
(1981) 12 MAD CK 0028
In the Madras High Court
Case No : Tax Case No. 863 of 1977

Commissioner of Gift-tax

APPELLANT

Vs

K. Ramesh

RESPONDENT

Date of Decision : 09-12-1981

Acts Referred:

Citation : (1983) 141 ITR 462

Hon'ble Judges : S. Padmanabhan, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : A.N. Rangaswami, for the Appellant; S. Swaminathan, for the Respondent

Judgement

Balasubrahmanyam, J.—The questions of law which we are asked to answer in this gift-tax case relates to the valuation of unquoted shares

in M/s. T. V. Sundaram Iyengar and Sons and M/s. Sundaram Industries Ltd. The valuation of the shares was made by the GTO on the basis of

the break-up value method. The gift in this case was by the assessee-holder on March 28, 1972. The GTO took the balance-sheet of the two

companies as at March 31, 1972, and applied the break-up value method on the net worth of the companies as on that date. On appeal, the

Tribunal held that since the gift took place before the balance-sheet as at March 31, 1972, the break-up value method must be applied to the last

balance-sheet before the dated of the gift, namely, the balance-sheet as at March 31, 1971.

2. The correctness of the method which found favour with the Tribunal is the subject-matter of the present reference. The question of law which

has been referred to us in this case is at the instance of the Department and it is as follows :

Whether, on the facts and in the circumstances of the case, it has been rightly held that the shares of M/s. T. V. Sundaram Iyengar & Sons and

Sundaram Industries should be valued for gift-tax assessment for the assessment year 1972-73 at Rs. 151.11 and Rs. 124.62 per share and not at

Rs. 158.60 and Rs. 134.82 per share, respectively ?

3. The contention of the learned counsel for the I.T. Dept. is that since the gift in the present case on March 28, 1972, is nearer to the balance-

sheet as at March 31, 1972, than the balance-sheet as at March 31, 1971, the break-up value must be based on the later balance-sheet even

though the balance-sheet was subsequent to the date of the gift, having regard to consideration of proximity. There is considerable force in the

submission made by the learned counsel. Under the G.T. Act, the subject-matter of every taxable gift have to be valued on its market value. The

subject of the gift in the present case is unquoted shares in two private limited companies in both of which there is a restriction on the free transfer

of shares. The scheme of the G.T. Act, to a certain extent, is similar to the W.T. Act, where also the basis of admeasurement of the tax is the

evaluation of the market value of the assets. In the W.T. Code there are special rules made for ascertaining the market value of the unquoted

shares which are not freely transferable. Under more special rules, once we arrive at the value per share on the basis of the break-up value method

applied to the balance-sheet valuation of the company's assets and liabilities, the Rules provides for a discount of 15 per cent. on the break-up

value of the shares so as to approximate the figure to the probable market value. There is no similar provision under the G.T. Act or the Rules

made thereunder for ascertaining the market value of unquoted shares where such unquoted shares are taxable gifts. The question in the present

case is not, however, whether the value of the gifted shares has to be arrived at by applying the break-up value method to the assets and liabilities

of the company in which the shares are held. The pertinent point of controversy between the assessee and the Department in the present case in

much narrower. It is whether the break-up value method has to be applied to the balance-sheet immediately before the date of the gift or whether,

having regard to the date of the gift, the next balance-sheet must be taken as the basis for valuation. This was the argument addressed by the

Department before the Tribunal, with reference to the balance-sheet as at March 31, 1972, which was nearer to the date of the gift, namely,

March 28, 1972, than the balance-sheet last published as at March 31, 1971.

4. Since the tax is wholly based on the market value of the subject-matter of the gift, the endeavour must be to fix the market value as correctly as

possible, so that the tax liability may be determined properly. Even though unquoted shares which are not easily transferable in a private company

are the subject-matter of the gift, the gift-tax will have to be levied only on the basis of the determination of the market value. The criterion under

the Act is not whether there is, in fact, a market value off the subject-matter of the gift, but what its market value would be if sold in the market. It

is for this purpose that both assessee and the Department have been following the break-up value method as a recognized system of valuation even

in the absence of specific statutory rules on the subject.

5. Once it is recognized that the market value of the gift has to be fixed as on the date of gift, it is most and proper that such material, as is available

to determine the value as on the date as correctly as possible, must be taken into account. From this point of view, the balance-sheet as on March

31, 1971, as the standard of valuation, is far removed from the date of the gift, as compared to the balance-sheet as on March 31, 1972. It

follows, therefore, that this later balance-sheet, although subsequent to the date of the gift, something happens to the assets of the company or the

liabilities of the company which will tilt the value of the shares one way or the other, that factor alone can be taken into account. As for the rest, the

balance-sheet as on March 31, 1972, would be the proper measure for the valuation of the shares. This is because, in between the two balance-

sheets, one as at March 31, 1971, and the other as at March 31, 1972, there might have been several developments affecting the net worth of the

company, and thereby affecting the value of the individual shares therein, such as declaration of dividends, depreciation in fixed assets, further

borrowing, further augmentation of the assets and the like. All these will necessarily get reflected in the subsequent balance-sheet. If, therefore, the

balance-sheet subsequent to the date of the gift is not far removed from the date of gift, then necessarily the subsequent balance-sheet would afford

a better guide for the break-up value to be arrived at than the more distant

balance-sheet as at March 31, 1971. In the course of arguments, two cases which arose on the question of applicability of the break-up value method under the G.T. Act, both dealing in some measure with the manner

of arriving at the break-up value for unquoted shares, were cited. They are, COMMISSIONER OF GIFT-TAX, TAMIL NADU-III Vs. S.

venu SRINIVASAN AND ANOTHER., and Commissioner of Gift-tax Vs. Prema Srinivasan, . In those two cases, the ultimate decision of this

court was to remand the matter further consideration by the Tribunal. We do not derive from either of those any help for the proposition that was

argued before us.

6. In the view of our findings that the Tribunal was not justified in disregarding the balance-sheet as on March 31, 1972, we must hold that their

order cannot be upheld as lying down the proper basis for valuation. It is, however, not for this court to go into the question of valuation in this

reference. The matter has got to be re-examined by the Tribunal. It is true that the GTO, in his assessment, had taken the balance-sheet as at

March 31, 1972, as the basis for his valuation. But he had not considered whether in between the date of the gift, March 28, 1972, and March 31,

1972, anything had happened to the financial position or prospects of the two companies concerned. Nor have these factors been considered by

the Tribunal. We think these matters will have to be examined afresh by the Tribunal. So, while formally answering the question of law against the

assessee and in favour of the Department, it would be for the Tribunal to examine the question once again in the light of the observations we have

made in this case. There will be no order as to costs.