



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITR 4 OF 1992**

% Date of Decision: August 16,2010

**COMMISSIONER OF INCOME TAX** ..... **Appellant**

Through Mr. Sanjeev Sabharwal, Advocate

Versus

**MR. I.P. CHAUDHARI** ..... **Respondent**

Through Mr. Prakash Kumar, Advocate

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J (Oral)**

1. Following two questions are referred by the Tribunal in compliance of the directions of this Court contained in orders dated 8<sup>th</sup> July, 1991 under Section 256 (2) of the Act:-

“1. Whether, the Hon'ble ITAT was right in law in deleting the addition of Rs. 4,20,000 made by the A.O. on account of capital gains on transfer of 3500 equity shares of M/s. Rentiers & Financiers Co. P. Ltd. to his close relatives by invoking the provisions of Sec. 52 (1) of the Income-tax Act?

2. Whether the Hon'ble ITAT was right in law in deleting the salary income of Rs. 36,000/- of assessee's wife clubbed with the income of the assessee under the provisions of Sec. 64 (1) (ii) of the I.T. Act, when the assessee's wife had received this salary for not her technical or professional qualification but because of her husband being a Director of the company?”



2. In so far as the second question is concerned, because of insubstantial tax effect, it is not necessary for us to answer the same.

3. Coming to the first question, it has arisen out of the following facts.

4. The assessee sold 3500 equity shares of M/s. Rentiers And Financiers (P) Ltd. of the face value of Rs. 800 each to his family members at Rs. 110 per share through entries effected in their respective accounts with Ms/ Riviera Apartments Pvt. Ltd. The Income-Tax Officer estimated the sale consideration of these shares at Rs. 230 per share. By applying the provisions of section 52 of the Income Tax Act, the Assessing Officer computed the capital gain at Rs. 4,20,000 as against Rs. 35,000 declared by the assessee.

5. The assessee appealed to the Commissioner of Income –Tax (Appeals) who was of the opinion that the provisions of Section 52 were not attracted in this case in view of the decision of the Supreme Court in the case of ***K.P. Varghese Vs. ITO, 131 ITR, 597.*** In his opinion, if the Revenue seeks to bring a case within the provisions of Sec. 52 (2), it must show that not only the fair market value of the capital asset exceeded the full value of consideration, but also that the consideration had been understated and that the assessee had actually received more than what had been declared by him. The Commissioner of Income-tax (Appeals) also referring to the decision of the Delhi High Court in the case of ***Addl. CIT Vs. Avtar Mohan Singh, 136 ITR 645,*** held that there was no scope either in law or on facts to compute the capital gain at Rs. 4,20,000 on the transfer of capital shares instead of Rs. 35,000 shown by the assessee.



6. We have perused the judgment of the Supreme Court in **K Varghese** (supra). That was also a case involving interpretation of Section 52 of the Act. The Supreme court has categorically held that the difference between the market value and the consideration declared was not sufficient, and it was also necessary to show that the assessee had received more than what is declared or disclosed by him as consideration for sale of shares. Even the burden to show this lies on the department, as per the said judgment. When we apply the ratio of this judgment to the facts of this case, we do not find any infirmity in the order of CIT (Appeal) or that of the ITAT. In the first instance, the method adopted by the Assessing Officer for valuation of the shares itself was not correct. As pointed out by the CIT (A), the AO relied upon the formula contained in the form 1D of the Wealth Tax Rules, which could not be the basis of valuing the share of an ongoing concern.

7. As per the judgment of the Supreme Court in the **Commissioner of Wealth Tax, Assam Vs. Mahadeo Jalan & Ors.** 86 ITR 62, it has come on record that no dividend was declared in respect of those shares in the earlier years. If one were to adopt the yield method or the dividend method, the valuation of the shares would have been much less than the figure arrived at by the Assessing Officer. May be Rule 1D is mandatory for the purpose of valuation under the Wealth Tax Act. However, when the situation like the present is considered where the shares were sold by the assessee to some other persons and the question was as to whether there was any capital gain under Section 52 or not, yield or dividend method would have been more appropriate for valuing the shares of a running concern. That apart, as already pointed out above, the Assessing Officer



did not record any finding that consideration had been understated and t  
assessee had actually received more than what had been declared by him  
in the Income Tax Return.

8. In view of this fact alone, as per ***K.P. Varghese*** (supra), no addition  
could have been made under Section 52 of the Act.

9. We thus answer the reference in favour of the assessee and against  
the revenue.

**(A.K. SIKRI)**  
**JUDGE**

**(REVA KHETRAPAL)**  
**JUDGE**

**AUGUST 16, 2010**  
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