

(1997) 02 MAD CK 0087

In the Madras High Court

Case No : Tax Cases No"s. 691 to 696 of 1983 (References No"s. 392 to 397 of 1983)

Commissioner of Gift-tax

APPELLANT

Vs

D. Baskara Reddy and others

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Gift Tax Act, 1958 — Section 26(1), 4(1)
Income Tax Act, 1961 — Section 28, 52

Citation : (2000) 245 ITR 842

Hon'ble Judges : S.M. Siddick, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan and C.V. Rajan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

K.A. Thanikkachalam, J.—At the instance of the Department, the Tribunal referred the following common question, for the opinion of this

court for the assessment years 1970-71 and 1971-72 in the case of three different assessees, u/s 26(1) of the Gift-tax Act, 1958 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the transfer was not without

adequate consideration and, therefore, the assessee is not liable to gift-tax u/s 4(1)(a) of the Gift-tax Act, 1958 ?

2. The three assessees, viz., Sarvasri D. Baskara Reddy, D. V. Sivaprasada Reddy and D. Sudhakara Reddy, had, respectively, 1/16, 1/4 and

1/16 shares in the property at No. 5, Nungambakkam High Road, Madras. Half of the property was sold for Rs. 3,50,000 on March 30, 1970

and the other half for Rs. 3,50,000 on March 11, 1971, to D. S. Reddy and Co. Pvt. Ltd. The Income Tax Officer got the property valued by the

valuation cell, which fixed the value at Rs. 5,00,200 for the first sale and Rs. 5,54,100 for the second sale. In the view that the vendee consisted of

the assessee's relatives, the Income Tax Officer invoked section 52 for bringing to capital gains the difference between the market value and the

stated consideration and also made the assessments of the difference as a deemed gift u/s 4(1)(a) of the Gift-tax Act, for the two years,

representing the respective assessee's share.

3. On appeal, the Tribunal noted that in its earlier order in the case of Sri D. Pratapchandra Reddy, the Tribunal in its order, dated September 30,

1977, in I.T.A. No. 101/Mds. of 1976-77, had held that the consideration stated for the transfer was not less than the market value and,

therefore, the assessment of capital gains u/s 52 of the Act was invalid. For the same reason, the Tribunal held that the transfer was not without

adequate consideration and, therefore, there could be no deemed gift u/s 4(1)(a) of the Gift-tax Act, which was exigible to gift-tax. The Tribunal

accordingly upheld the cancellation of the gift-tax assessments made by the Appellate Assistant Commissioner. A similar question came up for

consideration before this court in the case of Commissioner of Gift-tax Vs. Indo Traders and Agencies (Madras) P. Ltd., , wherein this court held

that if the consideration which passed between the parties can be considered to be reasonable or fair, it cannot be considered to be inadequate.

The adequate consideration is not necessarily what is ultimately determined by someone else as market value. Unless the price was such as to

shock the conscience of the court, it would not be possible to hold that the transaction is otherwise than for adequate consideration. In the present

case, on the facts, the Tribunal came to the conclusion that there is no difference between the fair market value and the stated consideration.

Therefore, gift-tax u/s 4(1)(a) cannot be levied in the present case. In that view of the matter, we answer the question referred to us in the

affirmative and against the Department. No costs.