
(1983) 01 KL CK 0005

In the High Court Of Kerala

Case No : Income-tax Reference No. 134 of 1979

Commissioner of Gift-tax

APPELLANT

Vs

H.H. Sethu Parvathi Bai

RESPONDENT

Date of Decision : 27-01-1983

Acts Referred:

Gift Tax Act, 1958 — Section 6, 6(3)

Citation : (1983) 2 ILR (Ker) 620 : (1984) 145 ITR 124

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; D. Krishnamoorthy, for the Respondent

Judgement

Subramonian Poti, Actg. C.J.

1. Pursuant to the order of this court, the Income Tax Appellate Tribunal, Cochin Bench, has referred the following question for the opinion of this court :

" Whether, on the facts and in the circumstances of the case and on an interpretation of Section 6 of the Gift-tax Act, 1958, the Tribunal is correct in law in holding that for the gift of the shares made by the assessee on March 25, 1971, the value fixed in the balance-sheet of the company as on March 31, 1970, should be taken as the proper value ? "

2. The question arises in connection with an assessment to gift-tax during the assessment year 1971-72 for which the accounting year is that ending on March 31, 1971. During that period the assessee gifted some properties and the dispute here concerns only gift concerning 1,000 shares in Nirlon Synthetic Fibres & Chemicals Ltd. These shares were gifted by the assessee on March 25, 1971, and this gift was returned for the year 1971-72 showing the value of each share as Rs, 200.

3. The GTO was not prepared to accept the value so returned. He adopted Rs. 398.61 per share, that being the value adopted for such shares in the wealth-tax

return for the same assessment year 1971-72. Evidently this value of Rs. 398.61 shown in the wealth-tax return was based on the balance-sheet of the company as on March 31, 1971.

4. The assessee appealed to the AAC, the contention being that the value should have been taken as Rs. 330 per share, that being the value of each of the shares as shown in the balance-sheet as on March 31, 1970. The contention of the Revenue evidently was that the balance-sheet of March 31, 1971, being nearer in point of time to the date of gift and particularly being only one week away from the gift the valuation of the shares as in the balance-sheet of March 31, 1971, should be relied on in preference to the valuation in the balance-sheet as on March 31, 1970. The AAC took the view that the profit for the year 1970-71 could not be determined any day prior to March 31, 1971 and, therefore, it was the value as in the previous balance-sheet that should be reckoned for the purpose of determining the market value of the share.

5. The Revenue took up the matter before the Tribunal in appeal. Noticing that the value of the property gifted must depend upon the value in the open market on the date of the gift the Tribunal took the view that the price which any buyer would offer would depend upon what he knew of the property which he had to buy and the buyer would not be in possession of figures of profit as on March 31, 1971, for, he would only be aware of the information that the break-up value of a share in the balance-sheet as on March 31, 1970, was Rs. 330 per share. He would have assumed that the same dividend as of the previous year would be paid unless it be that he had special information as to the change in the circumstances of the company or in the profit earning of the company during the year ended March 31, 1971. There being no such case and the shares being not those listed in the stock exchange during the relevant year the value as in the balance-sheet on March 31, 1970, was adopted by the Tribunal. As a consequence the Revenue's appeal was dismissed. It is in these circumstances that the question now referred to us arises.

6. u/s 6 of the G.T. Act, 1958, the value of any property other than cash transferred by way of gift is to be estimated as the price which, in the opinion of the GTO, it would fetch, if sold in the open market on the date on which the gift was made. Shares are saleable in the open market and, therefore, Sub-section (3) of Section 6 would not apply. The value will have to be determined on the basis of what the shares would fetch if sold in a hypothetical market on the date of the gift. A shareholder would normally be in possession of information about the shares and whatever would be relevant as information is expected to be passed on by him to the prospective purchaser. The purchaser is expected to quote the price in the light of such information conveyed by an honest seller who offers his property for sale. The profit made by a company is within the special knowledge of the company and the shareholders become aware of such profit only when the balance-sheet and the profit and loss account is made available. Even the company will not be able to say what the profit for the year is until the

close of the year and if the valuation of the shares would depend on the profit earning; by a company, information that would be available at any time to the shareholders would be only the figures relating to such profit earning on the last day of the year which has been completed and not on the last day of the year which is yet to close. The profit the company would make in the year ending on March 31, 1971, could not, therefore, be visualised by the shareholder on March 23, 1971, and, therefore, if a shareholder puts up his share as an honest seller he will not be in a position to indicate any information concerning the profit that may be earned during the year ending March 31, 1971. The normal information that he would be possessed of and that he would be able to convey to a willing purchaser would be the value as on March 31, 1970, and that based upon the balance-sheet and P & L a/c. as on March 31, 1970. May be there are special circumstances within his knowledge which may go either to enhance the value of the shares or reduce their value. If a seller is honest, one may expect him to communicate information about such special circumstances also to a willing buyer. But if there is no material to show that there were any special circumstances in a case there can be no assumption of communication of any material other than the position of the company as on the last day of the previous year in this case as on March 31, 1970, in regard to which there is a balance-sheet and P & L a/c. In other words, in regard to a sale effected before the end of the year in the normal course the information available would be the material as to the financial position of the company as on the last day of the previous year. The position must necessarily be different in a case where what are sold are shares listed in the stock exchange in which case the value as quoted by the stock exchange on the date of a gift may be relevant. That is not the case here and, therefore, the shares are to be treated just as any other property. It necessarily follows that the nearness of the date of the gift to March 31, 1971, in comparison to the date March 31, 1970, is irrelevant and is of no consequence at all.

7. The view that we have expressed here has been taken by the High Court of Gujarat in Commissioner of Gift Tax, Gujarat Vs. Executors and Trustees of The Estate of Late Shri Ambalal Sarabhai, . The High Court of Gujarat followed the decision of the House of Lords in *Lynall v. IRC*, [1972] 83 ITR 563.

8. In the light of the above discussion we see no reason to take a view different from that taken by the Tribunal in regard to the question now referred to us. Therefore, we answer the question in the affirmative, that is, in favour of the assessee and against the Revenue.

9. A copy of the judgment under the seal of the High Court and signature of the Registrar will be sent to the Income Tax Appellate Tribunal, Cochin Bench.