(1996) 06 KL CK 0087

In the High Court Of Kerala

Case No : IT Ref. No. 1 of 1990

Commissioner of Gift Tax — APPELLANT

Vs

N.C.J. Rajan — RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Citation : (1997) 137 CTR 151

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Judgement

P.A. Mohammed, J.—This reference application under s. 26(1) of the GT Act, 1958 is coming before us for answer at the instance of the Revenue. The question of law referred to us is as follows :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the reassessment by holding that the assessee cannot be said to have failed to disclose fully and truly the material particulars necessary for completing the assessment ?

2. The short facts leading to the above reference can be narrated thus : The assessment year involved in this case is 1971-72. During the relevant accounting year the assessee made gifts of shares of certain companies which are not quoted in market. For the purpose of evaluating the gift, the GTO adopted r. 1D of the WT Rules, on the basis of valuation report said to have been given by the assessee. Later, the GTO realised that there was undervaluation of the shares under r. 1D and therefore, the provision for the tax has not been reduced by the advance tax paid by the company. It is for that reason the GTO reopened the assessment. The GTO calculated the value of the shares after reducing the advance tax appearing in the asset side of the balance sheet from the provision for taxation. Being aggrieved by the said order the assessee filed an appeal before the AAC. In the appeal the AAC confirmed the re-assessment made by the GTO. On further appeal by the assessee, the Tribunal observed that there were materials before the GTO and it was for him to draw the necessary inference

thereon and therefore, the Tribunal said that the assessee cannot be said to have failed to disclose fully and truly the material particulars. In view of the above decision of the Tribunal, the Revenue came up before us in this tax reference case.

3. It is unnecessary to go into the details of the case in view of the nature of the order we propose to pass in this case. However, a few circumstances are found to be stated. The reason for reopening the assessment was that the assessee had sold some shares to his wife for a consideration of Rs. 7,580 and according to the Department this was below the market rate. In the reassessment the GTO has attempted to bring to tax the deemed gift that is to say the difference in value as fixed by him in respect of some of the shares sold to his wife. As far as the deemed gift is concerned, it is for the Revenue to draw an inference that a gift is involved under the provisions of s. 4(1)(a) and the relevant material particulars to be furnished are the sale of the shares and the rate at which it was sold. It was submitted before the Tribunal that all the particulars were made available by correspondence entered into between the assessee and the Department. Therefore, it is crystalline that the materials were there before the GTO and it is for him to draw the necessary inference. Therefore, the Tribunal came to the conclusion that the assessee cannot be said to have failed to disclose fully and truly the material particulars.

4. Learned senior standing counsel for the Revenue attempted to argue the case on the basis of s. 16(1)(b) of the GT Act. As per the above provision, if the GTO has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in cl. (a), that any taxable gift has escaped assessment for any year, whether by reason of under assessment or assessment at too low a rate or otherwise, he may at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements and proceed to assess or reassess any taxable gift which has escaped assessment. However, for invoking this provision time-limit prescribed for completion of the reassessment is four years from the end of the assessment year in which the gifts were first assessable. Even assuming that the said provision can be invoked, it is time-barred. In view of the above position, counsel for the Revenue has confined his argument only on s. 16(1)(a). In view of the discussion hereinbefore, the question raised by the Revenue is answered in the affirmative, that is to say, against the Revenue and in favour of the assessee.

