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

Bench: Division Bench

Judgement

Sengupta, J.
This is a reference u/s 27(3) of the Wealth-tax Act, 1957 ("the Act") for the assessment years 1982-83 to 1984-85. For all

the three years the assessee was owning unquoted equity shares of several companies. The shares are valued according to rule 1D of the Wealth-

tax Rules, 1957, by the Assessing Officer while completing the assessment. Later, the Commissioner found that the valuation made was not strictly

in accordance with the provisions of the said rules. He issued a notice u/s 25(2) of the said Act proposing to revise the order of the Assessing

Officer as the same was erroneous insofar as it was prejudicial to the interests of the revenue. The assessee contested the revision proceeding

before the Commissioner contending that there was no error committed by the officer in applying rule 1D. It was further submitted before the

Commissioner that the figures of under-valuation given in the show-cause notice were not supported by any details, with the result that the assessee

was not enabled by the notice to meet the case against the assessee. The contentions were, however, rejected and the assessments set aside.

Being aggrieved, the assessee carried the matter to the Tribunal in appeal. The Tribunal upon hearing the rival contentions and going through the

papers made the following observations :

As observed supra, in the notice issued by the Commissioner of Wealth-tax three grounds have been set out by him for assuming jurisdiction u/s

25(2). The first ground would render the order passed by the Wealth-tax Officer erroneous but no prejudice to the revenue has been done as

contended by the Commissioner of Wealth-tax in his order. We have to remember in this connection that it is not that every erroneous order can

be revised u/s 25(2). The order has not only to be erroneous but has also to be prejudicial to the interests of the revenue. It is an admitted fact that

in some cases the proposed dividends were not treated as liability but as has been rightly contended by the assessee, these mistakes go to cancel

out the earlier mistake of the assessee in relation to the advance tax paid as an asset. At the time of appeal hearing the assessee was required to file

a chart of the correct valuation of the shares held by the assessee in the various companies. On a perusal of the chart we find that the values

adopted by the Wealth-tax Officer in the Wealth-tax assessments are more than the value as per rule 1D method. To illustrate, in the case of the

Oberoi Hotels (India) (P.) Ltd. the value of these shares taken in the wealth-tax assessment was Rs. 1,002.43 whereas as per the correct working

it should be only Rs. 921. There has no doubt been an under-valuation in the valuation of shares of Oberoi Holdings (P.) Ltd., Oberoi Investments

(P.) Ltd., Oberoi (Properties) (P.) Ltd. and Oberoi Buildings and Investments (P.) Ltd. But the overall effect as per the statements filed before us

in the course of hearing to which the departmental representative had also access was that the cumulative value of the shares of various companies

determined by the Wealth-tax Officer was in excess of their value as per the break-up value method. In these circumstances, we are of the view

that the assumption of jurisdiction by the Commissioner of Wealth-tax is not correct. Though the Commissioner of Wealth-tax has only set aside

the order, the exercise of making a fresh assessment order is not likely to result in any advantage to the revenue. We might in this connection like to

mention that the provisions of section 25(2) of the Wealth-tax Act are not to be regarded as revenue-raising provisions. These powers have to be

exercised by the Commissioner of Wealth-tax in the circumstances where the orders passed by the Wealth-tax Officer is found to be erroneous

being prejudicial to the interests of the revenue. As observed earlier, in the notice issued by the Commissioner of Wealth-tax three alleged lapses

were pointed out. The first, as stated earlier, has not resulted in any loss to the revenue at all. As regards the second, the non-deduction of

proposed dividend as liability has resulted in passing of an erroneous order prejudicial to the interests of the revenue. Gain resulting from this

rectification would be cancelled by the revenue loss that would result in if the advance tax paid by the assessee is excluded from the aggregate

value of the assets. Not even a prima facie case has been made out by the Commissioner of Wealth-tax to show that provision for taxation was in

excess of the tax payable on the book profits. Powers of the Commissioner of Wealth-tax u/s 25(2) are quasi-judicial powers and not

administrative. The assessee in reply to the notice issued by the Commissioner of Wealth-tax requested him to give details of the figures of under-

valuation given by him in the notice and no such details were furnished to the assessee. The orders were passed without in any way considering the

objections of the assessee or without proper discussion as to why the orders passed by the Wealth-tax Officer were considered to be erroneous

being prejudicial to the interests of the revenue. Since the orders have been passed in a routine way, we are of the view that the same cannot be

upheld. The exercise of jurisdiction u/s 25(2) is regarded as without jurisdiction and the orders passed by the Commissioner of Wealth-tax are

vacated.

In this background, the following questions have been referred for our opinion:

1. Whether, on the facts and in the circumstances of the case, the orders passed by the Commissioner of Wealth-tax u/s 25(2) of the Wealth-tax

Act, 1957, are valid and legal ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding on the basis of the Statement filed by the assessee

that cumulative value of the shares of various companies determined by the Wealth-tax Officer was in excess of their value as per break-up value

method when details contained in the said Statement are not discussed by the Tribunal in its order ?

2. The parties reiterated the contentions they had urged before the Tribunal. Dr. Pal appearing for the assessee submitted that the show-cause

notice u/s 25(2) contained three grounds as follows:

1. Advance-tax and prepaid expenses were treated as asset.

2. Items like amount set apart for payment of dividend where such dividends were not declared before the valuation date at the general meeting of

the company were taken as liabilities.

3. Provisions for taxation in excess of tax computed with reference to the above profits were treated as liabilities.

3. Therefore, the entire issue turns on the question whether the contentions made on behalf of the assessee that the break-up value arrived at by the

Assessing Officer was more than the value to be correctly ascertainable by application of rule 1D. Without, however, pronouncing on the

soundness of this approach we first proceed to examine the very basic premise in the assessee''s arguments. First, we do not agree that there was

any ultimate error in taking the advance tax as an asset on the one hand and taking the provision for taxation in full as the liability. Even if advance

tax is not to be taken as an asset, the gross tax payable before adjustment of the advance tax against the tax payable with reference to the book

profits cannot also be taken as liability. In this regard, we take the view that while advance tax is not to be taken as asset, the provision for gross

tax payable with reference to book profits without adjustment of the advance tax is not also to be reckoned as a liability. The rule, of course,

requires advance tax not to be taken as an asset, but exclusion of advance tax as an asset necessarily postulates that the tax liability computable as

deduction from the net worth of the company should be the net tax liability remaining payable after adjustment of the advance tax against it. The

principles of accountancy cannot admit of the proposition that advance tax should be excluded from assets and at once the gross tax liability on the

book profit before adjustment of the advance tax should also be included as liability. Therefore, we do not agree with the learned counsel''s

contention that there was any error on the part of the Assessing Officer in taking the advance tax as an asset insofar as he allowed the gross tax

liability as provided for in the Balance Sheet as liability. Again, it cannot be said that prepaid expenses do not represent any asset. Rule 1D

contemplates exclusion of only the fictitious asset, but prepaid expenses cannot be said to be fictitious asset. It is a tangible asset in the sense that

the party who was prepaid is a debtor to the company which he is to satisfy either by rendering service or delivering goods. It is a real debt

receivable. An asset could be fictitious only where it does not represent any quid pro quo. That is not the case in the case of pre-paid expenses. In

fact, the claim arising from pre-paid expenses is an action able claim. So, in our view, pre-paid expenses represent an asset to be taken into

account for the purpose of computing the net worth of the company under rule 1D.

4. On the provision for dividend also, we are of the view that the proposed dividend does not create any liability because such provision is made

by the Board of Directors which is not the competent authority to declare dividend. Unless there is authoritative declaration of dividend, there can

be no allowance of liability by way of provision for proposed dividend. Therefore, the contention of the assessee that the mistake in the assessment

order prejudicial to the assessee neutralises the mistake to the detriment of the revenue is not correct since the Assessing Officer committed no

mistake in taking the advance tax as asset while allowing the gross tax payable as liability. Nor is there any error in treating prepaid expenses as

asset and disallowing proposed dividend as liability.

5. Accordingly, we are not in agreement with the view taken by the Tribunal and we answer the first question in the affirmative and the second

question in the negative and both in favour of the revenue. There will be no order as to costs.

Sen, J.

I agree.