

Birla Jute Manufacturing Co. Ltd.

Vs

Commissioner of Wealth-Tax, West Bengal. (and vice versa)

Civil Appeals Nos. 1834 and 1169 of 1968

(K.S. Hegde, A.N. Grover JJ)

10.08.1971

JUDGMENT

GROVER J. -

These appeals have been brought from a judgment of the Calcutta High Court by certificate in a wealth-tax reference. Civil Appeals No. 1834 of 1968 is of the assessee and the other appeal has been filed by the Commissioner of Wealth-tax, West Bengal.

It is necessary to deal with the appeal of the Commissioner of Wealth- tax as the other appeal shall also stand disposed of once the question is answered in the Commissioner's appeal. The assessee is a public limited company. In the assessment year 1948-49 the assessee revalued its assets enhancing the existing book value by Rs. 1,45,00,000 which was credited to the capital reserve account. In assessing the wealth- tax payable by the assessee for the assessment year 1957-58 the relevant valuation date being March 31, 1957, the Wealth-tax Officer proceeded under section 7(2) of the Wealth-tax Act, hereinafter called the "Act", and took the valuation of the assets at Rs. 5,10,40,897 as shown in the balance-sheet on the relevant date. The assessee claimed that a sum of Rs. 1,45,00,000 by which the book value of the fixed assets was enhanced in 1948-49 should be deducted in the computation of the net value. It is not clear from the order of the Wealth-tax Officer, who rejected the claim, as to what was the ground taken for claiming this deduction. Before the Appellate Assistant Commissioner it was contended on behalf of the assessee that the capital reserve was not out of profits and was only a notional reserve and, therefore, it should be excluded when global valuation of the assets was being made. It was urged that the figure of reserve was purely artificial and had no relation to the working of the company and should not be taken into account in the valuation of the net assets. The Appellate Assistant Commissioner did not accede to the contention and confirmed the assessment. The Appellate Tribunal found that a similar point had come up for decision before a special Bench of the Tribunal consisting of three members in Bombay and had been decided in favour of the assessee. Following that decision the Tribunal allowed the appeal and held that the department was not justified in valuing the assets at the enhanced figure for the purpose of computation of the net wealth of the assessee. The relevant question that was referred was as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in excluding the sum of Rs. 1,45,00,000 from the net valuation of the assets as shown in the balance-sheet of the assessee as on March 31, 1957 ?"

The High Court was of the view that the revenue had taken the stand before the Tribunal that the motive of the assessee in revaluing the assets at a higher figure was to declare the bonus share

which, however, could not be so declared as the permission of the Central Government was withheld in that behalf. According to the High Court there was a motive for revaluation of the assets and therefore the valuation in the balance-sheet could not furnish the correct basis. It was pointed out that the conduct of the assessee was "far from what was to be desired" because even in the successive balance-sheets the revaluation figure appeared even after the assessee had failed to get the permission of the Central Government to issue bonus shares. But according to the High Court an erroneous figure did not become a correct figure by lapse of time. The following portion of the judgment of the High Court may be reproduced :

"The Tribunal was, therefore, in a sense right in excluding a sum of Rs. 1,45,00,000 from the net value of the assets as shown in the balance-sheet of the assessee, as on March 31, 1957. We, however, make it clear that in answering question No. 1 in the affirmative, we did not mean that the net value of the assets should be taken at the figure as appearing in the balance-sheet reduced by Rs. 1,45,00,000. What we mean to say is that in valuing the assets the addition of Rs. 1,45,00,000 may not have been correctly made. This does not, however, mean that the net value of the assets must be the balance-sheet figure reduced by Rs. 1,45,00,000. That net value will have now to be ascertained under section 7(1) of the Wealth-tax Act, now that we have expressed the opinion that the balance-sheet in the instant case has not found the unequivocal approval both of the assessee and of the revenue authorities."

It is quite clear, under section 7(2) of the Act, the Wealth-tax Officer may determine the net value of the business as a whole having regard to the balance-sheet of the business as on the valuation date. It must be remembered that under section 211 of the (Indian) Companies Act, 1956, every balance-sheet of a company must give a true and fair figure of the state of its affairs as at the end of the financial year. If the assessee has shown the net value of the assets at certain figure in the balance-sheet the Wealth-tax Officer would be entitled to accept it on the footing that the assessee knew best what the valuation of the assets was. It was, however, open to the assessee to satisfy the authorities that the said figure had been enhanced or increased or inflated "for acceptable reasons". It was equally open to the Wealth-tax Officer not to accept the figure given by the assessee but to arrive at another figure if he was satisfied for good reasons that the valuation given in the balance-sheet was wrong. There can be no doubt that section 7(2)(a) of the Act contemplates that the book value in the balance-sheet should be taken as the primary basis of valuation and if any adjustment is required it is open to the Wealth-tax Officer to make such an adjustment in the valuation as given in the balance-sheet as may be necessary in the circumstances of the case. (See *Kersoram Industries & Cotton Mills Ltd. v. Commissioner of Wealth-tax*).

In the present case the sole reason which at the stage of the appeal before the Tribunal came to be disclose or inflating the valuation by Rs. 1,45,00,000 in the assessment year 1948-49 was that the assessee contemplated issuing bonus shares for which the consent of the Central Government was necessary under section 3 of the Capital Issues (Control) Act, 1947. The same was not granted. The assessee, however, did not produce the order of the Central Government showing the reasons for which permission was declined to the issuance of bonus shares. It continued to show the or inflated valuation in the balance-sheet throughout. The circumstances in which bonus shares are issued are well known. A company may not require any new money but it may reasonably wish to bring the nominal amount of its issued shares capital more into line with the true excess of assets over liabilities. Unless it takes this step its annual profits will appear to be disproportionately high in relation to its nominal capital. By means of issuing bonus shares the reserve or share premium account or some part of the same are capitalized or converted into share capital. The capitalisation

of free, i.e., voluntary reserves, merely means that undistributed profits have been permanently ploughed back and converted into share capital which cannot be returned to the members by way of dividend. (vide Modern Company Law by L. C. B. Gower, page 110.)

It is quite clear that the main idea underlying the issue of bonus shares is to bring the nominal amount of the issued share capital of the company into line with the true excess of assets over liabilities. This will involve a genuine a correct valuation of assets and not their under valuation or inflation. It must be remembered that the power to issue shares for increasing the capital is of a fiduciary nature and must be exercised bona fide for the general advantage of the company. No evidence in the shape of an affidavit or any other material was placed before the wealth-tax authorities by the assessee demonstrating how it became necessary to inflate the valuation by Rs. 1,45,00,000 for the purpose of issuing bonus shares. It was not even the case of the assessee that the value was inflated under expert actuarial suggestion or under some misapprehension or mistaken advice. In this situation the only possible conclusion can be that the assessee could not advance any convincing and acceptable reasons for the alleged inflation. The Wealth-tax Officer could reject the figure given by the assessee in the balance sheet if he was, for sufficient reasons, satisfied that figure was wrong. The facts and circumstances which have been discussed above show that the Wealth-tax Officer was fully justified in accepting the figure which the assessee himself had given in the balance-sheet as the correct figure and proceed to make the assessment in accordance with that figure. The High Court should have, therefore, answered the question in the negative and in favour of the Commissioner of Wealth-tax.

The appeal of the Commissioner of Wealth-tax, i.e., C.A. No. 1169 of 1968, is allowed and the question is answered accordingly. The appeal of the assessee, i.e., C.A. No. 1834 of 1968, consequently becomes infructuous and must be dismissed in view of the answer returned in the other appeal. The Commissioner will be entitled to the costs incurred in this court, one hearing fee, as also in the High Court.

Civil Appeal No. 1169 of 1968 allowed.

Civil Appeal No. 1834 of 1968 dismissed.

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