(1976) 09 MAD CK 0009

In the Madras High Court

Case No : Tax Case No. 424 of 1971 (Reference No. 139 of 1971)

Additional Commissioner of Gift-tax APPELLANT

Vs

A.A. Annamalai Nadar RESPONDENT

Date of Decision : 21-09-1976

Acts Referred:
Gift Tax Act, 1958 — Section 2, 26(1)
Partnership Act, 1932 — Section 30(2)

Citation : (1978) 113 ITR 574

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : A.N. Rangaswami and Nalini Chidambaram, for the Appellant; K. Narayanaswami, for the Respondent

Judgement

Sethuraman, J.—u/s 26(1) of the Gift-tax Act, the Income Tax Appellate Tribunal, Madras Bench, has referred the following questions for

the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that transfer by the assessee of 75 per

cent. of the value of the goodwill is for consideration and there was no gift within the meaning of Section 2(xii) of the Gift-tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that if at all there was a gift, gift-tax

should be levied only on 50 per cent. of the value of the goodwill ?

2. The relevant facts are as follows : The assessee was carrying on commission business in sanna leaves and pods. He had three sons, one of

whom was a major working, with him in the business for some remuneration. The two other sons are minors. He converted the proprietary business into a partnership business by taking his major son as a partner and by admitting the minor sons to the benefits of partnership. Each of

them was entitled to a 25 per cent. share in the profits. The partnership deed came into existence on February 17, 1964, which falls within the

relevant accounting period for the assessment year 1965-66.

3. The Gift-tax Officer came to the conclusion that the business of the assessee enjoyed a goodwill and by taking the three sons into the

partnership, the assessee transferred 75 per cent. of the value of the goodwill of the business. He estimated the value of the goodwill so transferred

at Rs. 24,501 and assessed the said amount to gift-tax. On appeal, the Appellate Assistant Commissioner held that by converting the proprietary

business into a partnership business, the assessee had transferred of the of the goodwill of the business which originally belonged to him and since

the value of the assessee''s right in the goodwill had diminished and the value of the share of the three sons in the goodwill had increased, there was

clearly a gift and he, therefore, confirmed the assesssment as passed by the Gift-tax Officer. Before the Appellate Tribunal, the assessee contended

that the transfer of 75 per cent. of the goodwill was for consideration and that, therefore, there was no gift within the meaning of Section 2(xii) of

the Gift-tax Act and that there was no goodwill for the business. There was an alternative contention that, since the two minors were admitted only

to the benefits of the partnership, they had no right to a share in the assets of the firm including the goodwill and that even assuming that there was a

gift and the business enjoyed a goodwill, the liability to gift-tax would only be to the extent of 50% of the value of the goodwill of the firm. The

Tribunal held that the transfer by the assessee of 75 per cent. share of the value of the goodwill of the firm was for consideration and that,

therefore, there was no gift by the assessee to his sons which would attract liability to gift-tax. In support of its conclusion, the Tribunal relied on

the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Karnaji Lumbaji, . The Tribunal further held that there was good

will which could exist in this type of business carried on by the assessee for the supply of sanna leaves and pods which had been carried on for a

continuous period of 14 years. On the alternative contention, the Tribunal held that the partnership deed did not provide for any share to the minors in the goodwill and that, in view of Section 30(2) of the Partnership Act, the goodwill could only be shared by the assessee and his major son and

if at all there was a gift, gift-tax could be levied only on 50 per cent. of the value of the goodwill of the business. These conclusions of the Tribunal

are questioned in the form of the reference of the two questions set out already.

4. From the order of the Tribunal, it is clear that the major son was taken as a partner and that the minor sons were admitted to the benefits of the

partnership for adequate consideration, the consideration being the capital contribution in all the three cases and, in addition, the rendering of

services by the major son and the agreement to share the loss. In fact, in the document dated February 17, 1964, there is a clear reference to

Annamalai Nadar, the assessee, having become old and not being in a position to attend to the business affairs as he had been doing earlier. He,

therefore, thought of inducting his major son who was actually assisting him in his business to his satisfaction. The Tribunal was, therefore, right in

its view that there was adequate consideration for the conversion of the business into a partnership business and that there was no question of any

gift of goodwill in the case of the major son.

5. As far as the minor sons are concerned, there was absolutely no transfer of any assets as such so that there could be no gift of any goodwill in

their favour. Further, the question as to whether there can be any liability to tax in the circumstances similar to the one before us has been the

subject of consideration before the Supreme Court in Commissioner of Gift-Tax, Kerala Vs. P. Gheevarghese, Travancore Timbers and Products,

. In that case, it was held thus (page 409):

All that the departmental authorities did and that position continued throughout was that they picked up one of the assets of the assessec''s

proprietary business, namely, its goodwill, and regarded that as the subject of gift having been made to the daughters who were the other partners

of the firm which came into existence by virtue of the deed of partnership. This approach is wholly incomprehensible and no attempt has been

made before us to justify it.

6. In view of the reasons given above, we answer the first question in the affirmative and in favour of the assessee. As far as the second question is

concerned, we do not think it necessary to answer it because the question arises only out of an alternative contention put forward before the

Tribunal and accepted by it. The assessee will be entitled to his costs. Counsel''s fee Rs. 500.

