indukumar C. Patel Vs. Cwt

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Court : Gujarat

Decided On : Jul-18-2002

Reported in : [2002]125TAXMAN173(Guj)

Appeal No. : Wealth Tax Reference No. 12 of 1991 18 July 2002

Appellant : indukumar C. Patel

Respondent : Cwt

Advocate for Pet/Ap. : Manish R. Bhatt & Mrs. Mona Bhatt, *for the Revenue*.

Judgement :
Counsels:

Manish R. Bhatt & Mrs. Mona Bhatt, for the Revenue.

In the Gujarat High Court M.S. Shah & K.A. Puj, JJ.

JUDGEMENT

M.S. Shah, J.

In this reference at the instance of the assessee, the following questions are referred for our opinion in respect of the assessment year 1979-80 :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in making additions on account of compulsory deposit with interest in the total wealth ?

'2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not deducting gross amount of provisions for taxation as a liability while applying rule 1D of the Wealth Tax Rules for determining the break-up value of shares of private limited companies ?'

2. At the hearing of the reference, none appears for the assessee though served. Mrs. Mona Bhatt, the learned standing counsel appears for the revenue.

3. As far as question No. 1 is concerned, our attention is invited to our decision dated 27-6-2002 of this court in WT Reference No. 2 of 1989 wherein this court pointed out that the provisions of section 7A inserted in the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 with effect from 1-4-1975, provide that for the purposes of exemption under section 5 of the Wealth Tax Act, 1957 (hereinafter referred to as the Act), the amount of compulsory deposit shall be deemed to be a deposit with a banking company to which the Banking Regulation Act, 1949 applies. This court accordingly, held in the aforesaid decision that the amount standing to the credit of the assessee as compulsory deposit (which would also include interest accrued on the deposits in the compulsory deposit) would not be liable to wealth-tax.

Following the aforesaid decision, our answer to question No. 1 is in the negative, i.e., in favour of the assessee and against the revenue.

4. Coming to question No. 2, our attention is invited to the decision of the Apex Court in Bharat Hari Singhania v. CWT wherein the Apex Court held as under : .

'If in the case of the balance sheet of the company, the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by clause (1)(a) of Explanation II to rule ID, is also shown as a liability, i.e., if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities and

this is also what clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to clause (i)(a). The advance tax paid is not really an asset but the proforma of balance sheet in Schedule VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liability, says that only that amount which is still remaining to be paid, shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the sub-clauses.' (page 5)

Following the aforesaid decision, our answer to question No. 2 is that rule 1D of the Wealth Tax Rules for determining the break-up value of shares of private limited companies shall be applied in the light of the aforesaid principles laid down by the Apex Court in Bharat Hari Singhanias case (supra).

5. The reference, accordingly, stands disposed of with no order as to costs.