

(1998) 06 KL CK 0044

In the High Court Of Kerala

Case No : Income-tax Reference No. 41 of 1995

Commissioner of Gift Tax

APPELLANT

Vs

Dr. P.A. Varghese

RESPONDENT

Date of Decision : 02-06-1998

Acts Referred:

Citation : (1998) 150 CTR 668 : (1999) 237 ITR 439 : (2001) 118 TAXMAN 753

Hon'ble Judges : Om Prakash, C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; K.M.V. Pandalai, for the Respondent

Judgement

Om Prakash, C.J.—Heard counsel for the parties.

2. Pursuant to the directions given by this court, the Income Tax Appellate Tribunal referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and fact in determining the value of the property gifted at Rs. 1,00,000 ?"

3. The facts in brief, are that the assessee, a medical practitioner, made a gift of a portion of a building, known as Pulikkal Buildings, Ernakulam, on January 15, 1985, to his minor son. The assessment relates to the year 1983-84. At the time of gift, the gifted property was under tenancy of a quasi-Government-body of the Central Government, namely, Spices Export Promotion Council. The monthly rent was Rs. 808. On the basis of the said rental value, the assessee valued the gifted property at Rs. 60,000 only. The Gift-tax Officer found that immediately after the expiry of ten months from the date of the gift, the property in question was let out by the donee at the rate of Rs. 4,000 per month. The Gift-tax Officer, capitalising the said rental income at ten times, worked out the value of the gifted property at Rs. 3,57,890.

4. The assessee carried the dispute in appeal to the Commissioner of Gift-tax,

who stated that part of the gifted property had been let out to Lakshmi Vilas Bank on a monthly rent of Rs. 2,000 in 1977. The area of such portion was 2,500 sq. ft., whereas the area of the gifted property was 2,860 sq. ft. The Commissioner of Gift-tax, taking into consideration the rental of Rs. 2,000 of a portion of the property let out to Lakshmi Vilas Bank, estimated the rental of the gifted property at Rs. 3,000 per month on the date of the gift and capitalising the same at ten times, directed the Gift-tax Officer to redetermine the value of the gifted property by capitalising the rental of Rs. 3,000 at ten times after allowing deduction of 15 per cent.

5. Not satisfied with the relief granted by the appellate authority, the assessee approached the appellate tribunal, who, taking into account the stringent provisions of the Rent Control laws and the rent of the gifted property at Rs. 808, estimated the value of the gifted property at Rs. 1 lakh only as against the declared value of Rs. 60,000.

6. Learned senior standing counsel submits before us that the property was let out as early as the year 1965 and that no steps permissible under the rent control laws for enhancement of rent, were taken by the donor and that if such steps were taken, the rent would have been much higher than Rs. 808 per month. This is how learned standing counsel submits before us that monthly rent of Rs. 808 cannot form the basis for estimating the value of the gifted property. He submits that the appellate authority was right in taking into consideration the rent of the portion of the property, which was let out to the bank. It is submitted by him that the Appellate Tribunal has not followed any cogent basis for estimating the value of the property. Adverting to Section 6(1) of the Gift-tax Act operative up to and including the assessment year 1988-89, the learned taking counsel submits that the value of the gifted property be estimated on the basis as to what amount the property would have fetched, if sold in the open market. The Revenue does not have any instance of sale to find out that the gifted property, if sold, would have fetched far greater amount than Rs. 1 lakh, as estimated by the Appellate Tribunal.

7. Capitalisation of Rent is a well-known method for estimating the value. The only question for consideration is whether the rent fetched by the gifted property up to the date of the gift or the rent fetched by a portion of the building or the rent which was settled between the donee and the tenant after ten months of the date of gift, should form the basis for estimating the value. Since the gifted property was under tenancy right from 1965 up to the date of the gift, we see no good reason to take into account the rent fetched by a portion of the building or the rent which was settled after ten months of the date of gift between the donee and the tenant. These rents would have become relevant if the gifted property were not let out on the date of the gift. But the gifted property remained under tenancy up to the date of the gift from 1965. When the gifted property remained let out up to the date of the gift, then the rent of the gifted property for estimating the value, becomes relevant, unless the same is proved

to be collusive or underestimated. There is no case for the Revenue that the rent settled between the donor and the quasi-Central Government office, did not represent the true rental value. In the case of quasi-Central Government office, we can safely assume that the rent settled between the donor and that office represented the true market rent. We are, therefore of the view that the Appellate Tribunal rightly rejected the basis followed by the appellate authority. We do not see any good ground to interfere with the view taken by the Appellate Tribunal in the matter

8. In the result, we do not see any infirmity in the view taken by the Appellate Tribunal. The aforementioned question is, therefore, answered in the affirmative, that is in favour of the assessee and against the Revenue.