
(1976) 11 MAD CK 0017

In the Madras High Court

Case No : Tax Case No. 279 of 1972 (Reference No. 66 of 1972)

Additional Commissioner of Gift-tax

APPELLANT

Vs

S.V.R. Cycle Mart

RESPONDENT

Date of Decision : 16-11-1976

Acts Referred:

Gift Tax Act, 1958 — Section 4(1)

Citation : (1977) 110 ITR 429

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

Bench : Division Bench

Advocate : A.N. Rangaswami, for the Appellant; K.C. Rajappa, for K. Srinivasan, for the Respondent

Judgement

Ismail, J.—At the instance of the Additional Commissioner of Gift-tax, Madras-I, the Income Tax Appellate Tribunal, Cochin Bench, u/s

26(1) of the Gift-tax Act, has referred the following two questions for the opinion of this court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no transfer of shares in the

Chettinad Mercantile Bank Ltd. by the assessee-firm to its partners within the meaning of the Gift-tax Act, 1958 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the transfer of 270 shares in the same company

by the assessee to the three ladies was not for inadequate consideration and, hence, provisions of Section 4(1)(a) of the Gift-tax Act are not

attracted?

2. The assessee is a partnership firm consisting of two partners, Veerappa Chettiar and Chinnan Chettiar. The partnership firm owned 520 shares

in the Chettinad Mercantile Bank Ltd. The original cost of acquisition of these shares was Rs. 60 per share. The assessee-firm sold these shares to the following persons at the prices noted against each one of them :

Name of the transferees	Number of shares transferred	Cost per share	Price realised
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Rs. Rs.

- | | | | |
|---|-----|----|-------|
| 1. Veerappa Chettiar (partner) | 125 | 50 | 6,250 |
| 2. Chinnan Chettiar (partner) | 125 | 50 | 6,250 |
| 3. Alagammai Achi (wife of partner No. 1) | 125 | 75 | 9,375 |
| 4. Umayal Achi (wife of partner No. 2) | 120 | 75 | 9,000 |
| 5. Alamelu Achi (mother of partner No. 1) | 25 | 75 | 1,875 |

Total 32,750

3. The Gift-tax Officer came to the conclusion that the transfer of shares was for inadequate consideration, and, therefore, there was a deemed gift

u/s 4(1)(a) of the Gift-tax Act by the assessee firm to the five persons mentioned above. Since the shares transferred by the assessee-firm were not

quoted shares, the Gift-tax Officer, by adopting the break-up method, ascertained the value per share at Rs. 99.40, and the value of 520 shares at

that rate worked out to Rs. 51,688. Since the assessee-firm had sold 520 shares for a total sum of Rs. 32,750, the difference between these two

amounts was assessed to gift-tax. Against this assessment, the assessee preferred an appeal to the Appellate Assistant Commissioner. That officer

held that there could be no transfer of the shares by the firm to its partners, and hence there was no liability to gift-tax. With regard to the transfer

in favour of the three ladies, that officer held that the price of Rs. 75 per share cannot be said to be inadequate consideration merely because the

value arrived at by the break-up method was found to be more than the price for which the assessee-firm sold the shares to these three persons.

Consequently, the Appellate Assistant Commissioner allowed the appeal preferred by the assessee. Against the order of the Appellate Assistant

Commissioner, the department preferred an appeal to the Tribunal. Before the

Tribunal, the revenue contended : (i) the firm and the partners constituting the firm are two different units of assessment and there can be a legal transfer by the firm to its partners ; and (ii) Section 6(3) of the Gift-tax Act provides that in regard to any property whose value cannot be estimated as it is not saleable in the open market, its value should be determined in the manner prescribed by the Rules, and Rule 10(2) provides for determining the value of unquoted shares by the break-up value method, and since there is a difference between the value arrived at by the break-up method and the price for which the shares were sold by the assessee-firm, there was a deemed gift u/s 4(1)(a) and the gift-tax assessment should, therefore, be upheld. The Tribunal held, (i) when the assessee-firm transferred the shares to its partners, there was no transfer involved as denned u/s 2(xxiv) of the Gift-tax Act; (ii) the mere difference between the sale price of the shares and the value of the shares as arrived at by the break-up value method, is not sufficient to arrive at a finding that the consideration paid for the transfer of shares was inadequate ; and (iii) the transfer of shares by the assessee-firm was a bona fide transaction in the ordinary course of business, and free from donative intent and it should be considered as having been made for adequate and full consideration. In view of this conclusion, the Tribunal dismissed the appeal preferred by the department. It is the correctness of this conclusion of the Tribunal that is challenged in the form of the questions extracted above.

4. In this case, we have to deal with the sales of the shares in two separate categories. The first is the sale of the shares to the two partners themselves. With regard to this, the question that was considered by the authorities below was whether there was any transfer at all so as to attract the provisions of the Gift-tax Act, since on the face of it, the consideration was inadequate when compared with the price for which the shares were sold to the other three ladies. The second is the transfer of shares to the three ladies, the two wives of the two partners and the mother of one of the partners. With regard to this, the question was whether there was an element of gift involved in the transfer on account of the inadequacy of the price as contemplated by Section 4(1)(a) of the Gift-tax Act. The former point is covered by question No. 1, and the latter point is covered by question No. 2. Therefore, we shall consider these two points separately.

5. As far as the first point covered by question No. 1 is concerned, the Tribunal purported to follow the decision of this court in Commissioner of

Income Tax Vs. Janab N. Hyath Batcha Sahib, and the decision of the Supreme Court in Addanki Narayanappa and Another Vs. Bhaskara

Krishtappa and Others, . We are of the opinion that neither of the two decisions has any bearing on the question to be considered, because the

present case does not involve the conversion of the partners' individual property into a partnership property, nor does it involve the adjustment of

the assets and liabilities of the partners inter se on the dissolution of the partnership.

6. As far as the decision of this court in Commissioner of Income Tax Vs. Janab N. Hyath Batcha Sahib, is concerned that was a case where the

proprietary concern was converted into a partnership concern, in which the former proprietor continued to be a partner. In that context, it was held

that when the assets of the proprietary concern were made the assets of the partnership concern, there was no transfer. As far as the decision of

the Supreme Court is concerned, it dealt with the general proposition of law that during the continuance of the partnership, no partner can claim

that he was entitled to a particular item of the partnership assets or a particular share in the totality of the partnership assets, and his only right is to

obtain his share of the surplus of the assets over the liabilities when the partnership is dissolved and the accounts are taken or to receive his share

of the profits when the partnership is carrying on its business. That proposition also has no relevancy to the facts of this case. In this case, as

pointed out already, the firm which held the shares sold a number of shares to the two partners separately for cash consideration, and after such

sale, each of the partners became exclusively entitled to the shares which had been sold to him, and in these shares, the other partner had no

interest whatever. To such a situation, the decisions referred to above can have no application, and, therefore, there was a transfer of shares by the

firm to the two partners in this case. As we pointed out already, the transfer was for inadequate consideration, and, therefore, u/s 4(1)(a) of the

Act, there was an element of gift attracting the liability to pay gift-tax. Hence, we answer the first question in the negative and against the assessee.

7. As far as the second question is concerned, Section 4(1)(a) of the Act states :

(1) For the purposes of this Act,--

(a) where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor.

8. In this case, the transferees were no other than the wives and mother of the partners. Under these circumstances, for the purpose of deciding whether the transfer was otherwise than for adequate consideration, the Gift-tax Officer has necessarily to find out the market value of the shares at the date of the transfer. Admittedly, the shares were not quoted in the stock exchange. Therefore, the Gift-tax Officer adopted the break-up value for the purpose of determining the market value. Such a method is known to law and recognised by law. By applying that method and arriving at the market value of each share at Rs. 99.40, if the Gift-tax Officer holds that the transfer of the shares at Rs. 75 per share was otherwise than for adequate consideration, it cannot be held that he committed any illegality. As a matter of fact, the Tribunal would appear to have gone entirely off at a tangent. In the course of its order, the Tribunal did not consider this aspect at all, but chose to make certain general observations as to what would constitute an adequacy or inadequacy of consideration and what would be the effect of such adequacy or inadequacy of consideration in the field of contracts. While so holding, the Tribunal committed an error in thinking that the shares were acquired by the assessee at Rs. 50 per share, and, therefore, the transfer of shares at Rs. 75 per share could not be said to be for inadequate consideration, forgetting that the Tribunal itself in the earlier portion of its order referred to the fact that the cost of the acquisition of these shares by the assessee was Rs. 60 per share. Under these circumstances, we are clearly of the opinion that the Tribunal was in error in holding that Section 4(1)(a) of the Act did not apply to the case on hand. Therefore, we answer the second question also in the negative and against the assessee.

9. There will be no order as to costs.