(1991) 02 KL CK 0012

In the High Court Of Kerala

Case No : Income-tax Reference No. 74 of 1989

Commissioner of Gift Tax APPELLANT

Vs

K.J. Abraham RESPONDENT

Date of Decision : 27-02-1991

Acts Referred:

Citation : (1991) 192 ITR 450

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant;

Judgement

K.S. Paripoornan, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal (in short, "the Tribunal") has referred the following question of law for the decision of this court:

"Is not the valuation of land by the Tribunal at Rs. 1,500 per acre most unreasonable, arbitrary, unsupported by any material and based on surmises and conjectures ?"

2. The matter arises under the Gift-tax Act. We are concerned with the assessment year 1978-79, the accounting year ending on March 31, 1978. The respondent-assessee owned a rubber estate measuring 30.71 acres in Kanjirappally. He mortgaged the said estate to his son in 1968 for six years for a sum of Rs. 25,000. By a document dated March 30, 1978, the ownership of the estate was transferred to his son for a consideration of Rs. 35,000. The Gift-tax Officer held that there is an element of gift involved in the said transfer. He valued the rubber estate at Rs. 6,000 per acre and determined the value of the estate at Rs. 1,84,260. Gift-tax was levied thereon in the sum of Rs. 20,352. In appeal, the Appellate Assistant Commissioner, by his order dated April 21, 1983, affirmed the said decision. He held that the rubber estate is in the Kanjirappally area, one of the best areas for rubber, and that immediately after the transfer dated March 30, 1978, the rubber trees were cut and sold in April, 1978, for a

consideration of Rs. 60,000, which is Rs. 25,000 more than the consideration shown in the sale deed dated March 30, 1978. He held that prima facie there is a gift.

3. He further held that the estate land is far more important and there was a possibility of an understatement in the consideration and the value of Rs. 6,000 per acre, adopted by the Gift-tax Officer, is reasonable, since the property in question was fertile and the Agricultural Income Tax Officer has estimated the annual income at Rs. 44,400 for the year 1976-77. The order passed by the Gift-tax Officer was upheld. In second appeal, at the instance of the assessee, the Tribunal modified the taxable value of the gift in the sum of Rs. 70,000. The Tribunal held that the value of the land can be determined at Rs. 1,500 per acre and so the value of the entire estate should be determined at Rs. 1,05,000. Deducting the apparent value in the document, Rs. 35,000, the value of the gift was fixed at Rs. 70,000. It is thereafter at the instance of the Revenue that the Tribunal has referred the question of law, formulated hereinabove, for the decision of this court,

4. We heard counsel for the Revenue, Mr. P. K. R. Menon. The assessee was not represented before us. We should state that, ordinarily, the value fixed for the gift is a finding of fact. Normally, this court would not interfere with such a finding of fact. But, even the finding of fact can be assailed if it is unsupported by any material or is arbitrary or based on surmises and conjectures. The Tribunal had a duty to demonstrate that the decision appealed against before it was wrong before interfering with the order passed by the Appellate Assistant Commissioner. In paragraph six of the order dated November 6, 1985, the Tribunal agreed with the Appellate Assistant Commissioner that there is an element of gift in the transfer effected by the assessee to his son. But, it was observed that the Appellate Assistant Commissioner''s order is based on presumptions and surmises in fixing the value of the gift and he has not taken into account the facts on record. What those facts are have not been detailed in the order passed by the Tribunal. What are the findings of the Appellate Assistant Commissioner which are based purely on presumptions and surmises are also not stated. The Tribunal, by a curious reasoning, held that the value of the trees sold, viz., Rs. 60,000, should be deducted from the value estimated by the Gift-tax Officer and that would represent the value of the land in the sum of Rs. 1,24,260. This was found to be excessive. We do not know on what basis the Tribunal said that the said value is excessive. We do not further understand as to why the Tribunal stated that the value of the trees sold, viz., Rs. 60,000, should be deducted. We could gather from the records placed before us that when the estate was sold by the assessee to his son on March 30, 1978, it was sold with the trees. If that be so, why the value of the trees should be deducted passes one''s comprehension. What is more, after stating that the sum of Rs. 1,24,260, which will be the sum after deducting the value of the trees fixed for the land, the Tribunal had stated that the value of the land can reasonably be determined at Rs. 1,500 per acre. On what basis the Tribunal surmised that the value of the

land could be determined at Rs. 1,500 per acre is neither intelligible nor discernible from the records. We do not find that the Tribunal had made any attempt to gather the value of the land in the vicinity or that any attempt was made to ascertain the value of the land in the locality. The observation of the Tribunal that the value of the land can be reasonably determined at Rs. 1,500 per acre is a wild surmise and, on the face of it, it is arbitrary. It is on the above reasoning that the Tribunal has fixed the taxable value of the gift at Rs. 70,000. We are of the view that the reasoning and conclusion of the Tribunal aforesaid is solely based on conjectures and surmises and the value was fixed in a most arbitrary manner. The question referred to this court is answered in the affirmative, in favour of the Revenue and against the assessee. The Appellate Tribunal shall restore the appeal to file and dispose of the appeal in accordance with law (SIC). The reference is (SIC) accordingly.

5. A copy of this judgment under the seal of this court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

