

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 2322 of 2010

For Approval and Signature:

HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA

HONOURABLE MR.JUSTICE J.B.PARDIWALA

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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DECEASED SHANTADEVI GAEKWAD - Appellant(s)

Versus

DY COMMISSIONER OF INCOME TAX, CIRCLE - 5 - Opponent(s)

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Appearance :

MR MANISH J SHAH for Appellant(s) : 1,

MR KM PARIKH for Opponent(s) : 1,

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE
MR.BHASKAR BHATTACHARYA

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 30/04/2012

CAV JUDGMENT

(Per : HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR
BHATTACHARYA)

1. This Appeal under Section 260A of the Income Tax Act, 1961 [“the Act”] is at the instance of the assessee and is directed against order dated January 29, 2010 passed by the Income Tax Appellate Tribunal, “B” Bench, Ahmedabad [“the Tribunal”] in ITA 1111/Ahd/2003 for the Assessment Year 1992-93, by which the Tribunal dismissed the appeal preferred by the appellant.

2. Being dissatisfied, the assessee has come up with the present Appeal.

3. Since notice was issued by a Division Bench of this Court on November 8, 2011 and pursuant to such notice, Mr. K.M. Parikh has entered appearance on behalf of the Revenue, we heard out the Appeal itself after formulating the following question of law:

“Whether the Tribunal below committed substantial error of law in holding that Fair market Value of the disputed jewellery as on 1st April 1974 should be arrived at by reverse indexation from the sale price of December 1991 and not from the Fair Market Value of 31st March 1989 on the basis of which the Revenue had imposed Wealth Tax upon the assessee.”

4. The facts giving rise to the filing of this Appeal may be summed up thus:

4.1 The assessee is the mother of erstwhile ruler of Baroda, late

Srimant Fatehsinh Rao-I, Gaekwad. During the year under consideration, the assessee had sold certain jewellery/valuable articles made of gold diamonds and pearls which she inherited from her son. The sale consideration was of Rs. 9,05,09,176. The assessee, by following the method of reverse indexation worked out the fair market value of the said jewellery at Rs. 3,47,25,492/- as on April 1, 1974 and computed the capital gains at Rs. 2,78,84,432/-. The Assessing Officer noted that the details of the jewellery sold and the details of the jewellery acquired did not match and therefore, according to the Assessing Officer, all the items of jewellery were not sold during the year under consideration. He, accordingly, estimated the value of the items as on April 1, 1974 at Rs. 5.00 Lac as against the returned value of the gold jewellery of Rs. 6,65,270/- as on March 31, 1974. He, consequently, calculated the capital gain as under:

<i>"Total Sales consideration.</i>		<i>Rs. 9,05,09,176</i>
<i>Less: Cost of acquisition estimated as above</i>	<i>Rs. 5,00,000</i>	
		<i>Rs. 9,00,09,176</i>
<i>Less: Deduction u/s. 48</i>	<i>Rs. 15,000</i>	
<i>50% of balance</i>	<i>Rs. 4,49,92,086</i>	<i>Rs. 4,50,12,086</i>
	<i>Chargeable</i>	<i>Rs. 4,49,97,090"</i>

4.2 The matter ultimately went to the Tribunal, which set aside the issue by making the following observations:

"We have considered the rival contentions of the parties, perused the record and gone through the decision cited. The decision referred to by the Ld. AR for the assessee is

distinguishable on facts, it has been found that a number of explanations information and material in the form of fresh were produced before the CIT[A]. In view of the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Valimohammed Ahmedbhai 134 ITR 214 [Guj.], the CIT[A] ought to have given a reasonable opportunity of hearing to the A.O. In the light of above discussion, after considering the aspect of natural justice as required by Rule 46A of the IT Rules, we send back the issue to the file of CIT[A] to decide the issue afresh in accordance with law and after giving a reasonable opportunity of being heard to both the parties."

4.3 The Commissioner of Income Tax (Appeals) ("CIT [Appeals]") decided the issue afresh in accordance with the directions of the Tribunal and further, admitted the additional grounds. In one of the grounds, it was contended by the assessee that the fair market value of the asset should be considered as on the date of acquisition by the assessee and not the cost of acquisition as on April 1, 1974. The assessee also contended that the "reverse indexing method" should be adopted by the Assessing Officer.

4.4 The CIT [Appeals] considered the calculation done by the Assessing Officer and also the one arrived at by the assessee and found that the jewellery was acquired on succession and therefore, its value should be necessarily adopted as on April 1, 1974 under the Act. Consequently, the valuation of gold items was made by the assessee based on the prices of the gold prevailing as on April 1, 1974 and as such, it was accepted by the Assessing Officer and,

therefore, there was no dispute. However, the fair market value of diamonds and pearls as on April 1, 1974 was worked out by the assessee at Rs. 2,95,18,222/- and Rs. 4,15,600/- respectively. As against this, the Assessing Officer worked out the value at Rs. 1,39,48,363/- and Rs. 3,72,000/- respectively. Nevertheless, both, the assessee and the Assessing Officer agreed that the method of reverse indexation should be adopted. The assessee had adopted the base as the value worked out on March 31, 1989 on the basis of valuation done by a registered Valuer, whereas the Assessing Officer had taken the actual sale price in December, 1991 as the basis. As there was no dispute about the method of reverse indexing adopted by the Assessing Officer and the assessee, the only dispute was as to whether its valuation should be the valuation done by the assessee based on March 31 1989 or on the basis of the sale price on the date of sale viz. December, 1991.

4.5 The CIT [Appeals] held that the cost of acquisition as per fair market value as on April 1, 1974 should be Rs. 1,39,48,363/- instead of Rs. 5,11,44,000/- adopted by the assessee.

4.6 Being dissatisfied, the present Appeal has been preferred.

5. Therefore, the only question that arises for determination in this Appeal is whether the Tribunal below committed substantial error of law in holding that Fair Market Value of the disputed jewellery as on

1st April 1974 should be arrived at by reverse indexation from the date of sale held in December 1991 based on the sale price and not from the Fair Market Value as on 31st March 1989 on the basis of which the Revenue had imposed Wealth Tax upon the assessee.

6. In order to appreciate the aforesaid question, it will be profitable to refer to the provisions contained in Sections 48 and 49 of the Income Tax Act, 1961, which are quoted below:

"48 (1) The income chargeable under the head "Capital gains" shall be computed,-

(a) by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

(i) expenditure incurred wholly and exclusively in connection with such transfer; (ii) the cost of acquisition of the asset and the cost of any improvement thereto:

Provided *that in the case of an assessee, who is a non-resident Indian, capital gains arising from the transfer of a capital asset being shares in or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every re-investment thereafter in, and sale of,*

shares in, or debentures of, an Indian company.

Explanation.-For the purposes of this clause,-

(i)"non-resident Indian" shall have the same meaning as in clause (e) of section 115C;

(ii)"foreign currency" and 'Indian currency' shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(iii)the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;

(b) where the capital gain arises from the transfer of a long-term capital asset (hereafter in this section referred to, respectively, as long-term capital gain and long-term capital asset) by making the further deductions specified in subsection (2).

(2) The deductions referred to in clause (b) of sub-section (1) are the following, namely:-

(a) where the amount of long-term capital gain arrived at after making the deductions under clause (a) of sub-section (1) does not exceed ten thousand rupees, the whole of such amount; (b) in any other case, ten thousand rupees as increased by a sum equal to,-

(i) in respect of long-term capital gain so arrived at relating to capital assets, being buildings or lands or any rights in buildings or lands or gold, bullion or jewellery,-

(A)in the case of a company, ten per cent of the amount of such gain in excess of ten thousand rupees;

(B)in the case of any other assessee, fifty per cent of the amount of such gain in excess of ten thousand rupees;

(ia) in respect of long-term capital gain so arrived at relating to equity shares of venture capital undertakings,-

(A) in the case of a company, other than venture capital company, thirty per cent of the amount of such gain in

excess of ten thousand rupees;

(B) in the case of venture capital company, sixty per cent of the amount of such gain in excess of ten thousand rupees;

(C) in any other case, sixty per cent of the amount of such gain in excess of ten thousand rupees;

(ii) in respect of long-term capital gain so arrived at relating to capital assets other than capital assets referred to in sub-clauses (i) and (ia),-

(A) in the case of a company, thirty per cent of the amount of such gain in excess of ten thousand rupees;

(B) in any other case, sixty per cent of the amount of such gain in excess of ten thousand rupees:

Provided that where the long-term capital gain relates to both categories of capital assets referred to in sub-clauses (i) and (ii), the deduction of ten thousand rupees shall be allowed in the following order,' namely:-

(1) the deduction shall first be allowed against long-term capital gain relating to the assets mentioned in sub-clause (i);

(2) thereafter, the balance, if any, of the said ten thousand rupees shall be allowed as deduction against long-term capital gain relating to the assets mentioned in sub-clause (ii),

and the provisions of sub-clause (ii) shall apply as if references to ten thousand rupees therein were references to the amount of deduction allowed in accordance with clauses (1) and (2) of this proviso:

Provided further that, in relation to the amount referred to in clause (b) of subsection (5) of section 45, the initial deduction of ten thousand rupees under clause (a) of this sub-section shall be reduced by the deduction already allowed under clause (a) of section 80T in the assessment for the assessment year

commencing on the 1st day of April, 1987, or any earlier assessment year or, as the case may be, by the deduction allowed under clause (a) of this sub-section in relation to the amount of compensation or consideration referred to in clause (a) of sub-section (5) of section 45 and references to ten thousand rupees in clauses (a) and (b) of this sub-section shall be construed as references to such reduced amount, if any.

Explanation.-For the purposes of this section,-

(a) "venture capital company" means such company as is engaged in providing finance to venture capital undertakings mainly by way of acquiring equity shares of such undertakings or, if the circumstances so require, by way of advancing loans to such undertakings, and is approved by the Central Government in this behalf;

(b) "venture capital undertaking" means such company as the prescribed authority may, having regard to the following factors, approve for the purposes of subclause (ia) of clause (b) of sub-section (2), namely:-

(1) the total investment in the company does not exceed ten crore rupees or such other higher amount as may be prescribed;

(2) the company does not have adequate financial resources to undertake projects for which it is otherwise professionally or technically equipped; and

(3) the company seeks to employ any technology which will result in significant improvement over the existing technology in India in any field and the investment in such technology involves high risk.

(3) The deductions specified in sub-section (2) shall be made also for the purposes of computing any loss under the head "Capital gains" in so far as it pertains to any longterm capital asset and, for this purpose, any reference in that sub-section to the amount of long- term

capital gain arrived at after making the deductions under clause (a) of subsection (1) shall be construed as reference to the amount of loss arrived at after making the said deductions."

49 (1) Where the capital asset became the property of the assessee-

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(ii) under a gift or will;

(iii) (a) by succession, inheritance or devolution, or

(b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or

(c) on any distribution of assets on the liquidation of a company, or

(d) under a transfer to a revocable or an irrevocable trust, or

(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) of section 47;

(iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation.-In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that

referred to in clause (i) or clause (ii) or clause (iii) 8[or clause (iv)] of this sub-section.

(2) Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.

(2A) Where the capital asset, being a share or debenture in a company, became the property of the assessee in consideration of a transfer referred to in clause (x) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.

3. Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it."

7. After hearing the learned counsel for the parties and after going through the provisions contained in the Act for calculation of the capital gain, we find that according to the provisions of the Act, 1st April, 1974 should be treated to be the date in the present case on which the disputed jewellery was deemed to have been acquired by the assessee. There is no dispute that although the property was transferred to a third party in the month of December, 1991, the

assessee herself gave a declaration of fair market value of the selfsame jewellery as on 31st March, 1989 based on the report of a Valuer for the purpose of Wealth Tax Act as required under the said Act. It is admitted position that the Revenue has accepted the said valuation and has not disputed the same for the purpose of Wealth Tax Act.

8. There is also no dispute that both the assessee and the Revenue agreed before the Tribunal below that the method of reverse indexation should be the appropriate one for the purpose of ascertaining the fair market valuation of the disputed jewellery as on 1st April, 1974. It further appears that if the valuation is so arrived at on the basis of reverse indexation from 31st March, 1989 based on the valuation accepted by the Revenue under the Wealth Tax Act instead of December, 1991 based on the sale price, the valuation will be about Rs. 1.5 Crore more and will, thus, go in favour of the assessee.

9. In this connection, we find substance in the contention of Mr. Shah, the learned Advocate for the assessee, that the Revenue having accepted the declaration of the valuation of the selfsame jewellery given by the assessee as on 31st March, 1989 as correct valuation for the purpose of Wealth Tax Act, there is no reason why the same valuation should not be treated to be a reliable base for the purpose of computing the capital gain under the Act by the process of reverse indexation. We do not find any reason to disbelieve the valuation

given by the assessee under the Wealth Tax Act as on 31st March, 1989 based on the valuation assessed by a Registered Valuer in terms of the said Statute. The Revenue having accepted the said valuation for the purpose of Wealth Tax Act, in our opinion, is precluded from disputing the correctness of the selfsame valuation for the purpose of assessment of capital gain, as the factor of “fair market value” is decisive for the purpose of both Wealth Tax Act and in ascertaining the cost of acquisition under the Income tax Act. Moreover, it appears that by reverse indexation method, which is a recognized mode of valuation, based on accepted valuation under the Wealth Tax Act as on March 31, 1989 the assessee would get benefit of about Rs. 1.5 Crore more. We, therefore, should follow the well-settled principle that the one, which is favourable to the assessee, should be preferred.

10. In our opinion, there is no justification of discarding the valuation given by the assessee in her wealth tax return as the Revenue has not disputed the said valuation and in that case, we find that the authorities below committed substantial error of law in making reverse indexation not from 31st March, 1989 which is nearer to April 1, 1974 than from December, 1991, the date of actual sale.

11. Moreover, the mode of valuation of jewellery under the Wealth Tax Act as it appears from Rule 18 of Schedule III of the said Act is also the fair market value, which is adopted in calculating the capital gain as indicated below:

“18. Valuation of jewellery

(1) The value of the jewellery shall be estimated to be **the price which it would fetch if sold in the open market on the valuation date (hereafter in this rule referred to as fair market value).**

(2) The return of net wealth furnished by the assessee shall be supported by,-

(i) a statement in the prescribed form, where the value of the jewellery on the valuation date does not exceed rupees five lakhs;

(ii) **a report of a registered valuer in the prescribed form, where the value of the jewellery on the valuation date exceeds rupees five lakhs.**

(3) Notwithstanding anything mentioned in sub-rule (2), the Assessing Officer may, if he is of opinion, that the value of the jewellery declared in the return,-

(a) is less than its fair market value by such percentage or such amount as is prescribed under sub-clause (i) of clause (b) of sub-section (1) of section 16A;

(b) is less than its fair market value as referred to in clause (a) of sub-section (1) of section 16A, he may refer the valuation of such jewellery to a Valuation Officer under sub-section (1) of the said section and the value of such jewellery shall be the fair market value as estimated by the Valuation Officer.]”

(Emphasis supplied.)

12. We, therefore, find that it is a fit case where the order passed by the Tribunal should be set aside on the ground that there was no justification of disbelieving the valuation given by the assessee based

on her wealth tax return which has been accepted by the Revenue, particularly when on that basis, if the calculation is made, the assessee will be substantially benefited.

13. We are unable to accept the contention of Mr. Parikh, the learned counsel appearing on behalf of the Revenue, that we should adopt the reverse indexation from the date of actual sale simply because in that process the Revenue will be benefited. We have already pointed out that for the purpose of taxation, it is settled law that when two equally efficacious and acceptable data for the purpose of valuations are available, the one which is beneficial to the assessee should be preferred. The Tribunal below, as it appears from record, did not at all consider this aspect and committed substantial error of law in not following the above well-settled principle of taxation law. Moreover, we have already pointed out that the date March 31, 1989 is nearer to April 1, 1974 than December 1991 and thus, there was no justification of adopting reverse indexation from a farther date.

14. Moreover, the full value of consideration received as a result of transfer of this type of jewellery belonging to a royal family is generally higher than the market value of the selfsame material, were it not a regalia. Therefore, for the purpose of ascertaining the market value of such an item as on April 1, 1974 in order to deduct the same from actual sale price of the article for arriving at the figure of capital gain, it would be unsafe to base the actual sale price by the process

of reverse indexation and thus, the valuation accepted by Revenue as market value for the purpose of Wealth Tax Act is the safest base.

15. We, therefore, allow the Appeal and set aside the order passed by the Tribunal and direct the Assessing Officer to recalculate the capital gain by adopting reverse indexation based on valuation as on 31st March, 1989 disclosed in the return of the assessee under the Wealth Tax Act for the purpose of arriving at the valuation as on April 1, 1974.

16. The Appeal, thus, is allowed. We answer the question formulated in this appeal in the affirmative and against the Revenue. In the facts and circumstances, however, there will be no order as to costs.

[BHASKAR BHATTACHARYA, ACTING CJ]

**THE HIGH COURT
OF GUJARAT**

[J.B. PARDIWALA, J.]

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