(1977) 12 BOM CK 0028

Bombay High Court

Case No: Wealth-tax Reference No. 12 of 1968

Commissioner of Wealth-tax, Bombay City-III		APPELLANT
	Vs	
S.K. Varma		RESPONDENT

Date of Decision: Dec. 1, 1977

Acts Referred:

- Income Tax Act, 1922 - Section 23A
- Income Tax Act, 1961 - Section 104
- Wealth Tax Act, 1957 - Section 2, 27(3), 3, 4

Citation: (1978) 113 ITR 882

Hon'ble Judges: M.N. Chandurkar, J; Desai, J

Bench: Division Bench

Advocate: R.J. Joshi, for the Appellant; I.M. Munim, for the Respondent

Judgement

Desai, J.

A very short point arises for determination in this wealth-tax reference in which the following question has been referred to us under of the Wealth-tax Act, 1957 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provision in respect of section 23A super-tax made in the balance-sheet of M/s. Caprihans (India) Pvt. Ltd. and M/s. Mangaldas H. Verma Private Ltd. should be deducted in computing the break-up value of the shares of these companies for purpose of wealth-tax assessment of the assessee for the assessment year 1962-63 ?"

2. The reference arises out of the assessment under the Wealth-tax Act on an individual for the year 1962-63, the corresponding valuation date being March 31, 1962.

3. Amongst other assets, the assessee owned 4,620 shares of the face value of Rs. 100 each in a company called Caprihans (India) Pvt. Ltd. Similarly, he held 800 shares of the face value of Rs. 50 each in a company called Mangaldas H. Verma Pvt. Ltd. In valuing these shares, the Wealth-tax Officer adpoted the break-up method and in doing so, considered that the provision for additional super-tax u/s 104 of the Act of 1961, corresponding to section 23A of the Act of 1922, was not allowable as a deduction. The assessee being aggrieved with the valuation adopted for these two sets of shares, preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the method adopted by the Wealth-tax Officer, observing that the prospective purchaser of these shares would not be in a position to determine whether or not the companies in terms of the aforesaid provisions. According to the Appellate Assistant Commissioner, he would not be in a position to anticipate any such liability. In his order, the Appellate Assistant Commissioner emphasised that whether the super-tax or additional super-tax is levied consideration of these several facts, he rejected the contention of the assessee. The assessee carried the matter in second appeal to the Tribunal which by a very cryptic order observed that the amount should be taken into account in valuing the shares.

4. Mr. Joshi on behalf of the Commissioner drew our attention to a decision of the Madras High Court in T.V. Sundaram Iyengar and Sons (P.) Ltd. Vs. Commissioner of Wealth-tax, , where a distinction has been made of charge under sections 3 and 4 of the Act and liability to additional super-tax by reason of section 23A. The view taken was that before an order was passed u/s 23A, the possible liability to super-tax under that section could not be said to have ripened into a debt. It was contended before the Madras High Court that the liability to pay additional super-tax u/s 23A sprang not from the order which the Income Tax Officer may make, but from section 23A itself. The Division Bench of the Madras High Court considered the scheme of section 23A and observed at page 113 :

"The structure of section 23A and the manner in which the liability to additional super-tax arises thereunder leave no room for doubt that the liability is not charged automatically by statutory force but arises only after consideration of and decision on various factual factors to be found by him."

5. We are in respectful agreement with this decision. It was submitted, however, by Mr. Munim for the assessee that the principle enunciated in a decision was required to be applied only for determining the wealth of company held by an individual shareholder. He drew our attention to the fact that at the material time the rules subsequently prescribed for arriving at a proper valuation of equity shares (not quoted on a stock exchange) had not come into operation. The decision that he posed for our consideration was whether a prospective buyer of these shares would or would not make a provision in respect of these liabilities in arriving at the proper price of the shares. As developed by him during the course of the argument, it

appeared to us that this argument was based upon the manner in which the provision for the liability had been made by the respective companies in their balance-sheets and the subsequent stand of these companies in their tax assessment proceedings. It is conceivable that, in an exceptional case, the company which has not made the distribution up to the statutory percentage may accept fully and unconditionally the liability to pay super-tax and this may be indicated either in the balance-sheet or borne out from the stand taken by the company in its assessment proceedings in which such liability may not be challenged. This would be in a way an exception to the general rule of approach indicated by the Madras High Court in the decision earlier referred to. For such exception to be made, it is necessary that the question should have been raised in the specific form by the assessee before the revenue authorities and the necessary facts for giving a proper answer to the same brought on record. In the case before us, it appears that the question in this special or exceptional form was not urged before the lower authorities and the necessary is, therefore, not on the record. Mr. Munim submitted that this would be merely an aspect of the question referred to us. But we are unable to accept such submission.

6. It is the admitted position that the orders determining the liability of the company for payment of super-tax were not passed for either of the two companies on the valuation date which was material for the purposes of arriving at a proper valuation of these shares as far as the assessee is concerned and, in our view, therefore, such provision for a possible liability was not deductible.

7. In the result, the question referred to us is answered in the negative and against the assessee. The assessee will pay to the Commissioner the costs of the reference.