

(1996) 09 SC CK 0081

In the Supreme Court Of India

Case No : Civil Appeals Nos. 4551-56 Of 1984

Commissioner of Gift-tax

APPELLANT

Vs

D.C. Shah and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Citation : (2001) 249 ITR 518 : (2003) 11 SCC 359

Hon'ble Judges : S. P. Bharucha, J; Faizan Uddin, J

Bench : Division Bench

Advocate : Laxmi Iyengar and S.N. Terdol, for the Appellant;

Final Decision : Dismissed

Judgement

1. The respondents have been served in these appeals but have not entered appearance.

2. These appeals arise out of a reference to the High Court under the provisions of the Gift-tax Act, 1958 (the judgment and order of the High Court is reported in D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, .

3. The reference pertained to the reconstitution of a partnership firm carrying on business in the name of Shah Chhaganlal Ugarchand Akkolkar at Nippani on January 1, 1964 and November 19, 1968, when fresh deeds of partnership came to be executed. The reference was of six questions. The first question is illustrative of the issue involved, and it reads thus (see D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was a taxable gift by the assessee when his share of profit in the firm was reduced from 19 paise to 14 paise and thus of his son Kiran D. Shah was increased from 9 paise to 14 paise ?"

4. It is not contended on behalf of the Revenue that there was any reduction in the capital contribution of the assessee and a consequential increase in the

capital contribution of his son pursuant to the alteration in their shares of profit. What is submitted is that the mere fact that the share of the assessee in the profits of the firm was reduced from 19 to 14 paise and that of his son increased from 9 to 14 paise established that there had been a taxable gift of the 5 paise share of profits. The High Court was right in holding, having regard to the recitals of the deed of partnership, that it was not possible to make out any transfer of property as such by any particular individual in favour of another individual so as to result in a gift. To find out whether there was a gift, the terms of the document were material as also any other evidence that might be brought on record, and the burden of so doing was upon the Revenue. There being no material from which it could be inferred that there was a gift, the High Court concluded that the answer to the question must be in favour of the assessee and against the Revenue. The High Court noted that the son had brought into the firm a contribution of capital in the sum of Rs. 2.33 lakhs. He had been in the business for nearly four years and the High Court found it reasonable to assume that the increase in his share of profits was on account of his experience and capacity to shoulder more responsibilities. Merely because the share of the father had come to be reduced by five paise and there was a corresponding increase so far as the son was concerned did not lead to the inference that the five paise share of the father had been transferred to the son.

5. This was the position also in regard to the subsequent alterations in the profit sharing arrangements of the firm, to which the other questions related.

6. That the share of one partner is decreased and that of another partner correspondingly increased does not lead to the inference that the former had gifted the difference to the latter. The profit sharing ratio in a firm can vary for a number of reasons, among them the ability of the partners to devote time to the business of the firm. The gift of a part of a partner's share to another partner has to be established by relevant evidence. The onus of doing so is on the Revenue. It has not been discharged in the present case.

7. No interference with the judgment and the order under appeal is called for. The appeals are dismissed. No order as to costs.