

(1997) 02 MAD CK 0058

In the Madras High Court

Case No : Tax Cases No"s. 852, 853, 854 and 855 of 1983 (References No"s. 427, 428, 429 and 430 of 1983)

Commissioner of Gift-tax

APPELLANT

Vs

D. Surendranath Reddy and others

RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Gift Tax Act, 1958 — Section 4(1)

Citation : (1998) 233 ITR 21

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant;

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, 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 two assessees were the co-owners of the property at No. 5, Nungambakkam High Road, Madras. Their shares are 1/16th and 1/4th,

respectively. The property was sold in two lots on March 30, 1970, and March 11, 1971 for Rs. 3.5 lakhs. The vendee of these transactions was

D. S. Reddy and Co. (P.) Ltd. The vendee subsequently sold the entire property on October 20, 1972 to Oriental Hotels for Rs. 15 lakhs. The

Income Tax Officer, assessing the assessee, made a reference on the valuation of

the property for the two years, to the Departmental valuer and he had placed the fair market value of the lot sold on March 30, 1970, at Rs. 5,00,200 and placed the market value of the lot sold on March 11, 1971, at Rs. 5,54,100. The Income Tax Officer, in the reassessment, computed the capital gains, invoking section 52(2) of the Act. Consequently, in the gift-tax assessments, the difference in the sale price and the market value was taken as a deemed gift u/s 4(1)(a) of the Gift-tax Act, since according to the Gift-tax Officer, there has been transfer otherwise than for adequate consideration. The Appellate Assistant Commissioner dismissed the appeals filed by the assessee. The assessee further filed appeals before the Tribunal. The Tribunal, following its earlier order in I.T.A. No. 101/Mds/1976-77, dated September 30, 1977, in the case of Sri D. Pratapchandra Reddy, as also to the order of the Tribunal, dated October 30, 1981, in G.T.A. Nos. 64 and 65 (Mds) of 1980, in the case of the other co-owner's case, held that gift-tax is not exigible. Inasmuch as the fair market value is equivalent to the stated value, it was held that section 4(1)(a) of the Gift-tax Act would not apply. In Commissioner of Gift-tax Vs. Indo Traders and Agencies (Madras) P. Ltd., , 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. Adequate consideration is not necessarily, what is ultimately determined by some one 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. Accordingly, inasmuch as the Tribunal held that there is no difference between the fair market value and the stated consideration, there cannot be any deemed gift. In that view of the matter, we answer the question referred to us in the affirmative and against the Department. No costs.