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(1997) 12 KL CK 0022

In the High Court Of Kerala

Case No : IT Ref. No. 102 of 1995

COMMISSIONER OF GIFT TAX — APPELLANT

Vs

H. SUBRAMANIAN — RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Citation : (1999) 151 CTR 607

Hon'ble Judges : P.A. Mohammed, J;P. Shanmugam, J

Bench : Full Bench

Advocate : P.K.R. Menon and N.R.K. Nair and E.R. Shine, for the Appellant;

Judgement

P. SHANWGAM, J.:

The following questions were referred for opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and in fact in holding that there was no gift liable to be taxed under the GT Act, 1958 ?

(2) Whether, on the facts and in the circumstances of the case, the capital brought in by the new partners and the time and labour contributed to the firm constituted sufficient and valid consideration for the diminution in the share of the assessee''s profits ?"

2. The assessee M/s. Bhima Jewellers at Emakulam was a proprietary concern from 4th Sept., 1978, to 1st March, 1980. Thereafter, the proprietary concern was converted into a partnership of 7 persons including the assessee. The capital contributed by all the partners is in equal share of Rs. 50,000 each. The GTO initiated proceedings under the GT Act against the assessee, viz., Shri H. Subramanian, Bhima Jewellers, Ernakulam, for having transferred the capitalised value of the right to share the profit computed at Rs. 6,20,000. On appeal by the assessee, the CGT(A) allowed it and cancelled the assessment by the GTO. The GTO filed an appeal before the Tribunal and the assessee also filed a cross-

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appeal. The Tribunal dismissed the appeal as well as the cross objections. Hence, the above reference.

3. By going through the orders, we find that the GTO found that as on 29th Feb., 1980, the excess of assets over the liabilities amounted to Rs. 7,55,510 was treated in the books of the firm as the capital contribution by the assessee. The new partners, six in numbers, brought Rs. 50,000 each as their share capital. The GTO also found that on their admission into partnership, the incoming partners would get a right to share in the profits of the firm. They would also get a right to share in the assets. The right to share in the future profits was valued at Rs. 6,20,000 and a tax was imposed on it. The GTO4id not include the capital contribution by the assessee as a partner for the purpose of assessing, but has only taken the right to share in the future profits as a gift whereas the CGT(A) proceeded on the basis that the GTO mentioned that the incoming partners have not brought in any consideration to get the right to share future profits. The CGT(A) held that all the new partners brought in sufficient capital and, therefore, there was sufficient consideration. The Tribunal, on the other hand, proceeded on the basis that the GTO initiated proceedings for having transferred a part of the goodwill to the new partners. All the partners have contributed adequate capital in addition to time and labour and, therefore, there is no deemed gift.

4. From the partnership deed dt. 1st March, 1980, it is seen that the partners, apart from the contribution, are not subscribing any time and labour as found by the Tribunal. There is no material available warranting such a conclusion. Besides, the goodwill of the erstwhile proprietary concern was not quantified. What was considered as transferred was only the right to share in the future profits and not the assets of the proprietary concern. If the total contribution, namely, Rs. 7,55,510 and the right to share, namely, Rs. 6,20,000 are taken together, it would be Rs. 13,75,510. In order to find out whether there is adequate consideration, the officers should have taken this figure for the relative comparison. On the contrary, the contribution of Rs. 50,000 amounting to Rs. 3,00,000 is compared with Rs. 6,20,000 which is taken as the share in the future profits for the purpose of deciding that there is adequate consideration. We find that the approach of the officers in reference to the actual amount of transfer involved is not clear. The Tribunal proceeded on the basis that the assessee could withdraw the profits at any time and that there has been a contribution of time and labour. There is absolutely no material, before the authorities. Further, whether the transfer was only capitalised value of the right to share the profit, or only the capital contribution for determination of the question on the adequacy for consideration is not clear. We are, therefore, of the view that the matter requires a fresh consideration. Therefore, we decline to answer the questions. The matter is remanded back to the Tribunal for fresh consideration.

IT Ref. is disposed of as indicated above.

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