

inspecting Assistant Vs. Anil Kumar Jalan

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Nov-28-1986

Reported in : (1987)21ITD81(Mum.)

Judge : I Nigam, Y Meena

Appellant : inspecting Assistant

Respondent : Anil Kumar Jalan

Judgement :

1. These appeals relating to the assessment years 1963-64 to 1974-75, 1978-79 and 1979-80 filed by the revenue against the consolidated order of the AAC, Central Range I, Bombay, deal with the same issue and are, therefore, for the sake of convenience disposed of by a common order.

2. The assessee is an individual. The assessee's wealth, among other assets, consisted of unquoted equity shares of various companies belonging to the Jalan group. These shares were valued by the WTO under Rule 1D of the Wealth-tax Rules, 1957. On appeal, the AAC held that Rule 1D was merely directory and not mandatory and besides this rule was not an appropriate method of valuation of unquoted equity shares of companies, which were a going concern. The AAC, therefore, directed the WTO to value the unquoted equity shares of companies in accordance with the Board's Circular No. 332A, dated 31-3-1982 (see Taxmann's Direct Taxes Circulars, Vol. 1, 1985 edn., p. 1459) with the only modification that since the profits of the non-investment companies go on fluctuating the rate of

capitalisation should be taken at 12 percent.

The revenue is aggrieved and has, therefore, come up in the present appeals before us.

3. The learned departmental representative, Shri Ray, submitted to us that the Board's Circular No. 332A, dated 31-3-1982 applied only to valuation of unquoted equity shares of investment companies, holding companies, etc., and not to unquoted equity shares of non-investment companies under consideration here. The Board's circular was read to us in support of this contention. Proceeding further Shri Ray submitted that it was really strange that the AAC while directing the WTO to follow the Board's circular had directed him not to capitalise the profit-earning capacity on the basis of the yield of 8.5 per cent or 10 per cent as mentioned in the Board's circular but 12 per cent. Shri Ray submitted to us that Rule 1D was mandatory and, therefore, the unquoted equity shares of non-investment companies have to be valued under Rule 1D as was done by the WTO. Summing up, Shri Ray vehemently argued before us that on this issue the order of the AAC was erroneous and should be reversed, while the order of the WTO should be restored.

4. On the other hand, the assessee's learned counsel, Shri Khandelwal, submitted to us that even if the companies whose unquoted equity shares were under consideration here were not investment companies or holding companies and, therefore, the Board's Circular No. 332A, dated 31-3-1982 was not applicable to the valuation of unquoted equity shares of these companies, the fact remained that these companies represented going concerns, which were not ripe for liquidation or winding up and there were no exceptional circumstances like fluctuations of profits or uncertainty of conditions on the relevant valuation dates, which prevented any reasonable estimate of the profit earning capacity of these companies. In these circumstances, according to Shri Khandelwal, the rulings of the Hon'ble Supreme Court in the cases of CWT v. Mahadeo Jalan [1972] 86 ITR 621 and CGT v. Smt. Kusumben D. Mahadevia [1980] 122 ITR 38 will be fully applicable. Our attention was also invited to the ruling of the Hon'ble Bombay High Court in the case of Smt.

Kusumben D. Mahadevia v. N.C. Upadhyaya [1980] 124 ITR 799 wherein their Lordships laid down that Rule 1D was merely directory and not mandatory. He, therefore, vehemently argued before us that the only proper method of valuation of the unquoted equity shares of the companies under consideration in the present appeals was the income capitalisation method based on the profit earning capacity of the companies. The last submission of Shri Khandelwal was that the return from non-investment companies is fluctuating unlike in the case of investment companies and, therefore, the AAC rightly held that for capitalisation the rate of return should be taken at 12 per cent.

5. The learned departmental representative, Shri Ray, in reply made the alternative submission that even if the shares were valued under the income capitalisation method based on the profit-earning capacity of the companies concerned, it cannot be lost sight of that the Jalan group made a disclosure of about five crores under the Voluntary Disclosure of Income and Wealth Act, 1976 and some of the incomes disclosed according to the voluntary disclosure belonged to some of the companies whose shares were under consideration in the present appeals.

In these circumstances, according to Shri Ray, while working out the profit-earning capacity of the companies concerned, the income earned by the companies outside the printed balance sheet and profit and loss account, which formed the subject-matter of disclosure should also be taken into account. Shri Ray also submitted that unlike in the case of a bank deposit where the amount of the deposit remains stationary and only the interest income is earned in the case of a share not only the dividend income is earned but the market value of the share also increases from year to year and considering this fact the multiplier to be adopted under the income capitalisation method to the profit-earning capacity of the companies should be on the basis of a return of 10 per cent only and not 12 per cent as was directed by the AAC.⁶ We have carefully considered the rival submissions. It is not under dispute that the various companies whose unquoted equity shares were the subject-matter of the valuation in the present appeals were all going concerns, which were not ripe for liquidation or winding up and besides there were no exceptional circumstances like fluctuation of profits or uncertainty of

conditions on the relevant valuation dates, which prevented any reasonable estimate of the profit-earning capacity of the companies on the valuation dates relevant to the various assessment years. In these circumstances, in view of the ruling of the Hon'ble Supreme Court in the cases of Mahadeo Jalan (supra) and Smt.

Kusumben D. Mahadevia (supra), the only proper method of valuation of the unquoted equity shares of these companies was under the income capitalisation method based on the profit earning capacity of the companies. The Hon'ble Bombay High Court in the case of Smt. Kusumben D. Mahadevia (supra) has even gone to the extent of laying down that Rule 1D was merely directory and not mandatory. In these circumstances, while we agree with the learned departmental representative, Shri Ray, that the Board's Circular No. 332A, dated 31-3-1982, which applies only to the valuation of unquoted equity shares of investment companies, holding companies, etc., will not be applicable here, we have no hesitation in coming to the conclusion that the only proper method of valuation of the unquoted equity shares of the companies here was under the income capitalisation method based on the profit-earning capacity of the companies concerned on the relevant valuation dates.

7. This brings us to the next question of what should be the multiplying factor to be applied in the valuation of the shares under the income capitalisation method. There is a lot of force in the argument of the learned departmental representative, Shri Ray, that unlike in the case of a bank deposit where the amount of the deposit remains fixed and constant and only the interest income is earned, in the case of shares not only dividend income is earned but the value of the share also appreciates from year to year. The argument of the assessee's learned counsel, Shri Khandelwal, that the dividend income in the case of shares of non-investment companies fluctuates unlike in the case of investment companies cuts both ways in as much as this also provides an opportunity for increase in income and consequent appreciation in the value of shares. It is also necessary here to point out that it is not the case of the assessee and in response to a specific query by the Bench, the assessee's learned counsel, Shri Khandelwal, submitted that it was not the assessee's case that there were fluctuations of profits, which prevented

any reasonable estimate of the profit-earning capacity of the companies concerned on the relevant valuation dates. Considering all this and looking to the totality of the facts and circumstances, we are of the view that the multiplying factor to be adopted under the income capitalisation method should be based on a return of 10 per cent and not 12 per cent as was directed by the AAC. We further direct that while working out the profit-earning capacity of the companies concerned on the relevant valuation dates the WTO will take into consideration not only the profits as reflected according to the balance sheet and profit and loss account but also the profits outside the account books, if any, which formed the subject-matter of disclosure made by the Jalan group.

8. The WTO is directed to value the shares of the companies accordingly.

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