

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case No.788 of 2008

Commissioner of Wealth Tax
Chennai

Appellant / Respondent

Vs.

Sadhana Devi

Respondent / Appellant

Tax Case filed under Section 27A of the Wealth Tax Act, 1957 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 30.5.2005 made in ITA No.69/Mds/99 against the order of the Commissioner of Wealth Tax (Appeals)-II, Chennai by dated 26.05.1999 and made in WTA No.11/97-98 and against the Assistant Commissioner of Income Tax, Cen.Circle I(1), Madras - 3 dated 31.03.1997 and made in P.A.No./G.I.R/47-100-PX-6251.

For Appellant : Mr.T.R.Senthilkumar
Senior Standing Counsel
assisted by Ms.K.G.Usha Rani

For Respondent : Mr.R.Sivaraman

J U D G M E N T

(Delivered by DR.VINEET KOTHARI, J)

The Revenue has filed this Tax Case under Section 27A of the Wealth Tax Act, 1957 which is akin to Section 260A of the Income Tax Act raising the following purported substantial questions of law arising out of the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 30.5.2005 in W.T.A.No.69/Mds/1999:-

"i) 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?

ii) 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?"

2. Learned counsel appearing for both the parties fairly submit that the controversy involved in the present Tax Case about the valuation of shares held by the Assessee in a closely held Private limited Company has to be made as per Rule 11 in Part C of Schedule III, which stood omitted by Finance Act, 1992, with effect from 1.4.1993, but, since the Assessment Year in the present case is 1992-93, Rule 11 in part C of Schedule III will be applicable, which provides for valuation to be made for Unquoted Equity Shares in Companies other than Investment Companies.

3. On this issue, a co-ordinate Bench of this Court has held in Commissioner of Wealth Tax, Chennai v. Thirupathy Kumar Khemka ((2012) 259 CTR 260) as under:-

"11. When we look at the Rules concerning valuation of shares, Part C of the III Schedule to the Wealth Tax Act, as it then stood, deals with shares or debentures of companies. Rule 9 is a specific Rule providing for the valuation of quoted shares and debentures of the company. Rule 10 deals with valuation on unquoted preference shares. Rule 11 is about valuation of unquoted equity shares in companies other than investment companies. Part H makes provision for valuation of assets which are not covered under Rules 3 to 19. Rule 20 provides for valuation of assets whose price or consideration are covered by restrictive covenants in any instrument of transfer. As already seen in the preceding paragraphs, the decision in Addl. CIT v. Seth Devi Chand & Sons [1978J 111 ITR 724 (All.) clearly pointed out that the mere fact that the restrictions on the transferability of the shares would not affect the question as to the possible value that the shares would fetch, had they been sold in the open market. While holding that even though market value as a concept would hold good even in respect of shares suffering restriction on their transferability, this Court pointed out the need for assigning a depreciated value to such market value. This Court pointed out that since these shares, in reality, would not fetch the same

amount of price as the shares enjoying easy transferability, the shares could not be treated on par more or less with the shares which can be dealt with easily or saleable readily. Thus applying the decision reported in R.Rathinasabapathy Chettiar's case (supra) to the case on hand, with a lock-in period on the shares held out of the promoters' quota, necessarily one has to arrive at the depreciated value of these shares.

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 promoters' quota.

13. In the circumstances, 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."

4. In view of the aforesaid submissions and the matter being covered by the decision of the co-ordinate Bench of this Court, with which we respectfully agree, the present Tax Case is liable to be disposed of in the same terms and accordingly, it is

disposed of. The Assessing Authority shall adopt the valuation of the Shares in terms of Rule 11 as it stood applicable to Assessment Year 1992-93 in question. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Commissioner of Income Tax (Appeals)-II,
Chennai - 34.
 2. The Assistant Commissioner of Income Tax,
Cent. Circle 1(1), Chennai - 3
 3. The Registrar,
Income Tax Appellate Tribunal,
Madras 'B' Bench, Chennai
 4. The Deputy Commissioner of
Wealth Tax,
Cent. Circle 1(1), Chennai.
- +1 cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.37193

MP (CO)
SSM(12/06/2019)

Tax Case No.788 of 2008

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