

(2000) 09 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 45618 of 1996 (From the Judgment and Order dated 27-6-1996 of the Karnataka High Court in TRC No. 7 of 1994 reported at B. T. Patil and Sons v. CGT (1997) 224 ITR 431 (Karn) 20 September 2000 A.Y. 1979-80

B. T. PATIL and SONS

APPELLANT

Vs

COMMISSIONER OF GIFT TAX

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Gift Tax Act, 1958 — Section 4(1)(a)

Citation : (2000) 163 CTR 363

Hon'ble Judges : Y. K. Sabharwal, J;S. P. Bharucha, J;S. N. Phukan, J

Bench : Full Bench

Final Decision : dismissed

Judgement

By the Court

The High Court answered the following question in the affirmative and against the assessee :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the distribution of the plant and machinery belonging to the assessee-firm by it to its partners constituted a transfer of the assets and, hence, it was a case of deemed gift by way of sale of the assets at a consideration less than the market price thereof ?"

The assessee is in appeal by special leave.

2. The assessee is a partnership firm. It was engaged in the activity of excavating tunnels. It had five partners. During the assessment year under consideration, namely, assessment year 1979-80, it transferred certain items of machinery to each of its five partners and debited their accounts with the consideration charged therefore. The aggregate of such consideration came to Rs. 1,26,035. This, apparently, was the W.D.V. of the machinery in the assessee's

books. About three months later, the five partners floated another partnership and brought in the said machinery as their capital contribution thereto, of the value of Rs. 9,48,100. Then, the new partnership firm sold the machinery to another concern for the price of Rs. 10,76,220. On these facts, the Gift Tax Officer came to the conclusion that the assessee had made a gift of the machinery to its five partners and the consideration therefore was much less than the market value as evidenced by the sale of the machinery to the third party for the sum of Rs. 10,76,220. On the basis that the assessee had made a gift of Rs. 9,50,185, the assessee was charged gift-tax. The Commissioner of Gift Tax (Appeals) upheld the assessment but took the value of the machinery at Rs. 9,48,100, which was taken to be the capital value thereof, when it was brought in by the partners of the new partnership, and gave relief accordingly. Both the revenue and the assessee went to the Tribunal and the Tribunal upheld the order of the appellate authority.

3. Arising out of the order of the Tribunal, the question aforementioned was considered by the High Court. It had no doubt that the allotment or distribution of an asset or some of the assets, of a firm by the firm to a partner or partners during its subsistence so as to enable such partner to hold the assets in his or their individual capacity was a transfer of property and not an adjustment of capital. Accordingly, it upheld the Tribunal's conclusion.

4. Learned counsel for the assessee submitted to us that when there is already a subsisting shared interest in an asset, as in the case when a firm is continuing, the distribution of such asset to a partner would amount to replacing the shared interest with an exclusive interest in the asset and so there was no transfer. There was a transfer when an individual interest in an asset was converted to a shared interest, when the asset was brought into the partnership. But there was no transfer when the shared interest in an asset was converted to an individual interest as happened on dissolution, retirement or pursuant to the desire of partners to distribute.

5. Our attention was drawn by learned counsel for the assessee to the judgment of this court in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, and, specifically, to a passage that stated that it had been held by it earlier that when a partner retires or the partnership is dissolved, what the partner receives is his share in the partnership. What is contemplated here is a share of the partner qua the net assets of the partnership firm. On evaluation, that share in a particular case may be realised by the receipt of only one of all the assets. What happens here is that a shared interest in all the assets of the firm is replaced by an exclusive interest in an asset of equal value. That is why it has been held that there is no transfer. It is the realisation of a pre-existing right. The position is different, it seems to us, when a partner brings his personal asset into the partnership firm as his contribution to its capital. An individual asset is the sole subject of consideration. An exclusive interest in it before it enters the partnership is reduced on such entry into a shared interest."

6. In our view, when there is a dissolution of partnership or a partner retires and obtains in lieu of his interest in the firm an asset of the firm, no transfer is involved for the reason set out in the passage quoted above. But the position is very different when, during the subsistence of a partnership, an asset of the partnership becomes the asset of only one of the partners thereof; there is, in such a case, a transfer of that asset by the partnership to the individual partner. Where such transfer is for less than the value of that asset, there is a deemed gift to the extent of the difference under the provisions of section 4(1)(a) of the Gift Tax Act.

7. In the result, the civil appeal is dismissed.

8. No order as to costs.