

(2002) 07 GUJ CK 0086

In the Gujarat High Court

Case No : G.T. Reference No. 2 of 1991 4 July 2002

CGT

APPELLANT

Vs

Maneklal Hargovandas Patel

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Citation : (2002) 124 TAXMAN 55

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Full Bench

Advocate : Tanvish R. Bhatt, for the Revenue, for the Appellant;

Judgement

M.S. Shah, J.

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of the assessment year 1981-82 :

"Whether the Appellate Tribunal is right in law and on facts in holding that when the assessee had reduced his share in partnership firm from 25 per cent to 4 per cent, there was no taxable gift ?"

2. The assessee reduced his share from 25 per cent in a partnership firm to 4 per cent with the result that the shares of the other three partners correspondingly went upto exactly the percentage by which the assessee's share was reduced. The Ground Tax Officer valued this 21 per cent share by taking into account the average 5 years' profit and debiting three years' purchase thereon ultimately arriving at a figure amounting to Rs. 90,247. The assessee had already declared a gift amounting to Rs. 25,000 and, therefore, the Ground Tax Officer totalled up both these figures and after giving the basic exemption, arrived at a figure of Rs. 1,10,247. The Ground Tax Officer also applied aggregation on the basis of last 4 year's gift of Rs. 45,000. The Appellate Assistant Commissioner confirmed the order made by the Ground Tax Officer. The Tribunal relying on its earlier decision in the case of Sakerchand Manilal v. GTO, held that there was no gift in this case. Hence, this reference at the instance of the revenue.

3. We have heard Mr. Tanvish Bhatt, the learned standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

4. Having heard Mr. Tanvish Bhatt, the learned standing counsel for the revenue and having considered the decisions of the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, , The Commissioner of Gift Tax, Trivandrum Vs. T.M. Louiz, and also Commissioner of Gift-tax Vs. D.C. Shah and Others, , we are of the view that in the facts and circumstances of the case, the finding given by the Tribunal in favour of the assessee that there was no gift in respect of the partnership share for the year under consideration cannot be faulted with. In D.C. Shah's case (supra), the Apex Court has held in no unmistakable terms that when the share of one partner in a firm is decreased and that of another partner correspondingly increased, it does not necessarily lead to the inference that the former had gifted the difference to the latter. The profits-sharing ratio in a firm can vary for a number of reasons, among them, the ability of the partners to devote time to the business of the firm. The gift of a part of a partner's share to another has to be established by relevant evidence and the onus of doing so is on the revenue.

In the facts of the instant case, apart from the revenue not discharging the onus, the facts brought on record by the assessee are that the partner whose share was reduced from 25 per cent to 4 per cent was 80 years of age and was totally blind and, therefore, was physically unfit for continuing as a partner of the firm and, therefore, it was necessary to transfer his right to share partnership profits to the other partners.

In view of the aforesaid facts, the aforesaid decision of the Apex Court in the case of D.C. Shah (supra) is squarely applicable. The decisions of the Apex Court in Chhotalal Mohanlal's case (supra) and T.M. Louiz's case (supra) have already been considered and explained by this court in the decision in CGT v. Arunbhai Hargovandas Patel (GT Reference No. 2 of 1987, dated 25-9-2001).

5. Accordingly, our answer to the question referred to us is in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference, accordingly, stands disposed of with no order as to costs.