IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) Nos.786 and 787 of 2008

Commissioner of Wealth Tax,
Chennai. ... Appellant in both Tax Cases

-vs-

Rattan Kumar Khemka,
G-83 Anna Nagar,
Chennai-600 102. ... Respondent in both Tax Cases

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 30.05.2005 in WTA Nos.73/Mds/99 and 89/Mds/1999 for the assessment year 1992-93 against the order of the Commissioner of Income Tax (Appeals-II), Chennai 34, dt.25.6.99 made in WTA.No.6/96-97 and against the order of Asst. Commissioner of Income Tax, cen.circle I(1), Madras -34 dt.26.3.1997 made in P.A.N./G.I.R.No.47-066-PQ-9652.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
assisted by Mr.S.Rajesh,
Senior Standing Counsel &
M/s.K.G.Usha Rani,
Junior Standing Counsel

For Respondent : Mr.R.Sivaraman

COMMON JUDGMENT

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Senior Standing Counsel and M/s.K.G.Usha Rani, learned Junior Standing Counsel for the appellant and Mr.R.Sivaraman, learned counsel for the appellant.

2.These tax case appeals have been filed challenging the common order of the Income Tax Appellate Tribunal Madras 'B'

Bench, dated 30.05.2005,s in WTA Nos.73/Mds/99 and 89/Mds/1999 for the assessment year 1992-93.

3.The above appeals have been admitted on the following substantial questions of law:-

> "1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the shares owned by the assessee could not be valued as per the rate quoted in the stock exchange as the assessee was bound by a lock in period, and could not sell those shares at that time?
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> 2.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the shares which are bound by the restriction of a lock in period have no value at all and cannot even be valued as per Rule 11 of Schedule III of the Wealth Tax Act?"

4.The learned Senior Standing Counsel for the Revenue as well the learned counsel for the assessee agreed that the issue is covered by the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Wealth-tax vs. Thirupathy Kumar Khemka reported in [2012] 259 CTR 260. The operative portions of the judgment read as follows:-

> "*12.The question as to what could be the degree of depreciation that may be granted to the shares, remains without any guidelines provided for in Part C of the III Schedule. It is an open secret that in the absence of any such guideline, the depreciation may range from 0 to 100 and it is always a question of debate. Apparently, on account of all these, we feel that the Commissioner of Wealth Tax justifiably adopted Rule 11 of Part C of the III Schedule, which is with reference to unquoted equity shares. By adopting the principle as given under Rule 11, we are neither treating the shares as unquoted shares, nor are we ignoring the fact that the company's shares are quoted shares. All that one does by applying the principle in Rule 11 is to arrive at the valuation of a shares which are quoted shares, but suffering restriction on free transferability. We feel, that would, in fairness, answer the question as to what could be the depreciated value of a promoters' quota shares. Though the assessee is not in a position to show what could be the depreciated value of the restriction on the transfer, even invoking Rule 21,*

as had been done by the Revenue, we find that Rule 11 could only be a plausible method to arrive at the depreciated value of a quoted share, which suffers a lock-in period, by reason of it being allotted as a promoter's quota.

13.In the circumstance, we allow the Tax Case Appeals filed by the Revenue only to the extent of holding that the shares held in promoters' quota for a lock-in period could be allowed by adopting the methodology under Rule 11. No costs."

5.Thus, following the above referred decision, the tax case appeals, filed by the Revenue, are allowed only to the extent of holding that the shares held in promoters' quota for a lock-in period could be allowed by adopting the methodology under Rule 11 of Part C of the III Schedule to the Wealth Tax Rules. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Commissioner of Wealth Tax,
Chennai.

2.The Income Tax Appellate Tribunal Madras 'B' Bench.

3.The Commissioner of Income-tax (Appeals)-II,
Chennai-600 034.

4.The Asst.Commissioner of Income Tax, cen.circle I(1)
Madras 104.

+1cc to M/s.T.R.Senthilkumar Advocate Sr.No.49243

CP(CO)
sm:13.8.2018