

(1985) 10 RAJ CK 0037

In the Rajasthan High Court

Case No : Gift-tax Reference Application No. 143 of 1981

Commissioner of Gift-tax

APPELLANT

Vs

Mannalal Surana

RESPONDENT

Date of Decision : 29-10-1985

Acts Referred:

Gift Tax Act, 1958 — Section 26(3)

Citation : (1986) 162 ITR 688

Hon'ble Judges : N. Bhargava, J; Mohini Kapur, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; N.M. Ranka and M.K. Jain, for the Respondent

Judgement

Bhargava, J.—This is a reference application u/s 26 of the Gift-tax Act for referring the following questions of law for the opinion of this court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there could be no gift in the eye of the law to Shri Nirmal Kumar, major son ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the order of the Gift-tax Officer with regard to the point of gift made to the minor sons of the assessee ? "

2. Up to the assessment year 1970-71, the assessee, Mannalal Surana, was the proprietor of M/s. Hazarimal Milap Chand, Jaipur (hereinafter referred to as the "assessee "). He was assessed in the status of an individual. He observed the Diwali year as his accounting year. On Diwali, 1970, i.e., November 9, 1970, he converted his personal business run in the name and style of M/s. Hazarimal Milap Chand into a partnership concern by taking his major son, Nirmal Kumar, as working partner and admitting his two minor sons, Vimal Kumar and Narendra Kumar, to the benefits of the partnership. The share of profit of the partners were agreed to be as under, as per the partnership deed dated November 11,

1970 :

1. Mannalal Surana 10%
2. Nirmal Kumar 30%
3. Vimal Kumar (minor) 30%
4. Narendra Kumar (minor) 30%

3. According to the Gift-tax Officer, this action of the assessee amounted to a "gift" u/s 4 of the Gift-tax Act, 1958 (hereinafter referred to as the "Act") Consequently, gift-tax proceedings were initiated on January 31, 1974. In pursuance of a show cause notice, the assessee filed his return on August 27, 1974, showing "nil" gift. The assessee in his reply dated January 22, 1975, stated that because of his ill-health and with a view to expand the business activities, he decided to admit Nirmal Kumar, his son, as a working partner, who also contributed towards the capital in the said partnership as per his copy of accounts enclosed with the reply and Vimal Kumar and Narendra Kumar, both minor sons, were admitted to the benefits of the partnership. It was further submitted that the minors also contributed towards their capital of the said firm as per the copies of account enclosed and the partnership came into existence with effect from November 9, 1970.

4. The Gift-tax Officer found that none of the partners made contribution towards the capital when they were taken into the partnership or admitted to the benefits of the partnership in the case of minors. He further found that since Nirmal Kumar was only 20 years of age and probably had no experience in the line of business, it was wrong on the part of the assessee to say that Nirmal Kumar was admitted into the partnership with a view to expand the business activity and because the assessee was keeping ill-health and, therefore, all the three sons were taken as partners without any consideration and thus he found that by forming a partnership and relinquishing 90% share in favour of his three sons, the assessee has made a gift within the meaning of Section 4 of the Act.

5. The assessee went in appeal and the Commissioner of Income Tax (Appeals), Jaipur, dismissed the appeal by his order dated August 29, 1979. The assessee preferred further appeal before the Income Tax Appellate Tribunal which accepted the appeal as it came to a finding that for the expansion of the business and on account of ill-health of the assessee, he was unable to manage the same properly and so he converted his proprietorship business into a partnership with his three sons. The three sons had at the initial stage contributed no capital in the new firm. Subsequently, all the partners (sons) made contribution to the firm, as is clear from the copies of the accounts filed by the assessee and, therefore, the Tribunal found that there could be no gift in the eye of law so far as Nirmal Kumar (major son) is concerned. So far as the minor sons, Vimal Kumar and Narendra Kumar, were concerned, the Tribunal held that the position seems to be different as they have not contributed any capital nor rendered any

service and they were also not supposed to share the losses. If the minors have contributed any capital and on account of this fact, they were admitted into the partnership, it could be said that there was consideration and relying on Addl. CGT v. A.A. Annamalai Nadar [1978] 113 ITR 574 , it held that as far as the minor sons were concerned, there could be no transfer of assets as such to them so that there could be no gift of any goodwill in their favour, Relinquishment of share is very wide. It may include transfer of assets as well as a right to receive profits and, therefore, it came to the conclusion that there is no transfer of assets as such in favour of the minor sons, and remanded the case to the Gift-tax Officer directing him to decide about the alleged relinquishment of 60% share in favour of the two minor sons and the parties were given liberty to produce evidence in support of their contentions.

6. The Commissioner of Gift-tax moved an application before the Income Tax Appellate Tribunal requiring the Tribunal to draw up a statement of case and refer the above questions of law for the opinion of this court but the Tribunal rejected the said application and, hence, the present application has been filed before this court u/s 26(3) of the Act. The said application was admitted and notice was issued to the assessee.

7. We have heard learned counsel for the Revenue as well as for the assessee and also perused the records of the case. The Income Tax Appellate Tribunal after closely scrutinising the documents produced by the parties came to the conclusion that the assessee was being assessed as an individual, being the proprietor of M/s. Hazarimal Milap Chand, up to the assessment year 1970-71. On November 9, 1970, the assessee converted his personal business into a partnership concern by virtue of a partnership deed dated November 11, 1970, by which he took his three sons into the partnership. According to the new partnership deed, the assessee was to share profits at 10%, his major son, Nirmal Kumar, at 30% and his two minor sons, Vimal Kumar and Narendra Kumar, at 30% each. This change from proprietorship business into partnership was necessitated because the assessee was not keeping good health and he wanted to expand his business activities and, therefore, Nirmal Kumar was inducted as a working partner who also contributed (later) capital to the said partnership and was liable to share profits as well as losses. The two minor sons were admitted to the benefits of the partnership. The Tribunal came to the conclusion that there could be no gift in the eye of law, so far as Nirmal Kumar, major son, is concerned, as the alleged transfer was not gratuitous but for consideration, relying on COMMISSIONER OF GIFT-TAX, TAMIL NADU Vs. ALI HUSSAIN M. JEEVAJI AND ANOTHER., , Commissioner of Gift-Tax, Kerala Vs. P. Gheevarghese, Travancore Timbers and Products, and Commissioner of Gift-tax, Bombay City II Vs. Lalita B. Shah, . So far as Vimal Kumar and Narendra Kumar, minor sons, are concerned, their position was different from that of Nirmal Kumar. According to the partnership, they have not contributed any capital and also did not render any service and they were not required to bear the losses and relying on Addl. CGT v. A.A. Annamalai Nadar [1978] 113 ITR 574 , the Tribunal

came to the conclusion that there is no transfer of asset as such in favour of the minor sons. Therefore, it remanded the case to the Gift-tax Officer to decide about the alleged relinquishment of 60% share in favour of the two minor sons in accordance with law after giving an opportunity to the parties to lead any further evidence if they wanted.

8. Learned counsel for the Revenue could not justify that the view taken by the Tribunal was wrong or improper.

9. We are in agreement with the view taken by the learned members of the Income Tax Appellate Tribunal and we do not find any question of law arising out of the judgment of the Income Tax Appellate Tribunal, dated June 21, 1980. The application is, therefore, dismissed with no order as to costs.