

Dara B. Mistry Vs. Third Assistant Controller of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Mar-06-1987

Reported in : (1987)22ITD40(Mum.)

Judge : Y Upadhyay, Vice, R Sangani

Appellant : Dara B. Mistry

Respondent : Third Assistant Controller of

Judgement :

1. These two appeals arise out of the proceedings for the assessment of estate duty. One appeal is by the accountable person while the other is by the department. The dispute involved is valuation of shares of private company held by the deceased on the date of his death.

2. The deceased is Bomanji Jamasji Mistry, who died on 15-1-1976. On the date of his death he held shares in B. Jamasji Mistry Pvt. Ltd. The accountable person made valuation in accordance with the provisions of Rule 1D of Wealth-tax Rules, 1957 at Rs. 222 per share. In the course of assessment, he submitted computation made on yield basis under which value came to Rs. 48.34 per share. The Assistant Controller of Estate Duty made valuation by adopting general break-up method. In that process, he did not accept the value shown in the balance sheet of the company as value of the assets. He took higher value in the computation. Besides, said company held shares in other private company. He proceeded to determine market value of shares of said other company which

came to a higher figure than shown in the balance sheet of the company with which we are concerned. On this basis the value per share came to Rs. 493.33. The Accountable person went in appeal before the Controller of Estate Duty (Appeals). The Controller of Estate Duty (Appeals) directed the Assistant Controller of Estate Duty to adopt valuation as per Rule 1D of the Wealth-tax Rules, 1957. He rejected the submission for adopting the value on yield basis. The Accountable person and the department have now come in appeals before us.

3. The submission in the appeal by the accountable person is that valuation should be on yield basis and not in accordance with Rule 1D of the Wealth-tax Rules, 1957. The submission in the appeal by the department is that valuation should be by adopting general break-up method.

4. We have heard the parties. Section 37 of the Estate Duty Act, 1953 deals with valuation of shares of private companies in the proceeding for estate duty. It is specifically mentioned therein that primarily the valuation should be made by reference to the value of the total assets of the company. In case the value is not ascertainable with reference to the value of the total assets of the company, then alone efforts should be made to ascertain by any other process as to what price they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to articles of association, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market would be disregarded. This statutory provision cannot be ignored. In view of this specific special provision for valuation of shares of private company, those shares are bound to be valued with reference to, the value of the total assets of the company. This is the primary method prescribed by the statute. It is only when the value is not ascertainable by recourse to that method, that the question of adopting some other method would arise. Now, valuation with reference to the value of the total assets of the company is valuation by break-up method. The Estate Duty Act does not prescribe rules for computing value by break-up method. However, Wealth-tax Rules, 1957 contain a rule in which break-up method is prescribed. That rule is Rule 1D. That rule is a statutory rule embodying break-up method. The method prescribed in said rule can be conveniently adopted to make valuation under Section 37. The fact that

Rule 1D is under Wealth-tax Act and not under the Estate Duty Act would not make any difference. If the Estate Duty Rules had provided for a rule for valuation with reference to value of assets, resort to Rule 1D of Wealth-tax Rules, 1957 would not have been permissible. However, as already stated, Estate Duty Rules do not prescribe method of valuation with reference to value of assets. It is, therefore, fair and reasonable that method prescribed under Rule 1D of the Wealth-tax Rules, 1957 which contains provisions for valuation with reference to the value of assets should be adopted in proceedings of estate duty. It is the only statutorily recognised method and there could absolutely be no objection to adoption of said method. We are supported in this view of the matter by decision of Mysore High Court in CED v. J. Krishna Murthy [1974] 96 ITR 87. It has been further held therein that in the process of valuation under Rule 1D in the estate duty proceedings, the assets of the company as shown in the balance sheet should be adopted.

5. We do not accept the submission of the accountable person that yield method should be accepted. It is true that the Supreme Court has laid down in two cases that yield method is the proper method for valuation of shares of a Private Company when the company is a going concern and not ripe for liquidation and when the fluctuations in the profits are not such as to prevent reasonable estimation of profit-earning capacity. These two decisions are CWT v. Mahadeo Jalan [1972] 86 ITR 621 and CGT v. Smt. Kusumben D. Mahadevia [1980] 122 ITR 38 which were cited before us by the learned representative of the assessee. The first decision was under the Wealth-tax Act and the other under the Gift-tax Act. In the second decision, the Supreme Court made it clear that they had not considered effect of Rule 10(2) of Gift-tax Rules as that aspect did not arise out of the question as framed. These decisions do not lay down that even when there is obligatory statutory provision to adopt method with reference to value of assets that method should be discarded in favour of yield method. Our attention was drawn to the decision of the Bombay High Court in Smt. Kusumben D. Mahadevia v. N.C. Upadhyaya [1980] 124 ITR 799 where it was held Rule 1D was directory and not mandatory. This decision is under Wealth-tax Act.

Under said Act, there is no obligatory provision for making valuation with reference to value of assets of the company. Hence, under Wealth-tax Act, resort to break-up method would be discretionary. Under the Estate Duty Act, as already stated there is a statutory obligatory provision for making valuation with reference to value of the assets of the company. Hence, the first choice is break-up method. It is only in the circumstances, when it is found that value is not ascertainable with reference to value of assets of the company that resort to other method is permissible. Here in this case, we find that the value is ascertainable with reference to value of the assets of the company.

Hence the statutory provision for valuation with reference to value of assets of the company cannot be ignored and as method under Rule 1D is a statutory method where valuation is prescribed with reference to assets of the company that method is liable to be adopted. We reject the submission made on behalf of the assessee. We conform the directions given by the Controller of Estate Duty (Appeals).

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