
(1997) 03 RAJ CK 0021
In the Rajasthan High Court
Case No : Gift-tax Reference No. 6 of 1994

Commissioner of Gift-tax	Vs	APPELLANT
Marudhar Hotel (Pvt.) Ltd.		RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Gift Tax Act, 1958 — Section 26(3)

Citation : (1998) 229 ITR 675

Hon'ble Judges : J.C. Verma, J;B.R. Arora, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant; Rajendra Mehta, for the Respondent

Judgement

B.R. Arora, J.—The Revenue, by this application u/s 26(3) of the Gift-tax Act, 1958, has prayed that the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, may be directed to state the case and refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that there could be no element of deemed gift thereby sustaining the order of the Commissioner of Gift-tax (Appeals) and dismissing the departmental appeal ?"

2. The assessee, Marudhar Hotel (Pvt.) Ltd., Jodhpur, a private limited company, by a deed of dissolution dated November 27, 1973, received the property known as "Umaid Bhawan Palace" and the remaining business of Umaid Bhawan Palace, a registered partnership firm. The assessee thereafter started the business as a hotelier as the sole proprietor on August 1, 1973, and continued up to June 30, 1974. By the partnership deed dated November 12, 1974, the assessee entered into a partnership with Shri Gaj Singh to run the business of hotelier more efficiently with effect from July 1, 1974. The business was to run under the name and style of Umaid Bhawan Palace, Jodhpur. The assessee contributed towards its capital the immovable property known as Umaid Bhawan Palace along with its

running business with effect from July 1, 1974. The immovable property which was brought to the stock of the partnership firm along with the other assets, were taken at its book value of Rs. 50,70,000. The assessee further entered into an agreement with party No. 2, Shri Gaj Singh, on June 10, 1975, and the additional clause was added in the partnership agreement that party No. 2, Shri Gaj Singh, will have no interest in the immovable property, i.e., "Umaid Bhawan Palace" put in the common pool of the partnership and the property will revert back to the assessee at its book value at the time of dissolution of the partnership. This partnership created vide partnership deed dated November 12, 1974, was later on dissolved on March 30, 1977, and the property "Umaid Bhawan Palace, Jodhpur" reverted back to the assessee at its book value.

3. For the assessment year 1976-77, the Gift-tax Officer, on March 19, 1981, issued a notice u/s 16(1) of the Gift-tax Act (for short, "the Act"), to the assessee to file the return of the gift made by it during the period 1976-77. This notice was served upon the assessee on March 24, 1981. The assessee, in pursuance of this notice, filed the return of gift on April 24, 1981, showing "nil" taxable gift. It was also stated in the revised return that the assessee had contributed its sole proprietary business along with the immovable property as its capital contribution to the partnership firm which cannot be said to be a "gift" within the meaning of Section 2(xii) and Section 4 of the Gift-tax Act. It was also stated that the contribution of the property to the partnership firm at its book value cannot be said to be a "transfer" within the meaning of Section 2(xii) of the Gift-tax Act nor was this contribution for an inadequate consideration and as such no taxable gift can be said to have been made by the assessee.

4. The Assessing Officer, vide his order dated March 30, 1985, reassessed the assessee and held that the contribution of Umaid Bhawan Palace, Jodhpur, as the share capital to the firm under the deed of partnership, is transfer of property as defined under Clause (xii) of Section 2 of the Gift-tax Act and determined the amount of Rs. 80,25,000 as the taxable amount of "deemed gift" after deducting Rs. 5,000 as an exemption. He, therefore, determined the gift-tax to the extent of Rs. 52,20,000.

5. Dissatisfied with the order dated March 30, 1985, passed by the Assessing Officer reopening the case and reassessing the assessee, the assessee preferred an appeal before the Commissioner of Gift-tax (Appeals), Jodhpur, who allowed the appeal filed by the assessee and held that the assessee transferred Umaid Bhawan Palace to the partnership firm as its capital contribution. The transaction was, no doubt, a transfer but the transfer was for a consideration which was incapable of being determined in monetary terms and no profit or gain can be said to have arisen from such transfer and the transfer under consideration is in consonance with the decision of the Supreme Court. The Commissioner further held that the transfer in the present case does not amount to a transaction being a device to convert the personal asset into money substantially for the benefit of the assessee while avoiding tax and the essential ingredients laid down u/s 4(1)

(a) of the Gift-tax Act for the purpose of invoking a "deemed gift" are not satisfied and, therefore, the transfer of Umaid Bhawan Palace by the assessee to the partnership firm does not constitute a "deemed gift" u/s 4(1)(a) of the Gift-tax Act.

6. The Revenue, dissatisfied with the order dated January 31, 1986, passed by the Commissioner of Gift-tax (Appeals), Jodhpur, filed an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. The Tribunal, by its order dated November 5, 1986, dismissed the appeal filed by the Revenue and partly allowed the cross-objections filed by the assessee. The Revenue thereafter moved an application u/s 26(1) of the Act to refer the question of law mentioned in the application for the opinion of this court. The Tribunal, vide order dated May 13, 1991, dismissed the application filed by the Revenue and declined to refer the question of law proposed by the Revenue for the opinion of the High Court, as according to the Tribunal, no question of law arises from the order passed by the Tribunal. The Revenue thereafter moved this application u/s 26(3) of the Gift-tax Act.

7. It is contended by learned counsel for the Revenue that (i) the Tribunal, while deciding the issue in the appeal, totally ignored the vital fact that by transfer of "Umaid Bhawan Palace, Jodhpur" as capital contribution at the value of Rs. 50,70,000 against its market value of Rs. 1,31,00,000 the assessee-company has made a "deemed gift" within the meaning of Section 4(1)(a) of the Gift-tax Act, i.e., equivalent to the difference between the market value and the book value of Umaid Bhawan Palace ; (ii) the property brought in the business of the partnership firm by the partners became the property of the firm and in the partnership firm, a partner is entitled to his share of property and ceases to be the exclusive owner of the property ; (iii) "gift" includes the grant of partnership and any such transaction which increases the property of any other person ; (iv) the transfer of Umaid Bhawan Palace was a transfer for all purposes and, thus, the company has made a "deemed gift" in favour of other partners of the firm ; and (v) the insertion of a new clause in the partnership by the addenda dated June 10, 1975, does not alter the legal position in so far as the liability to the gift-tax u/s 4(1)(a) of the Act is concerned and since the question of law does arise out of the order passed by the Tribunal, the Tribunal was, therefore, not justified in declining to refer the question of law for the opinion of this court.

8. Learned counsel for the assessee, on the other hand, has supported the order passed by the Tribunal and submitted that the findings arrived at by the Tribunal are purely findings of fact which is clear from the finding recorded by the Commissioner of Gift-tax (Appeals) in paragraphs numbers 12, 13, 14 and 15 of the order and that of the Tribunal in paras 5 and 6 of the order which have not been challenged and as such no question of law does arise in the matter because the Tribunal, as well as the Commissioner, while deciding the question, relied upon the judgment of the Supreme Court in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, . It is further submitted by

learned counsel for the assessee that the controversy involved in the present case stands finally decided by the Supreme Court in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, and as such the reference to the High Court of the question will be only academic and the Tribunal was justified in declining to refer the question to this court. It is also contended by learned counsel for the assessee that even otherwise, the decision of the Tribunal is correct on the question of law and, therefore, the Tribunal was right in declining to refer the case.

9. We have considered the submissions made by learned counsel for the parties.

10. It is true that when the answer to a question is self-evident or where it is concluded by the judgment of the Supreme Court or the judgment of the High Court within whose jurisdiction the Tribunal is situated, then the reference of the question is merely academic and in such circumstances if the Tribunal declined to refer the question then no illegality can be found in the order passed by the Tribunal.

11. But where the question of law does arise out of the order passed by the Tribunal, the reference cannot be declined on the ground that the decision of the Tribunal is correct on the question of law. If a question of law does arise out of the order passed by the Tribunal then that has to be referred by the Tribunal for the opinion of the High Court and it is the High Court alone which can express its opinion on the question of law referred by the Tribunal. In this view of the matter we have to see whether any question of law does arise out of the order passed by the Tribunal and whether the question of law, if so arises, stands concluded by the judgment of the Supreme Court given in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*,

12. *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, was a case where the question in issue was whether merging of the personal asset of the partner in the capital of the partnership amounts to "transfer" of the capital asset ?

13. It was held by the Supreme Court in *Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat*, that "when the assessee, a partner in the firm, made over to the firm certain shares in a company which are held by him, there was a "transfer" of the shares, but that he receives no consideration within the meaning of Section 4, nor did any profit or gain accrue to him for the purpose of Section 45."

14. The question which requires consideration is whether (i) the transfer of a personal asset by the assessee to the partnership in which he is or becomes a partner, is a device or ruse for converting the asset into money which remains available for his benefit ; (ii) it will be open to the gift-tax authorities to go beyond the transaction and examine whether the transaction of crediting the partnership is a genuine or a sham transaction ; and (iii) the value of the Palace credited entry represents the true value of the property put in the partnership or

it is only a notional value rendered to be taken into account for determining the value of the partner's share in the asset of the partnership on the date of dissolution.

15. The admitted facts of the case are that in the partnership agreement there is a Clause 6 which states that "that the party of the second part has contributed towards his share of capital the building known as Umaid Bhawan Palace located in Jodhpur and at the price valued by the valuer appointed by the Government of India minus the depreciation claimed and whereas the party of the first part will contribute its share of capital as needed in the beginning. Both the parties have mutually agreed that the capital account of the party of the second part shall be credited with the written down value of the building "Umaid Bhawan Palace" brought in the stock of the firm by the party of the second part, as his capital contribution. Both the parties have further agreed that whatever additional capital is required from time to time, for carrying on the partnership business shall be contributed by the parties hereto in such proportion and in such terms as they may agree upon from time to time or it may be arranged from outside, as found suitable by the parties." Both the parties to the partnership agreement further agreed on June 10, 1975, that at the time of dissolution of the firm, the immovable property known as "Umaid Bhawan Palace, Jodhpur" along with its fixtures shall be taken over by the first party which was initially brought into the partnership firm.

16. Reading Clause 6 of the original agreement of the partnership and the agreement put byway of addenda in the partnership on June 10, 1975, along with the partnership deed raises a question of law to be decided by the High Court. The concept of the partnership creates a joint venture and if for that purpose any immovable property is brought in then it becomes the "trading asset" of the partnership. The property put in the partnership ceases to be the exclusive property of the person who brought it in and all the partners would have interest in proportion to their share in the joint venture of the business of the partnership. Even the applicability of certain provisions of the Act, on the admitted facts, gives rise to a question of law.

17. The Supreme Court in Sunil Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, has held that introduction of a capital asset by a partner in a partnership firm and crediting of the market price of the asset to the partnership, amounts to "transfer".

18. Section 2(xii) of the Gift-tax Act defines "gift" as follows : the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth and includes the transfer or conversion of any property referred to in Section 4, shall be deemed to be a "gift" under that section. We have, therefore, to look into the effect of the undisputed facts coupled with the interpretation of Section 2(xii) and Section 4 of the Act.

19. We are of the opinion that these are questions of law which do arise from the order passed by the Tribunal. When a question of law does arise out of the order passed by the Tribunal, it would be proper for the Tribunal to refer the question of law which arises out of the order passed by the Tribunal, for the opinion of this court. Whether the question has been rightly decided by the Tribunal, is no consideration for refusing to call for the reference because if the question of law does arise from the order passed by the Tribunal then it is for the High Court to decide that question and the Tribunal is not competent to decide the question of law. In this view of the matter, we think it proper to direct the Tribunal to refer the question of law mentioned in para. 1 hereinabove for the opinion of this court.

20. In the result, the application u/s 26(3) of the Gift-tax Act is allowed and the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, is directed to state the case and refer the question of law hereinabove stated in para 1 of the judgment, for the opinion of this court.