
(1994) 01 AHC CK 0045
In the Allahabad High Court
Case No : Gift Tax Application No. 173 of 1992

Commissioner of Gift-tax

APPELLANT

Vs

Kailashpat Juthalal (HUF)

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Gift Tax Act, 1958 — Section 4(1), 5(2), 6(3)
Gift Tax Rules, 1958 — Rule 10(2)

Citation : (1994) 118 CTR 301 : (1994) 209 ITR 400 : (1994) 75 TAXMAN 133

Hon'ble Judges : S.C. Verma, J; R.K. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Gulati, J.—By this application u/s 26(2) of the Gift-tax Act, 1958, the Commissioner of Gift-tax, Kanpur, seeks a direction from this court to the Income Tax Appellate Tribunal, "B" Bench, Allahabad, to refer the following questions for opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the grounds on which notice u/s 16(1) of the Gift-tax Act was issued were not fully settled and the issue of notice was invalid ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the shares in Messrs. M. P. Udyog Ltd., were to be valued on yield basis and the ratio laid down by the Supreme Court in Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, , was applicable ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the share should have been valued on the basis of the last balance-sheet of the company drawn up prior to the date of gift and the ratio laid down in Commissioner of Gift-tax Vs. K.

Ramesh, did not apply ?"

2. The respondent assessee is a Hindu undivided family and held shares in Messrs. M. P. Udyog Ltd, During the previous year relevant to the assessment year in question on May 29, 1985, the assessee sold one lakh thirty thousand one hundred forty shares of Messrs. M. P. Udyog Ltd., for a consideration of Rs. 5,85,630 at the rate of Rs. 4.5 per share. The Wealth-tax assessment for the year under consideration was made taking the value of shares as per Rule 1D of the Rules under the Wealth-tax Act at Rs. 14.38. per share. At this rate, the value of the shares sold by the assessee worked out to Rs. 18,71,413. The Gift-tax Officer entertained the view that there was a deemed gift within the meaning of Section 4(1)(a) of the Gift-tax Act, 1958 (for short "the Act"), for the shares had been sold for inadequate consideration to that extent. The Gift-tax Officer, therefore, sought to assess the difference of Rs. 12,80,780 after allowing deduction of Rs. 5,000 u/s 5(2) of the Act as deemed gift by taking resort to Section 16(1)(a) of the Act because the assessee had not filed any gift-tax return. The assessment so made was affirmed in appeal by the Commissioner of Income Tax (Appeals), Kanpur, and the appeal filed by the assessee was dismissed. It may be observed that the balance-sheet of Messrs. M. P. Udyog Ltd. (hereinafter referred to as "the company") is drawn up on July 31 each year. It is a company in which the public are not substantially interested and its shares were not listed in any stock exchange. The Gift-tax Officer was of the view that as the shares were not quoted in the stock exchange, their value was to be determined on the average of the break-up value indicated by the balance-sheet of the company in terms of Rule 1D of the Wealth-tax Rules/10(2) of the Gift-tax Rules read with Section 6(3) of the Act. As the transaction of safe was made during the currency of the previous year relevant to the assessment year in question and in order to determine the intrinsic worth of the shares as on May 29, 1985, the date of the transaction, the Gift-tax Officer adopted the balance-sheet of the company drawn up on July 31, 1985, being in proximity with the date of sale, as the basis to arrive at the break-up value at the rate of Rs. 14.38 per share. The contentions of the assessee that the value of the shares was to be determined by the yield or profit-earning method and that the balance-sheet as on July 31, 1984, which preceded the date of transfer was the only relevant balance-sheet which could have been taken into account for ascertaining the value of shares, were repelled both by the Gift-tax Officer and the appellate authority. However, the view entertained by the said authorities did not find favour with the Income Tax Appellate Tribunal in second appeal filed by the assessee.

3. The Income Tax Appellate Tribunal in the first instance observed that the shares were liable to be valued on the basis of the yield method instead of the break-up value method and in this connection it referred to a decision of the Supreme Court in Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia, . However, in the ultimate analysis, it rested its decision on different considerations. It pointed out that u/s 6 of the Act, the value of any property

gifted other than cash, is to be estimated to be the price which, in the opinion of the Gift-tax Officer it would fetch if sold in the open market as on the date of gift. Placing reliance on what it considered to be the principle of valuation appropriate to the case of the assessee, it opined that the value of the shares determined by the Gift-tax Officer on the basis of the balance-sheet drawn up subsequent to the date of sale was illegal, unjust and improper because as on the date of transaction the balance-sheet of the company as on July 5, 1984, alone was available to the prospective buyers. The shareholders become aware of profits made by the company only when the profit and loss account is published, Further, where the value of the shares would depend on the profits earned by a company, the information which the shareholders can get at any point of time, would be only of figures in respect of such profits earned as on the last date of the year which has been completed and not as on the last date of the year which is yet to close. For the aforesaid view the Income Tax Appellate Tribunal placed reliance on a decision of the Kerala High Court in Commissioner of Gift-tax Vs. H.H. Sethu Parvathi Bai, . It also held that initiation of proceedings u/s 16 of the Act to tax a deemed gift on the basis of some valuation which has yet to be finalised and is the subject-matter of controversy, was not justified. On these considerations, the validity of the notice u/s 16 of the Act was not found sustainable. It observed :

"... On the merits of the valuation, we have not considered it necessary to give our opinion."

4. The Income Tax Appellate Tribunal made an attempt to find out as to what was the value of the shares on the date of the gift and whether the assets and liabilities of the company in the case of the company had undergone any major change between the date on which the balance-sheet was last drawn up and the actual date of the gift.

5. It is apparent that the controversy between the contending parties is about the value of unquoted shares and the choice of the relevant balance-sheet which has got to be taken into consideration for the purpose of computation of the company's net worth. We may observe that on the question of the relevant balance-sheet, the view entertained by the Income Tax Appellate Tribunal is at variance with the view expressed by the Madras High Court in Commissioner of Gift-tax Vs. K. Ramesh, and Commissioner of Gift-tax Vs. Venu Srinivasan, . There the view expressed is that if the balance-sheet subsequent to the gift was not far removed from the date of gift then necessarily the second balance-sheet would afford a better guide for the break-up value to be arrived at than the more distant balance-sheet of the earlier date. In CWT v. S. Ram [1984] 147 JTR 278, the Madras High Court has expressed yet another view on the questions under reference. It was held (at page 291) :

"In the absence of the facility of drawing up a balance-sheet precisely on the date of the gift, the next best thing, both for the assessee who is the holder of the unquoted shares and the Department, which is charged with the duty of

evaluating the market value of the shares, not to speak of the company itself, is to take the balance-sheets falling both before and after the date of the gift and arrive, as near as may be, at the break up value of the assets and liabilities of the company as on the date of the gift on a time basis, or on some other basis."

6. Having regard to the foregoing, we cannot accept the argument of learned counsel for the respondent-assessee that the order of the Income Tax Appellate Tribunal does not give rise to any question of law. On the consideration on which the decision of the Income Tax Appellate Tribunal rested, there is a difference of opinion amongst the High Courts. There is no decision of this court nor was any decision of the Supreme Court brought to our notice. That apart, the correct principle of valuation applicable to a given case, in our opinion, is a question of law. We may refer to the decision of the Supreme Court in *Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia*, , if an authority is required for that purpose. Indeed, the Income Tax Appellate Tribunal while rejecting the application for reference to this court has not disputed that its order does not give rise to the questions that were sought for. However, the application was rejected by saying that the High Court should not be burdened with redundant questions of law as the matter was decided by it with reference to the decision of the Supreme Court just referred to above. We are afraid that we cannot share the view of the Income Tax Appellate Tribunal. It would be an oversimplification of the matter to say that the decision in appeal by the Income Tax Appellate Tribunal rested on the decision of the Supreme Court in the case of *Commissioner of Gift Tax, Bombay Vs. Smt. Kusumben D. Mahadevia*, , alone, whereas, in fact, it is not so. We are clearly of the opinion that the questions set out above do arise out of the order of the Income Tax Appellate Tribunal which requires a reference to this court. Accordingly, we direct the Income Tax Appellate Tribunal to draw up a statement of the case and refer the aforesaid questions of law for the opinion of this court.

7. In the result, the application succeeds and is allowed. However, there shall be no order as to costs.