

(1997) 10 MAD CK 0042

In the Madras High Court

Case No : Tax Case No. 867 of 1982 (Reference No. 569 of 1982)

Commissioner of Gift Tax

APPELLANT

Vs

Jayalakshmi Doraiswamy

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1999) 238 ITR 202

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—At the instance of the Revenue, the Appellate Tribunal has stated the case and referred the following questions

of law for the assessment year 1971-72 u/s 26(l) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act").

1. Whether, on the facts and in the circumstances of the case and having regard to the provisions of sections 4(1)(a) and 4(1)(c) of the Gift-tax

Act, 1958, the Appellate Tribunal was right in cancelling the gift-tax assessment made in the assessee's case for the assessment year 1971-72 ?

2. Whether, on the facts and in the circumstances of the case," the finding of the Appellate Tribunal that the consideration for the transfer is

adequate is based on valid and relevant materials and a reasonable view to take on the facts of the case.

2. The assessee is assessed as an individual. The original assessment for the assessment year 1971-72 was completed by the Gift-tax Officer.

Later on, on the basis of the information collected, the Gift-tax Officer was of the view that there was an escapement of gift-tax and issued a notice

calling upon the assessee to file the return. The assessee filed a nil return in response to the reassessment notice. The Gift-tax Officer, however,

made the assessment on the assessee on the taxable value of the gift of Rs. 2,85,935 and levied a gift-tax of Rs. 51,735.

3. The facts leading to the abovesaid assessment are as under : The assessee is the widow of one late Doraiswamy, who by a will dated May 4,

1949, appointed the assessee as the executrix of the will. As per the terms the will, she has to enjoy the income from the corpus of the estate of the

late Doraiswamy for her life and she was entitled to utilise the income at her absolute discretion subject to the condition that she maintained her

three daughters in equal share. The assessee entered into an agreement on June 3, 1970, with her two daughters and the children of the first

daughter",@rho had expired. According to the Gift-tax Officer, the assessee surrendered her life interest in all the properties in exchange for

absolute ownership of some of the properties. The division of the properties between the appellant and her daughters was arrived at on the basis of

the actuarial valuation of the assessee's life interest which resulted in the assessee acquiring some of the properties in T. Nagar and some shares in

certain companies. The Gift-tax Officer held that the value of life interest surrendered by, her should be at Rs. 7,14,535 and for the assessment

year 1971-72, the assessee's total wealth was computed at Rs. 5,77,142. The Gift-tax Officer, therefore, held that the capitalised value of the life

interest of the assessee would be Rs. 8,63,077 and, therefore, he held that there was an element of gift involved in the surrender of life interest to

the extent of Rs. 2,85,935.

4. The above sum of Rs. 2,85,935 was arrived at by deducting from the value of the life interest arrived at Rs. 8,63,077 and the value of the total

wealth given to the assessee which was arrived at Rs. 5,77,142.

5. There was an appeal to the Appellate Assistant Commissioner by the assessee. The Appellate Assistant Commissioner found that there was no

mala fide intention with respect to the transaction. She also found that the valuation of the life interest adopted by the Gift-tax Officer was not

correct. She held that the valuation of the life interest at Rs. 8,63,077 made by the Gift-tax Officer was misleading, inaccurate and was not correct.

After taking into account the actuarial valuation as ordered by this court in C.S.

No. 56 of 1971, dated January 10, 1972, she observed that according to the orders of this court, the total value of the property would be Rs. 11,78,631 out of which, the assessee became entitled to the properties worth Rs. 5,77,435 based on her life expectancy worked out according to the actuary. She, therefore, held that the assessee has not underestimated the value of life interest in the property and, therefore, there was no element of gift in the properties which she had absolutely made over in favour of her daughters and grand-children.

6. The Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal preferred by the Revenue on the ground that the assessee was not liable to gift-tax on the transaction by which the assessee surrendered her life interest in favour of her daughters and grandchildren in exchange for certain properties absolutely. The Tribunal found that the arrangement was finalised and she obtained the sanction of this court u/s 307(2) of the Indian Succession Act in C.S. No. 56 of 1971. The Tribunal also found that by the decree which was granted by this court, the arrangement between the assessee and her daughters and grandchildren to divide the properties covered by the terms of the will left by Doraiswamy was proper and in that view of the matter, the Tribunal held that the division of the properties between the assessee and her daughters and grandchildren was correct. The Tribunal, therefore, held that the surrender of life interest by the assessee in the income from the property left by the assessee's husband in favour of her daughters and grand children as per the actuarial valuation which was found to be beneficial to the parties was correct and came to the conclusion that the surrender was bona fide. The Tribunal also held that once the transaction is found to be bona fide. Section 4(1)(c) of the Act would not be applicable. In so far as the applicability of section 4(1)(a) of the Act is concerned, the Appellate Tribunal agreed with the finding of the Appellate Assistant Commissioner that the value of the properties based on the life expectancy of the assessee was arrived at according to the actuarial value and the same was approved by this court. The Tribunal, therefore, held that it cannot be said that the transfer was otherwise for adequate consideration within the meaning of section 4(1)(a) of the Act. In this view of the matter, the Appellate Tribunal dismissed the appeal filed by the

Revenue. The Revenue has challenged the finding of the Appellate Tribunal by raising the above said two questions.

7. Mr. C. V. Rajan, learned counsel appearing for the Revenue, submitted that the Appellate Tribunal was not correct in dismissing the appeal and the Tribunal should have seen that the transfer was for inadequate consideration and there are no valid or relevant materials for the Appellate Tribunal to come to the conclusion that the transfer was made for adequate consideration.

8. The assessee has been served. But, there is no representation on behalf of the assessee. We have carefully considered the submission of learned counsel and carefully perused the records. The Appellate Tribunal noticed that there is an actuarial valuation made by the assessee at the time of entering into agreement by the assessee with her daughters and grandchildren at the time of division of the properties. The Appellate Tribunal also noticed the order of this court in C.S. No. 56 of 1971, and on the basis of the orders of this court, the Appellate Tribunal came to the conclusion that the transaction was bona fide. We are of the view that after the decision of this court in C.S. No. 56 of 1971, the transaction entered into by the assessee cannot be said to be not bona fide at all. This court has granted its approval and sanctioned the arrangement. However, in so far as the applicability of section 4(l)(a) of the Act is concerned, the Tribunal has recorded a clear finding, that the value of the properties on the basis of the life expectancy of the assessee was based on actuarial valuation and that was also approved by this court. Hence, it cannot be said that the transfer was made for inadequate consideration. We are of the view that the finding of the Tribunal regarding the applicability of section 4(1)(a) of the Act as well as section 4(l)(c) of the Act is arrived at on the basis of the materials on record and the finding of the Appellate Tribunal is purely a finding of fact. We are of the view that no question of law arises out of the order of the Appellate Tribunal. In this view of the matter, we answer both the questions of law referred to us in the negative (sic) and against the Revenue. There will be no order as to costs.