

(2001) 10 DEL CK 0134

Delhi High Court

Case No: GT Reference No's. 1 to 16 of 1982 15 October 2001

CGT

APPELLANT

Vs

Raghu Hari Dalmia

RESPONDENT

Date of Decision: Oct. 15, 2001**Citation:** (2002) 172 CTR 485 : (2002) 120 TAXMAN 550**Hon'ble Judges:** Arijit Pasayat, C.J; D.K. Jain, J**Bench:** Full Bench**Advocate:** R.C. Pandey, Sanjeev Khanna, Ajay Jha and Ms. Prem Lata Bansal, for the Revenu R.K. Maheshwari and Harihar Lal, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

These references involve identical issue, Therefore, are disposed of by this judgment. Following questions have been referred u/s 26(1) of the Gift Tax Act, 1958 (hereinafter referred to as the Act) by the Tribunal, Delhi Bench A, for opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the conversion of equity shares into preference shares by Hari Bros. (P) Ltd. and the consequent allotment of preference shares to the assessees in place of equity shares held by them, would not amount to a transaction entered into within the meaning of section 2(xxiv)(d) of the Gift Tax Act, 1958 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that no gift arose as a result of the conversion of equity shares into preference shares, at par ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that, as per rule 10(2) of the Gift-tax Rules, the value of the equity shares as well as the preference shares, would be the same ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the value of the assets of the assessed had not decreased in globo"

The dispute relates to the assessment year 1971-72.

2. Factual position, in a nutshell, is as follows :

assesseees, respondents in the references, were holders of equity shares of a face value of Rs. 100 per share in Hari Bros. (P) Ltd. (hereinafter referred to as "the company"). They had different number of shares totalling 2000. The original number of equity shares held by each of these persons was only 250 and the increase to 2,000 shares had taken place, as a result of the issue of 1,750 bonus shares. The company was incorporated on 2-3-1995 and its paid-up capital was Rs. 2 lakhs consisting of 2,000 shares of Rs. 100. As indicated above, 250 equity shares were allotted in cash and subsequently 1,750 bonus shares were issued. assesseees are family members and trust belonging to Dalmia Group and the company was a closely held private limited company. On 19-9-1970, the Board of Directors of the company decided to increase the equity capital from Rs. 2 lakhs to Rs. 3 lakhs by issuing 10,000 new equity shares of Rs. 10 each. On 1-10-1970, 5,000 new equity shares were allotted to Dalmia Agencies (P) Ltd. and the remaining 5,000 equity shares to Govan Bros. (Rampur) Ltd. Allottees were companies belonging to J. Dalmia Group. The existing shareholders were not allotted any shares. With the allotment of 10,000 new equity shares, paid-up capital increased from Rs. 2 lakhs to Rs. 3 lakhs. As the company was a private limited one, new shares could not have been allotted to the allottee companies except with approval and consent of existing shareholders. On 23-11-1970, special resolution was adopted in general body meeting of the shareholders to convert 2,000 fully paid equity shares of the face value of Rs. 100 each held by the assesseees-respondents into 2,000 fully paid-up cumulative preference shares of the face value of Rs. 100 each. On 10-12-1970, 2,000 equity shares of Rs. 100 each ceased to exist and in return, assesseees were issued cumulative preference shares of the face value of Rs."100 each in the company.

3. Action u/s 16(1)(a) of the Act was initiated by the assessing officer primarily on the ground that as a result of the conversion, there was transfer of wealth by the members of Dalmia family held by them in the form of equity shares and this amounted to a gift. In response to the notices issued, assesseees submitted their respective returns. The assessing officer issued notices u/s 15(3) of the Act, requiring the assesseees to explain as to why the difference between the fair market value of the equity shares and preference shares should not be treated as gift. assesseees stand was that the conversion was a bona fide transaction for adequate consideration ,keeping in view, the rights attached to the preference shares. Rights under the preference shares were very valuable rights from a long-term point of view, as a company having good reserve could run into losses in future and the value of the equity shares may be affected thereby. But in the case of preference

shareholders, they will have a preferential right both as to the dividends as well as to the payment of capital. It was also pointed out that after managing agency system came to an end in December, 1969, the company had only one immovable property in occupation of the shareholders as their residence and the company may have to surrender a substantial part of the property to the government under the Urban Land Ceiling Law. This would considerably lower the value of the equity shares. The act of conversion was a unilateral action by the company and the shareholders did not part with their equity shares, for preference shares, in favor of any third party. In essence, it was contended that the conversion cannot be held to be a transaction resulting in a gift. The assessing officer rejected contentions. It was his stand that valuable rights were attached to the equity share-holders such as right to vote and the right to a higher rate of dividend, which was not available to the preference shareholders. It was held that a transaction entered into with the intent to diminish the value not of some property which is transferred to another person, but of the donor's own property in globo and to increase the value of property in globo of another person would constitute a gift. Having held that the conversion resulted in a gift, the assessing officer proceeded to compute value of the equity shares on the basis of the value of the net assets of the company. In doing so, he valued immovable property owned by the company on the "land and building" method and arrived at the net value of Rs. 1,773 per equity share. As these were converted into preference shares of Rs. 100 each, he held that there was a gift to the extent of Rs. 1,673 per share parted with by the assessee. Matter was carried in appeals by the assessee before the Appellate Assistant Commissioner, who upheld the views of the assessing officer. assessee preferred appeals before the Tribunal. assessee's stand was accepted by the Tribunal, which observed that conversion of equity shares into preference shares did not result in any gift liable to gift-tax. Referring to the decision of the Apex Court in [Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh](#), and [The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar](#), the Tribunal held that a gift under the Act is not brought about by the unilateral action of any person. In order to constitute transfer of property, two persons per force have to be involved, i.e., a donor and a donee. assessee had nothing to do with the allotment of 10,000 equity shares of Rs. 10 each to Dalmia Agencies (P) Ltd. and Govan Bros. (Rampur) Ltd. because such shares were created by the company in the process of increasing its equity capital and these shares were allotted by the company to the two companies much before the date of conversion of equity shares into preference shares. As the equity shares had the same value as that of the preference shares and since the allotment of preference shares in exchange of equity shares does not involve bilateral transactions, there was no transaction attracting gift-tax. It was further held that the value of the assets of the assessee in globo has neither decreased nor of the other two companies, to whom equity shares were allotted, increased because the three private companies were closely held companies belonging to the same group of assessee and any decrease or increase in the value of the assets of these

companies would ultimately be reflected in the value of interest of each of these assesseees in such companies; the conclusions of the revenue authorities that the intent was to diminish the value of the property was not established; this could also be not inferred from the mere fact that a transaction had the ultimate results of diminishing the value in such property. So far as conversion of the equity shares into preference shares was concerned, the Tribunal held that it was merely of an academic interest, as it had already been held by it that the conversion of the shares did not give rise to any gift. Even otherwise in working out the break-up value, the only property owned by the company had not been properly valued as the over-riding charge in favor of Smt. Krishna Devi Dalmia and the share of unearned increase in the value of the land payable to the President of India had not been taken into account; the assessing officer had totally ignored the fact that preference shares are cumulative preference shares with a right to participate in the surplus of assets in the event of liquidation of the company and further the assessing officer had not taken note of rule 10(2) of the Gift Tax Rules, 1958 (hereinafter referred to as "the Rules"), under which the equity shares as well as the preference shares had to be valued. It was observed that the said rule did not make any distinction between the valuation of an equity shares or of a preference share of a private company. Thus, the value of the equity shares worked out by the got at Rs. 1,773 per share was held to be patently incorrect. Accordingly, it was held that no gift-tax was payable on the conversion of equity shares, held by the assesseees into preference shares.

4. On being moved for reference, as noted supra, the questions, as set out above, have been referred for opinion of this court.

5. In support of the reference petition, the learned counsel for the revenue submitted that shares are goods and immovable property, which are transferable. The Tribunal was not justified in holding that the conversion of equity shares into preference shares was a unilateral act. Transfer of property under the Act means any disposition, conveyance, assignment, settlement, delivery, payment or other alienations and includes inter alia any transaction entered into by a person with intent thereby to directly or indirectly diminish the value of his own property and to increase the value of the property of another person. On conjoint reading of the provisions of the Companies Act, 1956 and the Act, shares or even interest of shareholder can be subject matter of transfer and charge under the Act. A company and a shareholder are two distinct persons and legal entities. They are competent to enter into contract and transfer property between them. Redemption of preference shares by a company has been held to be a transfer, for the purpose of capital gain under the Income Tax Act, 1961. Further when a face value of a share is reduced, on payment of money by the company to a shareholder, the rights of the said shareholder diminish and get reduced. There is reduction in right to get dividend and distribution of net assets on liquidation proportionately to the reduction of capital. The voting right of the shareholder also gets reduced with a reduction in the

value of the vote of the assessee in the event of there being a poll. Conversion can be effective only through a process of reduction of capital as provided under sections 100, 104 and some other provisions of the Companies Act. Equity shares held by the assesseees were transferred to the company and the assesseees in exchange or as consideration of this transfer received cumulative preference shares. This cannot be treated as a unilateral transaction. Two parties were involved. The rights of preference shareholders are not the same as those of equity shareholders, Therefore, assesseees had given up several rights, which were available as the equity shareholders. Though the Tribunal held that rule 10(2) could have been made applicable and even if it was held that the valuation made by the assessing officer was at a higher figure that para was not a ground to accept assesseees' contention regarding non-increase in the value. Rule 10(2) is not mandatory and the manner of calculation of market value is not stated in rule 10(2). Rules of valuation are procedural in nature and have to be given retrospective effect. Schedule II of the Act was inserted by the Direct Tax Laws (Amendment) Act, 1989. The said Schedule incorporated as procedural rule and partakes character of a rule of evidence, Therefore, Schedule 11 is applicable to all pending proceedings and could have been applied.

6. Stand of the assesseees, on the other hand, is that conversion cannot be treated to be a transaction resulting in a gift. It was a bona fide transaction for adequate consideration, keeping in view the rights attached to the preference shares, which are very valuable rights from a long-term point of view, as there was likelihood of considerable reduction in the value of equity shares and keeping in view the future prospects the conversion was accepted. Such act of conversion was a unilateral action by the company and there is no question of any gift being involved. The conversion can be only in terms of section 106 of the Companies Act and there was no variation of the rights, in fact, there was no transfer of any right to the company and there was no reduction or redemption of share capital. There were other private limited companies, which held equity shares and merely because there was denial of voting rights in certain circumstances, it cannot be considered to be a bilateral act and in fact, there was no transaction between the assesseees and the company.

7. In order to appreciate the rival submissions, a few provisions, which throw light on the controversy need to be noted.

The expression "transfer of property" has been defined in section 2(xxiv) of the Act, which reads as follows :

"(xxiv) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes

(a) ** ** **
to
(c)

(a) any transaction entered into by any person with intent, thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person;"

The term "property" is defined u/s 2(xxii) and reads as follows :

"(xxii) "property" includes any interest in property, movable or immovable;"

Section 4 of the Act, on the basis of which the revenue authorities proceeded, reads as follows :

"Gifts to include certain transfers.(1) For the purposes of this Act,

(a) where property is transferred otherwise than for adequate consideration, the amount by which the value of the property as on the date of the transfer and determined in the manner, laid down in Schedule II, exceeds the value of the consideration shall be deemed to be a gift made by the transferor:

Provided that nothing contained in this clause shall apply in any case, where the property is transferred to the government or where the value of the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India;

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration, which has not passed or is not intended to pass, shall be deemed to be a gift made by the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent, to which it has not been found to the satisfaction of the assessing officer to have been bona fide, shall be deemed to be a gift, made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift, made in his favor by the person, who causes or has caused the

property to be so vested;

(e) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount by which such value exceeds the consideration received, shall be deemed to be a gift made by such person.

(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has been converted by the individual into property, belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereafter in this sub-section referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, for the purpose of computation of the taxable gifts made by the individual, the individual shall be deemed to have made a gift of so much of the converted property, as the members of the Hindu undivided family other than such individual would be entitled to, if a partition of the converted property had taken place immediately after such conversion."

Gift is defined in section 2(xii) and reads as follows :

"(xii) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section."

Rule 10(2) to which also reference has been made by the learned counsel for the authorities though for different purposes reads as follows :

"(2) Where the Articles of Association of a private company contain restrictive provision as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total asset of the company, shall be estimated to be what they would fetch, if on the date of gift they could be sold in the open market on the terms of this purchaser, being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded."

8. It is to be noted that shares are goods and movable property as provided in section 2(7) of the Sale of Goods Act, 1930. Section 2(46) of the Companies Act defines shares as share capital of the company and that the shares or any other interest of any member in a company shall be movable property, transferable in the manner provided by the Articles of Association of the company in terms of section

82 of the Companies Act. In [The Commissioner of Income Tax \(Central\), Calcutta Vs. Standard Vacuum Oil Company](#), it was observed by the Apex Court that share is not a sum of money alone but represents interest of the shareholders, measured in sum of money and made of diverse rights contained in the contract evidenced by the Articles of Association of a company. A share in a company regulated by the Companies Act is a chose in action V.G.M. Holdings, In re (1942) Ch. 235. A share in a company does not denote rights only, it denotes obligations also; and when a member transfers his share, he transfers all his rights and obligations as a shareholder as from the date of transfer. He does not transfer rights to dividends or bonuses already declared, nor does he transfer liabilities in respect of calls already made; but he transfers his rights to future payments and his liabilities to future calls per Lindley L.J in National Bank of Wales In re, 66 LJ Ch. 225. In that case, it was held that a transfer with the sanction of the liquidator makes the transferee a "present" member and the transferor a "past" member of a liquidating company. As defined in section 85 of the Companies Act, equity shares and preference shares are conceptually different. In [Anarkali Sarabhai, Shahibag House, Ahmedabad Vs. Commissioner of Income Tax, Ahmedabad](#), the Apex Court held that in general sense, transfer of property means transfer of rights from one person to another. There may be passing of entire bundle of rights from the transferor to the transferee; in another case, there may be transfer of one estate out of several assets; and in a third case, there may be reduction of exclusive interest in the totality of rights of the original owner. In all the three categories of cases, transfer of property takes place. In the said case redemption of preference shares was held to be a transfer by way of sale and the amount, paid by the company for redemption was held to be the purchase price or consideration, as in substance the company purchases preference shares. In [Kartikeya V. Sarabhai Vs. The Commissioner of Income Tax](#), it was held that reduction of face value of a share and payment received from the company in this regard amounts to transfer of property. As noted above, section 2(xii) defines the expression "gift" in an expressive manner. It is provided that the expression includes any transfer by one person to another without consideration of money or money's worth and also includes transfers deemed to be gift u/s 4. Under clause (a) of section 4(1), which also includes any interest in a property, in view of section 2(xxiv) if any property is transferred otherwise than for adequate consideration, it will amount to gift. Under clause (c) release, discharge, surrender, forfeiture or abandonment of any interest in the property, which is not bona fide is also deemed to be gift. In [Khoday Eswarsa and Sons Vs. Commissioner of Gift Tax](#), it was observed that the term "gift" under the Act is much wider than u/s 122 of the Transfer of Property Act, 1882. u/s 6 of the Act, value of any property or price is, which in the opinion of the assessing officer, it would fetch, if sold in the open market. As observed by the Apex Court in [Sri Jagatram Ahuja Vs. The Commissioner of Gift Tax, Hyderabad](#), the word "transaction" in sub-clause (d) of section 2(xxiv) takes its colour from the main clause, i.e., it must be a transfer of property, in some way. The words disposition,

conveyance, assignment, settlement, delivery and payment are all used to indicate some kind of transfer of property. The definition of "transfer" in section 2(47) of the Income Tax Act is not an exhaustive definition. Clause (i) speaks of sale, exchange or relinquishment. In *Kartikeya V Sarabhais* case (supra), it was observed that when a face value of a share is reduced, on payment of money by the company to a shareholder, the rights of the said shareholder diminish and get reduced. There is reduction in right to get dividend and distribution of net assets on liquidation proportionately to the reduction of capital. The voting right of the shareholder also gets reduced with a reduction in the value of the vote of the assessed in the event of there being a poll. What each shareholder gets on liquidation is in lieu of the shareholding and represents worth and price of the share. If the share was held as stock-in-trade, the amount received will be revenue receipt in the hands of the shareholder and if the share was held by way of investment, the amount received represents the capital receipt [Commissioner of Income Tax Vs. Ram Kumar Aggarwal and Brothers,](#). Share or interest of any member in a company is movable property, which is transferable in accordance with the Articles of Association of the company. It is to be noted that the Articles of Association is in the nature of a contract between the shareholders and the company and defines and gives diverse rights of the shareholders. In addition, shareholders also have rights conferred under the Companies Act. Share is a right of specified amount in the share capital of a company carrying with its rights and obligations. It represents interests of a shareholder in a company and a bundle of rights, which a shareholder has in a company in proportion to his shareholding. The face value of the shares is relevant for the purpose of determining the liability of the shareholder and the payment of dividend and the right to receive payments. However, the value of share and the market price depends upon the rights conferred and given to the shareholder, his control over management and proportionate share in the benefits and profits earned by the company. As noted in [Life Insurance Corporation of India Vs. Escorts Ltd. and Others,](#) the equity shareholders have the following rights :

- (a) Right to elect directors of the company and through them participate in the management of the company;
- (b) Right to vote on resolutions at meetings of the company;
- (c) Enjoy benefits earned by the company in the shape of dividend;
- (d) Right to apply to court and get relief in the case of oppression and mismanagement;
- (e) Right to move to the court for winding-up;
- (f) Share surplus on winding-up of the company.

The value or market price of equity shares and preference shares of a same company will be different, as preference shareholder does not have same rights in a

company as an equity shareholder. An equity shareholder has the right to elect the directors and through them participate in management. A preference shareholder does not have right to elect directors and essentially there is no participation in the management. Equity shareholder has the right to vote on each resolution in a general body meeting of the shareholders and in case of poll his voting right is in proportion to the shares of the paid-up equity capital of the company. A preference shareholder does not have right to vote in respect of all resolutions; he has right to vote only on resolution, which directly affects rights attached to the preference shareholders. It is only, if the dividend due on cumulative preference shares remains unpaid for an aggregate period of not less than two years preceding the date of commencement of meeting that a cumulative preference shareholder gets right to vote on all resolutions. Section 87 of the Companies Act is relevant for this purpose. The preference shareholders have no voting rights. u/s 87(2), the rights conferred are restricted. The inevitable conclusion is that transaction constituted transfer of property.

9. The learned counsel for the assessed submitted with the emphasis that the resolution of the company was of 1-10-1970 for conversion and in fact after the resolution dated 23-11-1970, the conversion took place on 10-12-1970 and, Therefore, there was no link between the resolution of the company with the actual conversion. It is to be noted that the main players in the whole arrangement were persons belonging to a closely held group. It is also not correct as contended by the learned counsel for the assessed that there was no transfer of property involved. As soon as there is a change of rights attached to a class of shares, it amounts to a "transaction" and the moment the rights are diminished, it amounts to a "transaction involving gift". As was observed in [M.A. Ismail Vs. Commissioner of Gift-tax](#), on application of sub-clause (d) of section 2(xxiv) of the Act, three conditions have to be satisfied :

- (a) value of the property of the assessed should be diminished;
- (b) value of the property of any other person should increase;
- (c) the transaction must be with the intent to diminish directly or indirectly value of its own property and increase in value of any other person's property.

Any transaction done with the intent to directly or indirectly reduce value of ones property and to increase value of property of any other person is also deemed to be transfer. Thus the beneficiary can be any person and need not be the person to whom property is transferred. A third person can also be gainer and transaction may be for his benefit. It is to be noted that assessed's case was that for tax purposes and for reduction in the value for the shares held by the assessed, it was decided to convert equity shares into preference shares. As noted above, the rights of preference shareholders are not the same as equity shareholders. In [Escorts Farms \(Ramgarh\) Ltd. Vs. Commissioner of Income Tax, New Delhi](#), the Apex Court

had occasion to examine the question of valuation of shares and the impact of issue of bonus shares. It was held that issue of bonus shares results in the reduction of the market value of the shares. Though number of shares held by the assessee increases but the total market value remains the same. This is because of the rights of the shareholders, even after the issue of bonus shares, remain same.

10. The inevitable conclusion is, Therefore, that on conversion of equity shares, held by the assessee, to preference shares, there was transfer of property amounting to gift within the meaning of section 2(xii) of the Act.

The residual and the more important question is, whether the valuation aspect has been properly dealt with by the Tribunal. It is to be noted that rule 10(2) comes into picture where the Articles of Association of a private company contain restrictive provision as to the alienation of shares. The value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch, if on the date of gift they could be sold in the open market on the terms of the purchase, being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own reasons, give a higher price than the price in the open market shall be disregarded.

11. Though the learned counsel for the revenue submitted that there being no guidelines, Schedule II can be adopted. This is clearly fallacious, The said rule was introduced by the Direct Tax Laws (Amendment) Act, 1989, whereas in the present case, the order is dated 23-8-1980. It was argued with some amount of emphasis by the learned counsel for the revenue that the said Schedule incorporates a procedural rule and partakes character of a rule of evidence, and, Therefore, it can be given retrospective effect. We do not find any substance in that plea. We find that the Tribunal, while dealing with the issue of valuation, noted that the valuation, as fixed by the assessing officer, was high because overriding charge in favor of Smt. Krishna Devi Dalmia and the share of unearned increase in the value of the land payable to the President of India have not been taken into account. Further, the right of preference shareholders to participate in the surplus assets in the event of liquidation has not been considered. But at the same time, it was held that rule 10(2) does not make any distinction between the value of "the preference shares and the equity shares. Even if we accept the stand of the learned counsel for the revenue in this regard, it cannot be held that rule 10(2) has no application. It is the mode statutorily prescribed. In [Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax \(Central\) and others](#), , it was held with reference to section 7(1) of the Wealth Tax Act, 1957 in the background of rule 1(d) of the Wealth Tax Rules, 1957 that section 7(1) defines the expression "value of an asset". It is "the price, which in the opinion of the Wealth-tax Officer, it would fetch if sold in the open market on the valuation date", but this is made expressly subject to the rules made in that behalf. No guidelines are furnished by the Act to the rule-making authority except to say that the rule made must lead to ascertainment of the value of the asset (unquoted

equity shares) as defined in section 7. It is thus left to the rule-making authority to prescribe an appropriate method for the purpose. There may be several methods of valuing an asset or for that matter an unquoted equity share. The rulemaking authority cannot prescribe all of them together; it has to choose one of them, which according to it is more appropriate. The rule-making authority in the concerned rule, i.e., rule 1 (d), has prescribed the break-up method, which is undoubtedly one of the recognized methods of valuing unquoted equity shares. It was further held that even if it is assumed that there was another method available, which was more appropriate, still the method chosen cannot be faulted, so long as the method chosen is one of the recognized methods, though less popular. It is to be noted that prior to the amendment by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989, section 6 of the Act had a sub-section (3) which read as follows :

"(3) Where the value of any property cannot be estimated under sub-section (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner."

Undisputed the shares in question were not saleable in the open market. Sub-section (3) of section 6 of the Act is in pari materia with sub-section (3) of section 7 of the Wealth Tax Act, which was under consideration in *Bharat Hari Singhania's* case (supra). Applying the principles laid down in the said case, it has to be held that rule 10(2) had application to the facts of the case.

12. It is to be noted that the assessing officer, while computing the valuation, fixed the value of the land and building at Rs. 25 lakhs as against Rs. 7,83,230, as reflected in the balance-sheet. There is no indication as to how this figure was arrived at. In other words. valuation as done was without any basis. The Tribunal, no doubt had held that valuation aspect was of academic interest only. as there was no gift involved. On the contrary, we have, as noted above, held that there was a gift involved. In these circumstances, we hold that the Tribunal's conclusions both on the questions whether there was any gift involved and on the valuation are erroneous. Thus, we direct the Tribunal to redetermine the value keeping in view the aspects, which it itself noted.

The reference petitions are accordingly disposed of.