
(1986) 12 AHC CK 0029
In the Allahabad High Court
Case No : Gift-tax Reference No. 269 of 1981

Commissioner of Gift-tax

APPELLANT

Vs

Hasan Mumtaz

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Gift Tax Act, 1958 — Section 4
Income Tax Act, 1961 — Section 52

Citation : (1987) 60 CTR 72 : (1987) 168 ITR 412 : (1987) 31 TAXMAN 216

Hon'ble Judges : Ravi S. Dhavan, J;K.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—At the instance of the Revenue, the following questions have been referred by the Income Tax Appellate Tribunal u/s 26(3) of the Gift-tax Act:

"(1) Whether, on the facts and in the circumstances of the case, the learned Tribunal was legally correct in upholding the Appellate Assistant Commissioner's finding that in view of the Income Tax assessment wherein Rs. 52,000, i.e., the difference between the declared consideration and the deemed value of the consideration, has been taken into account for computation of capital gains, the said amount of Rs. 52,000 could not be charged to gift-tax ?

(2) Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in dismissing the departmental appeal following the lone judicial opinion favourable to the assessee and ignoring the various decisions of the various High Courts in favour of the Department on the issue ?"

2. In assessment year 1967-68, the assessee sold his house situated at Station Road, Bareilly, for Rs. 1,00,000. In the assessment year 1967-68, the Income Tax Officer with the approval of the Inspecting Assistant Commissioner applied the provisions of Section 52 of the Income Tax Act and computed capital gains on the footing that the fair market value of the said property was much higher.

Ultimately, in the second appeal, the Tribunal fixed the sale proceeds for the said property at Rs. 1,52,000. After these proceedings were over, the Gift-tax Officer initiated assessment proceedings against the assessee on the footing that in the deemed sale proceeds, the component of Rs. 52,000 as aforesaid constituted deemed gift within the meaning of Section 4 of the Gift-tax Act and the assessee had failed to furnish return in respect of the said gift. Holding the value of the property to be Rs. 1,52,000, the Income Tax Officer brought to gift-tax Rs. 52,000. On appeal, the Appellate Assistant Commissioner relied on the decision in *Sardarni Ahilya Raghbir Singh Raja Sansi Vs. Commissioner of Income Tax*, and held that no gift-tax could be charged on the difference between the declared consideration and the deemed value. The Revenue preferred a second appeal before the Income Tax Appellate Tribunal. The appeal was dismissed and, thereafter, on an application made u/s 26(3) of the Gift-tax Act, the present application has been filed.

3. Section 3 of the Gift-tax Act provides for charge of gift-tax. It lays down that gift-tax would be payable at the rate or rates specified in the Schedule. Section 52 of the Income Tax Act deals with the levy of capital gains on the basis that the real consideration for a transfer is more than that declared. These are two distinct provisions for levy of gift-tax and tax on capital gains. For the purpose of the Gift-tax Act, it was Rs. 52,000 in the instant case but for the purpose of the Income Tax Act, the difference between the actual cost and the market value. That being the capital gain, the tax was liable to be levied on that amount. There is thus no question of treating the same amount as a gift and as a transfer resulting in capital gain. It is, therefore, incorrect to say that the same amount is taxed twice over if gift-tax is liable to be paid u/s 4 on the basis of deemed gift on which capital gains tax has been realised u/s 52 of the Income Tax Act.

4. In *Sardarni Ahilya Raghbir Singh Raja Sansi Vs. Commissioner of Income Tax*, , the view taken was that as the difference between the declared consideration and the deemed value of the consideration had since been taken into account for the computation of capital gains, the said amount could not be charged to gift-tax. We respectfully do not agree with the Punjab and Haryana High Court that once capital gains tax has been levied, no gift-tax could be imposed. Gift-tax is distinct from capital gains tax. Both the taxes could be imposed. It is incorrect to say that what is being taxed is one and the same transaction.

5. In *Income Tax Officer, B-Ward and Another Vs. K.P. Varghese*, , the question of taxability both u/s 52 of the Income Tax Act and under the Gift-tax Act was considered. The majority took the view that (at page 63):

6. It was argued that to permit the assessment to Income Tax on the ground of capital gains in respect of the transfer here involved, and, at the same time to assess the difference between the market value and consideration received to gift-tax under the Gift-tax Act, would amount to double taxation. As pointed out in *Reid's Trustees v. Commissioners of Inland Revenue [1929] 14 TC 512*, there

is nothing inconsistent in principle in making the same sum subject to two different taxes under two different enactments. The statutes therein involved were the Income Tax Act and the Estate Duty Act. Besides, the scheme of taxation to Income Tax is different from that under the Gift-tax Act, It is the income that accrues or arises or is deemed to accrue or arise as a result of the transfer that is subject to assessment under the Income Tax Act. It is the transaction of the gift itself, i.e., the transaction used for transmission of title that is assessed under the Gift-tax Act. So understood, there is no question of double taxation."

7. Not only is the object of a transaction u/s 52 of the Income Tax Act and u/s 4 of the Gift-tax Act different but also its implications on the assessee. The liability in one case would be different from the other.

8. In *Income Tax Officer, B-Ward Vs. Buragadda Satyanarayana*, , the Andhra Pradesh High Court held that even if the assessee had been assessed to gift-tax on the difference between the market value and the actual sale consideration, it was permissible to" levy Income Tax in respect of the same transaction. To the same effect is the view taken in *Commissioner of Gift-tax Vs. B. Sathiar Singh*, , *SHIV SHANKAR LAL Vs. COMMISSIONER OF GIFT-TAX*., and *Shiv Shanker Lal Vs. Commissioner of Income Tax, Delhi*, . Nor do we find any provision in the Gift-tax Act which forbids the assessment to tax on the basis of transfer on which capital gains have already been imposed under the Income Tax Act. In this regard, we wish to note the provisions of Section 50A of the Estate Duty Act, 1953, which provide for relief from estate duty where gift-tax has been paid. A similar provision is to be found in Section 50B by which relief from estate duty where tax has been paid on capital gains has been given. The provision of the Income Tax Act and the Gift-tax Act do not permit us to hold that because the difference between the market value and the apparent consideration has been charged to tax under the Income Tax Act, the inadequacy of consideration cannot be deemed to be a gift under the Gift-tax Act.

9. For what we have said above, we answer the first question in the negative and in favour of the Department.

10. Since the first question has been answered against the assessee and the judgment of the Income Tax Appellate Tribunal has been found to be erroneous, the second question is not required to be answered.