

N.K.S.

*Before R. N. Mittal and M. M. Punchhi, JJ.*

ASHOK KUMAR OSWAL,—*Applicant.*

*versus*

THE COMMISSIONER OF WEALTH-TAX, PATIALA,—  
*Respondent.*

*Wealth tax reference No. 3 of 1977.*

March 12, 1984.

*Wealth Tax Rules, 1957—Rule 1-D Explanation II Clauses (i) (a) and (ii) (e)—Interpretation of—Market value of unquoted equity shares of a company—Determination of—Words 'tax payable with reference to the book profits'—Whether connote tax due from a company after deducting advance tax.*

*Held*, that clause (i) of Explanation II to Rule 1-D of the Wealth Tax Rules, 1957 deals with the amounts on the assets side in the balance sheet, which are not to be treated as assets and clause (ii) with the amounts on the liabilities side in the balance sheet which are not to be treated as liabilities. Under sub-clause (a) of clause (i) any amount paid as advance-tax and shown as an asset in the balance sheet of a company is not to be treated as an asset and under sub-clause (e) of clause (ii) the difference between the amount representing provision for taxation and amount payable as tax on the book profits is not to be treated as liability. It is well settled that various clauses in a rule should be interpreted harmoniously. In sub-clause (e) the words 'the tax payable with reference to the book profits' are important. These words connote the amount of tax due from a company after deducting the advance tax and not whole of the amount of tax worked out on the book profits. A provision for taxation is made in the balance-sheet under rules of accountancy and not under any rule of law. The liability of a company to pay tax is the amount of tax worked out on its profits minus the payment made as advance tax. It cannot be

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said that the advance tax paid is not relevant for determining the tax liability of a company. Therefore, under sub-clause (e) out of the provision for taxation, the actual amount payable after deducting the advance tax will be taken as the liability of the company and not whole of the tax on the book profits.

Para 7).

Commissioner of Wealth-Tax vs. Ashok K. Parikh, (1981) 129 I.T.R. 46.

DISSENTED FROM

*Reference made by the Income-tax Appellate Tribunal, Amritsar Bench, on the instance of assessee to the High Court of Punjab and Haryana at Chandigarh, under section 27(1) of the Wealth-tax Act, 1957, the following question of law said to arise out of the order dated 27th December, 1974 of the Tribunal in W.T.A. No. 17 of 1973-74:*

*"Whether on the facts and circumstances of the case, the interpretation of sub-clause (e) of clause (ii) of Explanation II of Rule 1-D of the Wealth-tax Rules 1957, is correct?"*

B. S. Gupta, Advocate with S. K. Mittal, Advocate, for the Petitioner.

Ashok Bhan Sr. Advocate with A. K. Mittal, Advocate, for the Respondent.

#### JUDGMENT

R. N. Mittal, J.

(1) This Wealth-tax Reference has been made under section 27(1) of the Wealth-tax Act, 1957 at the instance of the assessee by the Wealth Tax Appellate Tribunal, Amritsar Bench, Amritsar.

(2) Briefly, the facts are that the assessee filed his return of net wealth for the assessment year 1968-69 on 16th September, 1968. showing a net wealth of Rs. 2,27,537. He owned 4,000 equity shares of Messrs Oswal Woollen Mills, Limited which were unquoted. In the return the value of the shares was shown by the assessee as Rs. 83,200 at the rate of Rs. 20.80 per share. The Wealth-tax Officer (hereinafter referred to as the W.T.O.) while examining the balance-sheet of Messrs Oswal Woollen Mills, Limited found that the assessee had not properly valued the shares of the Company. He determined the

break-up value of the shares at Rs. 61.03 per share and adopted 82 per cent of the break-up value of the shares as the market value on the valuation date. On that basis he worked out the value of the shares as Rs. 50.04 per share. Consequently he determined the total value of the shares at Rs. 2,00,160.

(3) After the completion of the assessment the assessee made an application under section 35 of the Wealth-tax Act for rectification of the value of the share as per Wealth-tax Rules, 1957, on 19th May, 1971. Therein he made a prayer that the value of the shares be reduced to Rs. 20.15 from Rs. 50.04 per share in the assessment order. The W.T.O. rejected the said prayer. However, he held that there was mistake in calculation in the assessment order and, therefore, he recalculated the value of the shares at Rs. 46.29 per share. In doing so he worked out the value of the shares and the revised net wealth of the assessee as under:

|                                     |                  |  |                        |
|-------------------------------------|------------------|--|------------------------|
| "Total assets as per balance-sheet  |                  |  |                        |
| of M/s. Oswal Woollen Mills         |                  |  |                        |
| Ltd. as on 31st December, 1967      |                  |  | Rs. 1,51,65,838        |
| Less advance tax-payments not       |                  |  |                        |
| considered as assets                |                  |  | Rs. 34,42,312          |
| Balance assets                      |                  |  | <u>Rs. 1,17,23,526</u> |
| Less Liabilities:                   |                  |  |                        |
| 1. Secured loans                    | 21,28,296        |  |                        |
| 2. Unsecured loans                  | 14,01,136        |  |                        |
| 3. Current liabilities & provisions | 58,42,998        |  |                        |
| Less provisions for taxes           | 36,99,182        |  |                        |
|                                     | <u>21,43,816</u> |  |                        |
| Add current tax                     | 3,80,140         |  |                        |
|                                     | <u>25,23,956</u> |  |                        |
|                                     | 60,53,388        |  | <u>1,17,23,526</u>     |
| Deductable liabilities              |                  |  | <u>60,53,388</u>       |

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|   |                |           |
|---|----------------|-----------|
| Net assets  |                | 56,70,138 |
| No. of equity shares  | 94933          |           |
| Break-up value per share:   | Rs. 59.73      |           |
| 77½% thereof  | Rs. 46.29      |           |
| The revised net wealth of the assessee is computed as under:        |                |           |
| Net Wealth assessed as per order dated 24th October, 1968.          | Rs. 3,51,739   |           |
| Less value of 4000 shares   | Rs. 2,00,160   |           |
|   | Rs. 1,51,579   |           |
| Add value of 4000 shares @ Rs. 46.29 per share as worked out above. | Rs. 1,85,160   |           |
|   | Rs. 3,36,739." |           |

(4) The assessee went in appeal before the Appellate Assistant Commissioner. It was submitted on behalf of the assessee before him that while calculating the value of the shares the W.T.O. should have excluded from the figure of the total assets "provisions for taxes amounting to Rs. 36,99,182" as per sub-clause (e) of clause (ii) of Explanation II of rule 1-D of the Wealth-tax Rules, 1957 (hereinafter called "the Rules"). The Appellate Assistant Commissioner did not accept the contention and upheld the order of the W.T.O. Against the said order the assessee went up in further appeal before the Tribunal which came to the conclusion that the value of the shares was correctly determined by the W.T.O. in accordance with the above-said rule. Consequently it affirmed the findings of the Appellate Assistant Commissioner. On an application of the assessee under section 27(1) of the Act, the following question of law has been referred to this Court for its opinion:

"Whether on the facts and circumstances of the case the interpretation of sub-clause (e) of clause (ii) of Explanation II of Rule 1-D of the Wealth Tax Rules, 1957 is correct?"

(5) Mr. Gupta, learned counsel for the assessee, has argued that the interpretation taken by the Tribunal is not warranted. He urges that under sub-clause (e) of clause (ii) of Explanation II of

rule 1-D of the Wealth-tax Rules the provision for taxation made on the book profits of the Company should be treated as liabilities. If there is any excess in the amount shown by way of provision for taxes over what would be payable with reference to the book profits, only that excessive amount, he argues, cannot be treated as liabilities of the Company. It is further argued by him that the tax payable according to book profits, is the total amount of tax on such profits and not the amount of tax which is actually payable by the Company after deducting the advance-tax. In support of his contention he refers to *Commissioner of Wealth-Tax v. Ashok K. Parikh* (1), wherein it is observed that what sub-clause (e) of clause (ii) requires the W.T.O. to do is to ascertain first as to what are the book profits shown by the Company and in the light of those book profits what would be the tax payable with reference to those book profits in accordance with the law applicable thereto. Having thus ascertained the amount of the tax payable with reference to the book profits, the W.T.O. has then to see whether the provision for taxation on the liabilities side of the balance-sheet is in excess of the amount of tax payable with reference to the book profits as already ascertained by him. If there is any excess in the provision for tax liabilities, then that excess is not to be treated as part of the liabilities of the Company while computing the break-up value of the shares of the Company. So far as provision for advance tax is concerned that provision has to be disregarded while applying the provisions of sub-clause (e) of clause (ii) of Explanation II. It is further observed that sub-clause (e) of clause (ii) and sub-clause (a) of clause (i) of the rule operate in two different fields altogether. Clause (i)(a) operates in the field of actual payment of advance tax. Clause (ii)(e) operates in the field of excess provision for taxation, other than the provision for taxation regarding advance tax. For the purpose of computation of the market value of the shares of a Company, the advance tax paid and shown on the assets side of the balance-sheet of the Company cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of clause (ii)(e) of Explanation II.

(6) We have given due consideration to the argument but regret our inability to accept the same. In order to determine the question it is necessary to reproduce the relevant part of rule 1-D

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which is as follows:—

“1-D.—The market value of an unquoted equity share of any company other than an investment company or a managing agency company, shall be determined as follows:—

The value of all the liabilities as shown in the balance-sheet of such company shall be deducted from the value of all its assets shown in that balance-sheet. The net amount so arrived at shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet. \* \* \*

\* \* \* \*

*Explanation II.*—For the purposes of this rule—

(i) the following amounts shown as assets in the balance-sheet shall not be treated as assets, namely:—

(a) any amount paid as advance-tax under section 18-A of the Indian Income-tax Act, 1922 (11 of 1922), or under section 210 of the Income-tax Act, 1961 (43 of 1961):

\* \* \* \*

(ii) the following amounts shown as liabilities in the balance-sheet shall not be treated as liabilities, namely:—

\* \* \* \*

(e) any amount representing provision for taxation [other than the amount referred to in clause (i)(a)] to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

\* \* \* \*”

(7) The case involves interpretation of sub-clause (a) of clause (i) and sub-clause (e) of clause (ii) of Explanation II. Clause (i)

deals with the amounts on the assets side in the balance-sheet, which are not to be treated as assets and clause (ii) with the amounts on the liabilities side in the balance-sheet which are not to be treated as liabilities. Under sub-clause (a) of clause (i) any amount paid as advance-tax and shown as asset in the balance sheet of a Company is not to be treated as an asset, and under sub-clause (e) of clause (ii) the difference between the amount representing provision for taxation and amount payable as tax on the book profits is not to be treated as liability. It is well-settled that various clauses in a rule should be interpreted harmoniously. In sub-clause (e) the words "the tax payable with reference to the book profits" are important. These words connote the amount of tax due from a Company after deducting the advance-tax and not whole of the amount of tax worked out on the book profits. A provision for taxation is made in the balance-sheet under rules of accountancy and not under any rule of law. The liability of a Company to pay tax is the amount of tax worked out on its profits minus the payment made as advance-tax. It cannot be said that the advance-tax paid is not relevant for determining the tax liability of a Company. Therefore, under sub-clause (e) out of the provision for taxation, the actual amount payable after deducting the advance-tax will be taken as the liability of the Company and not whole of the tax on the book profits. With great respect to the learned Judges we have not been able to persuade ourselves to accept the view expressed in *Ashok K. Parikh's case* (supra).

(8) In the present case in accordance with the contention of the assessee the amount of Rs. 34,42,312 deposited as advance-tax has not been treated by the Wealth-tax Authorities as assets of the Company and the amount of Rs. 3,80,140 has been treated by them as its liability. However, regarding the amount of Rs. 36,99,182 which is the provision for taxes made in the balance-sheet his contention has not been accepted and the amount has not been treated as liability on the ground that it has not been shown that the amount beyond Rs. 3,80,140 was payable by the Company as tax on its book profits. In our view, sub-clause (e) has been correctly interpreted by the said Authorities. Consequently, we answer the question in the affirmative, i.e., in favour of the Revenue and against the assessee. No order as to costs.

M. M. Punchhi, J.—I agree.

N.K.S.