(1995) 11 P&H CK 0044

In the Punjab And Haryana At Chandigarh

Case No : G.T.C. No. 4 of 1994

Commissioner of Gift Tax — APPELLANT

Vs

Ashok Kumar Oswal — RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:
Gift Tax Act, 1958 — Section 26, 4, 4(1)

Citation : (1996) 131 CTR 116 : (1996) 219 ITR 98

Hon'ble Judges : R.P. Sethi, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : R.P. Sawhney and Aradhana Sawhney, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

R.P. Sethi, J.—The application of the Revenue seeking reference of the question of law to this court was rejected by the Income Tax Appellate Tribunal, vide annexure "P-2". It is contended that the Tribunal was not justified in declining to make a reference as admittedly the question of law sought to be referred had not been ascertained, determined or adjudicated by the jurisdictional court.

2. We have heard learned counsel for the parties.

3. Learned counsel appearing for the respondents has vehemently argued that in view of the fact that a similar application filed in the case of Rattan Chand Oswal had been rejected and the Revenue had not sought reference in that case, they were estopped from filing a fresh application in the case of the respondents and seeking reference of the question of law already determined by the Tribunal. It is further contended that in fact no question of law arose and the points sought to be referred to this court were purely a question of fact.

4. The acknowledged position of law is that there is no estoppel against the statute. The reference sought to be made to this court in accordance with the provisions of law cannot be held to be barred either by res judicata or by any other form of estoppel. The mere fact that the Revenue did not pray for making

of reference in the case of Rattan Chand Oswal, did not debar them from filing the application in the case of the respondents to get the reference made and the point of law adjudicated. Rather the judgment in favour of the respondent herein might have persuaded the Revenue to get the point of law settled lest it may continue affecting the interest of the Revenue in future as well. The plea raised can not also be termed a pure plea of fact. The reference sought requires the interpretation and application of Section 4(1) of the Gift-tax Act, 1958, which admittedly has not been interpreted or adjudicated by the jurisdictional court.

5. The application is accordingly allowed with a direction to the Tribunal to refer the following question to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the Revenue authorities had gone wrong in invoking Section 4(1)(a) of the Gift-tax Act, 1958, regarding valuation of shares of Oswal Woollen Mills Ltd., for the purposes of gift-tax ?"