(1998) 09 MAD CK 0105

In the Madras High Court

Case No : Tax Case No. 1754 of 1986 (Reference No. 1187 of 1986)

Commissioner of Gift-tax APPELLANT

Vs

A. Hafsa Banu RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Citation : (2000) 241 ITR 462

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; R. Gangadharan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred to us at the instance of the Revenue is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding and had valid materials to hold that there was adequate consideration for the transfer and hence there was no deemed gift within the meaning of Section 4(1)(a) of the Gift-tax Act ?"

2. The assessee was assessed under the Gift-tax Act for the assessment year 1973-74.

3. The assessee had sold the properties owned by him at Moore Street, Madras, to a firm for a sum of Rs. 1,55,000 on July 6, 1972. The Gift-tax Officer was of the view that the property had been undervalued and proceeded to tax the difference between the amount computed by him as the market value and the actual consideration received by the assessee. The appeal by the assessee proved to be unsuccessful. On further appeal, the Tribunal held that there was no undervaluation. The onus was on the Revenue to prove that there was an attempt at evasion of tax by the assessee. The adequacy of consideration for the transfer could not be decided with reference to what someone else considered to be the market value. The Tribunal relied on the decision of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and the decision of

this court in Commissioner of Gift-tax Vs. Indo Traders and Agencies (Madras) P. Ltd., .

4. We do not find any error in the order of the Tribunal. The burden was on the Revenue to show that the assessee had attempted to evade tax and had undervalued the property. There was no evidence to prove such an allegation against the assessee. The computation by the Department at a higher value at a subsequent point of time by itself does not establish that the consideration for which the transfer had been effected was not an adequate consideration nor that the assessee had done anything with a view to evade the tax properly payable by him.

5. In the absence of any material to substantiate the Revenue''s case against the assessee, the Revenue cannot be said to have discharged the burden. The question referred to is answered in favour of the assessee and against the Revenue. No costs.