

(2002) 02 RAJ CK 0185

In the Rajasthan High Court

Case No : N.N. Mathur and S.K. Garg, JJ. GT Ref. Application No. 43 of 1991 11
February 2002 A.Y. 1983-84

CGT

APPELLANT

Vs

NIZAMUDDIN

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Gift Tax Act, 1958 — Section 5(1)(xii)

Citation : (2002) 177 CTR 306

Hon'ble Judges : S.K. Garg, J;N.N. Mathur, J

Bench : Full Bench

Advocate : J.K. Singhi, for the Revenue and Mahendra Ganeshia, for the Assessee, for the Appellant;

Judgement

By the Court

This is an application u/s 26(3) of the Gift Tax Act, at the instance of the revenue seeking reference on the following question. Question of law arising from the order of the Tribunal Jaipur Bench dated 30-5-1989 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that transfer of immovable properties by the assessee to his minor sons, specifically for the purpose of their education, was not in the nature of gift in view of Hon"ble Madras High Court's decision in Commissioner of Gift-tax Vs. N. Jothi Kumar, without considering the facts of the two cases in detail?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of Commissioner of Gift Tax (Appeals) even though he did not decide the point of valuation of the property as specifically mentioned in para 6. 1 of his order."

2. The brief facts leading to the instant reference application are that the Commissioner of Gift Tax during the assessment proceeding for the year 1983-84 found that the assessee had made gift of immovable property valuing Rs.

94,620, Rs. 38,560 and Rs. 41,000 to his three minor sons. The assessee claimed exemption u/s 5(1)(xii) of the Gift Tax Act on the ground that said gifts were for providing higher and advance education to the minor sons. The assessing authority denied exemption as in his opinion the value of properties were much in excess of the expenses required for the purpose of providing educational facilities to the minor sons and the amount was not reasonable. On appeal the claim of the assessee was allowed by the appellate authority. The order of the appellate authority was confirmed in second appeal by the Tribunal. The appellate authorities having considering the entire material on record in depth and detail arrived in conclusion that looking to the total value of the property owned by the assessee a comparative small portion of the property was gifted to three minor sons for the purpose of meeting their educational requirements. Thus, the appellate authority granted exemption to the assessee u/s 5(1)(xii). Thus, the conclusions of both the appellate authorities are based on facts. The Andhra Pradesh High Court in the case of Commissioner of Gift-tax Vs. Bhupathiraju Venkata Narasimharaju, has held that the Karta of the family can gift properties in favour of the minor daughter or the son within a reasonable limit. He further held that what is reasonable is a question of fact which depends on the facts of the each case. In the instant case we are of the view that the findings of both the appellate authorities on the question of reasonableness is a finding of fact. No question of law arises from the order of the Tribunal. The reference application is rejected.

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