

Sunil Kumar Das Vs. Assistant Controller of Estate Duty.

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Court : Kolkata

Decided On : Apr-28-1984

Reported in : [1984]10ITD31(Cal)

Appeal No. : ED APPEAL NO. 13 (CAL.) OF 1983

Appellant : Sunil Kumar Das

Respondent : Assistant Controller of Estate Duty.

Judgement :

ORDER

Per Shri H. S. Ahluwalia, Judicial Member - The dispute in this appeal relates to the value of 850 shares held by the deceased in the Engle Lithographing Co. (P.) Ltd. for the purpose of computation of net principal value of his estate.

2. Assistant Controller chose to value the shares on the method of break-up value but in so doing he added a sum of Rs. 16,07,800 as goodwill of the company on the basis of three years super profits instead of Rs. 16,368 shown in the balance sheet. He also did not choose to follow the method prescribed in rule 1D of the Wealth-tax Rules, 1957 (the 1957 Rules) and, consequently did not grant 15 per cent reduction in the break-up value as provided for therein.

3. On appeal, the Appellate Controller upheld the valuation of the Assistant Controller except for the purpose of determining the goodwill he took the rate of capitalisation at three times of the average profit of three years which resulted in a

reduction of Rs. 5,35,943 from the total assets of the company. The accountable person has come up in second appeal before us.

4. We have heard the representatives of the parties at length in this appeal. The point argued before us was rather fine. The Assistant Controller and the department relied upon section 37 of the Estate Duty Act, 1953 (the Act) according to which, in case of private limited companies to the alienation of the shares the value if not ascertainable by reference to the value of total assets of the company shall be estimated to be what they would fetch if they could be sold in the open market. According to the revenue, the total assets of the company had been duly ascertained and, therefore, the value has to be determined on that basis. The question of market value would not arise in such circumstances. On the other hand, the representative of the accountable person drew our attention to the famous decision in *CWT v. Mahadeo Jalan* : [1972]86ITR621(SC) for the proposition that yield method is the generally applicable method for determining the value of shares and the break-up method should be resorted to in exceptional circumstances or where the company is ripe for liquidation. According to the representative of the accountable person, the principles of this decision had been subsequently explained and followed in the recent judgment of the Honble Supreme Court in *CGT v. Smt. Kusumben D. Mahadevia* : [1980]122ITR38(SC) , the relevant observation wherein read as under :

'What the Supreme Court meant when it said in the case of *CWT v. Mahadeo Jalan* : [1972]86ITR621(SC) that, in the case of an investment company, the asset-backing is a relevant factor in determining the value of its shares, was that in order to determine the capacity of the company to maintain its profits the asset-backing would be a relevant consideration. The profit-earning capacity of the company would naturally have to take into account not only the profits which the company is actually making but also the profits which the company should be capable of making and in order to arrive at a proper estimate of the latter, the asset-backing would be a relevant factor in the case of an investment company. It is not correct to read the observation as suggesting that valuation of the assets would be a relevant factor in determining the valuation of the shares.' (p. 39)

The contention of the representative of the accountable person was that in view of this position of law as explained by their Lordships, it should be held that ordinarily the value of shares in a private company should be estimated to be the market value on the yield method and it is not ascertainable by reference to the value of the total assets. On behalf of the department reliance was placed upon two decisions, viz., the decision of the Calcutta high Court in the case of CED v. Biswanath Rungta : [1968]67ITR748(Cal) wherein the valuation of the shares in the private limited company was made by including goodwill which was not shown in the balance sheet and the Honble High Court actually reversed the decision of the Tribunal in valuing the goodwill at Rs. 50,000 only and enhanced the same. The other decision relied upon was a recent decision of the Madhya Pradesh High Court in Shyamsukh Garg v. CED : [1984]145ITR238(MP) which again held that the goodwill could be included in the assets of the deceased.

5. We have carefully considered all the aspects of the matter. It is correct that, technically speaking, according to section 37, the total assets of the company in which the deceased held the shares should be calculated in order to determine their break-up value but then the issue is likely to become more complicated. It was probably in this view of the matter that the CBR inserted rule 1D in the 1957 Rules by which the manner of determining the market value of unquoted equity shares of the companies other than investment companies and managing agency companies has been laid down. This was to avoid any controversy over the market value but it has been specifically mentioned therein that for the purpose of determining the same, the value of the assets shown in the balance sheet is to be considered. Similarly, the value of the liabilities shown in the balance sheet is to be considered subject to certain explanations. Therefore, the value of goodwill which is not shown in the balance sheet as an asset would not be considered according to this rule. Now, if the revenue is not satisfied with the valuation arrived at in accordance with this rule, the other safe method would be yield method as has been approved of by the Supreme Court in the two cases of Mahadeo Jalan (Supra) and Smt. Kusumben D. Mahadevia (supra). The department cannot be allowed to argue Heads I win and tail you lose Either it takes the balance sheet and estimates the value on the break-up method or it takes the market value which would take care of the supposed goodwill. The two authorities cited on behalf of

the revenue do not directly decide this issue. At page 753, in the case of Biswanath Rungta (supra), there is a mention that the argument of the accountable person was that the value of goodwill need not be taken into consideration at all because the same was not considered in the balance sheet before the Tribunal. This was rejected by the Tribunal but the accountable person did not seek any reference. Therefore, this issue cannot be deemed to have been decided in that case. In the case of Shyamsukh Garg (supra) the dispute related to goodwill of a partner in a firm and not goodwill of a limited company, so this question was not directly involved. On the other hand, in CED v. J. Krishna Murthi : [1974]96ITR87(KAR) , it was held that in the absence of rules valuation for the purpose of the Act has to be made in accordance with the well recognised methods of valuation followed in India and the break-up method of valuation provided for by rule 1D was the only statutory recognised manner which should be adopted for the purpose of valuation of estate duty also.

6. We may in this behalf explain the fallacy that would arise in computing the value of the shares in the manner in which the revenue wants us. Out of the profits of the company a huge amount has to be paid for tax paid on account of income-tax so that the dividend declared on shares is comparatively less. The representative of the accountable person gave us a chart which shows that the rates of dividend for the calendar year 1967 to 1976 declared were 15, 13, 13, 12, 11, 12, 12 and 12 per cent, respectively. The face value of the shares was Rs. 100 and the market value assessable in accordance with rule 1D was stated to be Rs. 227.15 per share but the market value in accordance with the computation of the Assistant Controller comes to Rs. 452.31 per share. Even after the relief by the Appellate Controller, it would be more than Rs. 400. This does not reflect the true market values because then the return by way of dividend would be about 6 per cent for which return nobody would like to purchase such share. We are, therefore, of the opinion that either the department should proceed to determine the market value in accordance with the yield method as explained by the Supreme Court in the two authorities referred to or take up the value in accordance with the break-up method as laid down in rule 1D, of course it would be the option of the Assistant Controller to choose one or the two of the method but the revenue cannot be allowed to urge that the goodwill of the company shall be computed in accordance

with the super profits without taking into consideration that what goes the shareholders are the super profits after deduction of the tax liabilities. Accordingly, we accept the appeal and direct that the value of the shares shall be ascertained afresh by the Assistant Controller in the light of our aforesaid discussion.

7. For statistical purposes, this appeal shall be deemed to have been allowed as such.

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