
(1989) 07 RAJ CK 0026
In the Rajasthan High Court
Case No : Gift-tax Reference No. 35 of 1981

Commissioner of Gift-tax

APPELLANT

Vs

Kishan Chand

RESPONDENT

Date of Decision : 19-07-1989

Acts Referred:

Gift Tax Act, 1958 — Section 2

Citation : (1990) 184 ITR 31

Hon'ble Judges : S.C. Agrawal, J; M. Kapur, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant;

Judgement

1. This reference has been made by the Income Tax Appellate Tribunal, Jaipur (hereinafter referred to as "the Tribunal") u/s 26 of the Gift-tax Act, 1958 (hereinafter referred to as "the Act"), at the instance of the Revenue. It relates to the assessment year 1973-74. The question which has been referred for consideration of this court is as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that no gift was made by the assessee to the minors ?"

2. The facts, briefly stated, are that the assessee, Kishan Chand Agarwal, was a partner in the firm Shri Hari Industries, Bharatpur, as a karta of the Hindu undivided family. He had 50% share in the profits of the said firm. In the previous year relevant to the assessment year 1973-74, there was a change in the constitution of the said firm and Serva Shri Sushil Kumar, Anil Kumar, Ravinder Kumar, minor sons of the assessee's brother, were admitted to the benefits of the partnership and they were given 14%, 13% and 13% shares, respectively. Each of the said minors also contributed Rs. 4,000 towards the capital in the said firm, As a result of the admission of these minors to the partnership, the share of the assessee was reduced from 50% to 30%. The Gift-tax Officer held that the reduction of the share of the assessee from 50% to 30%

constituted a gift u/s 2 of the Act and taking into consideration the income of the firm, the Gift-tax Officer held that the value of the gift of the future profits of the partnership by the assessee to the minors was Rs. 28,936 and he assessed gift-tax on the said amount. The Appellate Assistant Commissioner, on appeal, reduced the value of the gift to Rs. 15,470, On further appeal, the Tribunal held that it cannot be said that when a firm is reconstituted and as a result of its reconstitution, the shares of some partners who have continued after the reconstitution have been diminished, and the new partners who joined have been given some shares by the adjustment of the shares amongst the old partners this is a transfer of property within the meaning of Section 2 of the Act and, therefore, it cannot be held to be a gift u/s 2 of the Act, In taking the aforesaid view, the Tribunal has placed reliance on the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, . With regard to the contribution of Rs. 4,000 made by each of the minors towards the capital of the partnership firm, the Tribunal has observed that the Appellate Assistant Commissioner had decided the matter merely on the ground that there was no consideration and he did not decide the issue on the ground that there was inadequate consideration when a capital of Rs. 4,000 each was contributed by the minors. The Tribunal has, however, not dealt with this aspect of the matter.

3. The assessee has failed to appear even though he has been duly served.

4. We have heard Shri V.K. Singhal, learned counsel for the Revenue. Shri Singhal has placed before us the decision of the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, , whereby the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, , on which reliance has been placed by the Tribunal, has been reversed. The Supreme Court has held that once goodwill is taken to be property and with the admission of the two minors to the benefits of partnership in respect of a fixed share, the right to the money value of the goodwill stands transferred, and the transaction does constitute a gift under the Act. The Supreme Court has approved the decision of the Madras High Court in M.K. Kuppuraj Vs. Commissioner of Gift-tax, , where minors were admitted to the benefits of a partnership firm and the assessee's interest suffered detriment by relinquishment of interest and it was held that the relinquishment of 8% profits in favour of the minors was admittedly without any consideration and hence would constitute a gift by the assessee in favour of the minors.

5. In view of the aforesaid decision of the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, the view of the Tribunal which is based on the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, cannot be upheld.

6. As regards the effect of the contribution of Rs. 4,000 by each of the three minors to the capital of the firm, it may be stated that the Tribunal has not gone into this question although the Appellate Assistant Commissioner, in his order, has considered this fact and has observed that the capital contributed by the

minor is a token contribution and it cannot be held as an adequate consideration for the allotment of shares to them for the benefits of the partnership and that the minors are related to the assessee and the other partner, Dwarka Prasad, and that the relationship with the existing partners was the sole consideration for admitting them to the benefits of the partnership to the extent of shares allotted to them. The Appellate Assistant Commissioner has expressed the view that the transfer of the share of the assessee to the extent of 20% to the minors was without any consideration, and, therefore, it amounted to a gift. The Tribunal has, however, not examined this aspect of the matter.

7. The reference is, therefore, allowed and the question referred by the Tribunal is answered as indicated below.

8. In the facts and circumstances of the case, the Tribunal was not justified in holding as it did only on the basis of the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, that no gift was made by the assessee to the minors. The Tribunal should reconsider the matter and while doing so, it should examine whether the contributions of Rs. 4,000 by each of the minors towards the capital of the firm was adequate consideration for the shares which were allotted to them. No order as to costs.