(1990) 08 KAR CK 0087

In the Karnataka High Court

Case No : Civil Petition No. 487 of 1986

Commissioner of Gift Tax — APPELLANT

Vs

Mrs. C.D. Muthanna — RESPONDENT

Date of Decision : 13-08-1990

Acts Referred:

Gift Tax Act, 1958 — Section 26 (2)
Registration Act, 1908 — Section 47

Citation : (1991) 187 ITR 461 : (1990) 3 KarLJ 487

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : G. Chandra Kumar, for the Appellant; K.A. Hemraj, for the Respondent

Judgement

Chandrakantaraj Urs. J.

1. This petition is by the Revenue seeking an order of this court directing the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore, to make a reference u/s 26(2) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act").

2. Briefly stated, the facts leading to this petition are these :

One Koravanda Muthanna gifted certain immovable properties to his four daughters and two grandsons by a deed of gift dated October 29, 1977, which was duly registered on November 7, 1977. In the deed of gift, there were recitals that the donees had been put in possession of the immovable properties gifted, on March 29,1977, itself. The donor, in his return under the Gift-tax Act for the assessment year 1978-79, included the value of the estate gifted together with the appurtenant properties valued at Rs. 5,26,276. That came to the conclusion that, having regard to the nature of the gift, the Gift-tax Officer ought to have treated the gift as falling for assessment in the assessment year 1977-78 as possession was given of the gifted properties on March 29, 1977, and further that the assessing authority should take into account not only the value of the gifted estate and other immovable properties referred to in the gift deed but also the value of the standing crop for purposes of determining the value of the coffee estate. Accordingly, the Gift-tax Officer reassessed the assessee (since deceased by legal representatives) adding a sum of Rs. 2,93,045 as the value of the standing crop in addition to the value disclosed by the assessee in his return. Aggrieved by the same. The assessee lodged an appeal before the Tribunal. The Tribunal, after considering the arguments advanced by the Revenue as well as the appellant before it, came to the conclusion that, admittedly, the gift had taken effect on March 29, 1977, and as such, the Gift-tax should be levied as if it was made for the assessment year 1977-78 and not for 1978-79. It, however, further ruled that as there was no standing crop on March 29, 1977, the inclusion of the value of the standing crop at Rs. 4,80,000 was impermissible, therefore, the present petition seeking a reference.

3. We have heard Sri Chandrakumar, learned counsel for the Revenue. He has pointed out that the Tribunal has incorrectly applied the provisions of section 47 of the Registration Act of 1908, to come to the conclusion that the gift had taken effect on March 29, 1977. We does not want to express any opinion at this stage in regard to that contention. Certainly, it suffices for us to state that as to when a gift of immovable property take effect is a pure question of law depending on the date of execution of the gift deed and its registration in accordance with law in cases in which the value of the gifted immovable property exceeds Rs. 100 in terms of the provisions in that behalf made in the Transfer of Property Act. Therefore, the Tribunal is bound to refer such a question when it was moved for a reference to this court for decision. We, therefore, direct the Tribunal to make a reference to this court of the question which hab been formulated as follows by the Revenue :

"Whether, on the facts and in the circumstances of the case, the appellate authority was right in law in coming to the conclusion that the gift took effect on March 29, 1977, even though the gift deed was registered on November 7, 1977, for the purpose of Gift-tax ?"

4. In so far as the second question is concerned, we do not think it to be a pure question of law. There is no legal foundation for including the standing crop in the valuation of a gifted estate for the purpose of Gift-tax. In a transfer of immovable property, whatever is contained on the land is included in the land itself and, therefore, in order to satisfy us that the standing crop should necessarily be included, the legal compulsion for it must be shown, that not having been done, we do not think it would be appropriate to call for a reference on that question.

