

(1995) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 503 of 1986

Commissioner of Gift-tax

APPELLANT

Vs

Laxminarayan Mahawar

RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:

Citation : (1995) 126 CTR 278 : (1996) 217 ITR 551 : (1995) 81 TAXMAN 260

Hon'ble Judges : U.L. Bhat, C.J.;Rajeev Gupta, J

Bench : Division Bench

Advocate : V.K. Tankha, for the Appellant; None, for the Respondent

Judgement

1. The following question of law has been referred to this court by the Appellate Tribunal at the instance of the Revenue u/s 26(1) of the Gift-tax act, 1958 :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to pay gift-tax ?"

2. The assessee is a partner in a firm. Initially, he had a 20 paise share in the firm. In the assessment year in question, there was a change in the constitution of the firm and new partners who introduced share capital were admitted. Consequent on the change in the constitution of the firm, the assessee's share in the property of the firm was reduced from 20 to 10 per cent. The Gift-tax Officer held that the assessee had surrendered a moiety of his share in favour of the incoming partners and this constituted gift. He valued the gift at Rs. 44,650 and completed the assessment. The Appellate Assistant Commissioner, on an appeal filed by the assessee, allowed the appeal and held that there was no gift involved. Further appeal to the Tribunal by the Revenue was dismissed. These facts led to the reference.

3. The Tribunal referred to two decisions of the Karnataka High Court in D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, and of the Bombay High Court in Commissioner of Gift-tax (Central), Bombay Vs. J.N. Marshall, for

holding that there was no gift involved in the transaction. Learned counsel for the Revenue points out that against the judgment of the Karnataka High Court, the Revenue filed SLP before the Supreme Court and the same has been admitted. The fact that the SLP has been admitted would not preclude this court from considering the matter.

4. Goodwill of a firm is undoubtedly an asset. It is a property of the firm in which the partner is entitled to his share. If he transfers his share in the firm by gift the subject-matter of the transfer would include the share in the goodwill also (see *Khushal Khemgar Shah and Others Vs. Khorshed Banu Dadiba Boatwalla and Another*, and *Commissioner of Gift Tax Vs. Nani Gopal Mondal*, If a partner gifts his share in the firm or in the goodwill of the firm, it can be regarded as a gift for the purposes of the Gift-tax Act, unless it attracts any of the exemptions provided therein. The question has to be decided on the facts and circumstances of each case and on the terms of the contract of each case.

5. In *D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka*, , on two occasions, new partners joined the firm leading to reallocation of shares and reduction of shares of the pre-existing partners. The new partners introduced share capital and were obliged to participate in the business and work of the firm. The Karnataka High Court held that the contributions in the share capital and participation in the business of the firm constitute adequate consideration and, therefore, there is no taxable gift.

6. In *Commissioner of Gift-tax (Central), Bombay Vs. J.N. Marshall*, the firm originally consisted of an assessee and his son--the assessee alone was entitled to goodwill. The firm took three new partners and a new partnership deed was executed giving goodwill to only three of the partners. The new partners admitted were the son and two daughters of the assessee. The Gift-tax Officer took the view that the assessee who had been till then the sole owner of the goodwill gifted his goodwill to his son and two daughters for no consideration. The Appellate Tribunal took a contrary view. The Bombay High Court held that the burden of proving that a particular transfer is a gift is on the Revenue by showing that the transfer was without consideration. A partnership is the result of a contract between persons who come together for the purpose of carrying on business and each one undertakes obligations which are of a contractual nature and, subject to contract to the contrary, are governed by the provisions in the Partnership Act and these obligations form the consideration for the rights which each one has under the contract. Whenever a new partner is introduced in an existing firm, his share in the firm would extend to such of the assets as are specified under the partnership agreement but he would also equally share in the liabilities to be incurred. The new partners may have to contribute capital. They may have to look after the business of the firm. It cannot, therefore, be said that whenever new partners are inducted and given a share, there is a gift as such. The High Court indicated that the newly added partners were required to work in the business and this and other factors go to show that there was consideration

in money's worth. The Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Karnaji Lumbaji, has taken a similar view.

7. Learned counsel for the Revenue placed reliance on the decisions in Premchand Jain Vs. Controller of Estate Duty, and of the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, The question in the former case was relating to goodwill of a firm on the death of a partner who retired before her death. At the time of retirement, she was not paid any amount of her interest in the goodwill of the firm. It was held that the goodwill is property, that except when there is a contrary provision in the deed of partnership, a partner at the time of retirement is entitled to get the value of his share in the goodwill just as he is entitled to get the value of his share in the other assets of the firm, and that the value of his share in the goodwill was property passing on his death liable to estate duty. That was clearly a case of an implied gift without consideration and attracting the definition of the expression "gift". In the case of Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, on reconstitution of a firm, one partner retired and the share of another was reduced and a new partner was inducted and two minor sons of the partners were admitted to the benefits of the partnership. The Supreme Court held that the right to the money value of the goodwill stood transferred and the transaction constitutes a "gift". It is to be noticed that there was no contention that any capital was introduced by the minors or the minors made any contribution in any other form. This decision also is not helpful for the purpose of the case which stands on a different footing.

8. We may, in this connection, refer to the decisions of other High Courts which have taken a view similar to the view taken by the High Courts of Karnataka and Bombay. They are Commissioner of Income Tax Vs. Sardar Wazir Singh, and COMMISSIONER OF GIFT-TAX, TAMIL NADU Vs. ALI HUSSAIN M. JEEVAJI AND ANOTHER.,

9. A gift is a transfer of existing movable and immovable property made voluntarily and without any consideration by the donor to the donee and accepted by or on behalf of the donee. On the admission of the new partners, the assessee's share in the partnership was reduced and a share was given to the new partners. It can, therefore, be said that there was a transfer of a share in the firm including the goodwill. The question is whether there was no consideration for this transfer. The burden is on the Revenue to show that the transfer was without consideration. When a new partner introduced share capital in the firm, the introduction of share capital strengthens the foundation of the firm and helps in sustaining and enhancing the business of the firm, thereby promoting the interest of the firm. To that extent, the share of a partner in the total share capital is inevitably reduced. The advantage which a firm as a whole derives by the introduction of share capital will be shared by the partner whose share is reduced. The consideration for reduction in the share capital, it appears to us, is sufficient consideration for the transfer which, therefore, cannot be

regarded as a gift. We are inclined to agree with respect with the view taken by the High Courts referred to above. This court in Premchand Jain Vs. Controller of Estate Duty, and the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, do not deal with a situation whereby share capital was introduced or there was capital introduced.

10. In the result, the question referred is answered in the affirmative, that is, in favour of the assessee and against the Revenue.

11. A copy of this order under the signature of the Registrar and the seal of the High Court will be remitted to the Appellate Tribunal.