

(1997) 12 MAD CK 0194

In the Madras High Court

Case No : T.C. No. 1307 of 1985 (Reference No. 813 of 1985)

Commissioner of Gift-tax

APPELLANT

Vs

O.E. Arumugha Mudaliar

RESPONDENT

Date of Decision : 22-12-1997

Acts Referred:

Gift Tax Act, 1958 — Section 24, 24(2)
Income Tax Act, 1961 — Section 263, 28

Citation : (1999) 237 ITR 789

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—Pursuant to the directions of this court by order dated December 22, 1983, the Income Tax Appellate Tribunal has referred the following question of law under the provisions of section 26(3) of the Gift-tax Act, 1958, for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the gift-tax assessment as made by the Gift-tax Officer was not erroneous and prejudicial to the interest of the Revenue and that the Commissioner of Gift-tax had no jurisdiction to set aside the same u/s 24(2) of the Gift-tax Act ?"

2. The assessment year involved is 1980-81. The original assessment under the Gift-tax Act, 1958, was made on the assessee accepting the value of the gifted immovable property at Rs. 1,32,242 as returned by the assessee. The Commissioner of Gift-tax initiated the revisional proceedings under the provisions of section 24(2) of the Gift-tax Act (hereinafter referred to as "the Act") on the score that in the wealth-tax assessment for the year 1978-79 a reference was made by the Wealth-tax Officer to the Valuation Officer who valued the same property at Rs. 2,17,000 and, therefore, he was of the prima facie view that the Gift-tax Officer had not correctly determined the market value of the property

and he directed the Gift-tax Officer to redo the assessment after granting opportunity to the assessee. After issuing the show-cause notice to the assessee and after hearing the objections raised by the assessee, the Commissioner of Gift-tax held that the market value of the property gifted determined by the Gift-tax Officer in the original assessment did not reflect the true market value of the property and in this view of the matter he set aside the order and directed the Gift-tax Officer to redo the same in accordance with law.

3. The assessee preferred an appeal before the Income Tax Appellate Tribunal challenging the order of revision passed by the Commissioner of Gift-tax u/s 24(2) of the Gift-tax Act. The Tribunal, following a decision of the Calcutta High Court in the case of *Ganga Properties Vs. Income Tax Officer*, , held that the Commissioner acted on the report of the Valuation Officer and that the report came into existence after completion of the original order of assessment made by the Gift-tax Officer in question which the Commissioner has no jurisdiction to rely upon and hence set aside the order of the Commissioner and allowed the appeal preferred by the assessee. The Tribunal on the basis of the directions of this court has referred the question of law stated supra.

4. Mr. C. V. Rajan, learned counsel for the applicant, brought to our notice the Explanation to section 24 of the Gift-tax Act, particularly clause (b) of the Explanation to section 24(2) of the Gift-tax Act and submitted that in view of clause (b) of the Explanation to section 24(2) of the Act, the order of the Appellate Tribunal is not correct. Learned counsel for assessee, on the other hand, submitted that the record as defined in the Explanation cannot include the valuation report furnished before the Valuation Officer u/s 16A of the Wealth-tax Act, as the wealth-tax proceedings cannot be regarded as a part of the record under the Gift-tax Act.

5. We have carefully considered the rival submissions made by learned counsel for the parties. The Tribunal decided the matter and set aside the case on the basis of the decision of the Calcutta High Court in the case of *Ganga Properties Vs. Income Tax Officer*, Parliament, by the Finance Act, 1988, inserted an Explanation in sub-section (2) of section 24 of the Gift-tax Act. A fair reading of the Explanation clearly shows that the Explanation was inserted to define the expression "record", and it is defined to include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner.

6. This court in *K.A. Ramaswamy Chettiar and Another Vs. Commissioner of Income Tax*, , has taken the view that a similar Explanation introduced to section 263 of the Income Tax Act has full retrospective effect and operation. Since the Appellate Tribunal did not have the benefit of the Explanation to section 24(2) of the Act the Tribunal did not consider the question whether the Explanation introduced to section 24(2) of the Act, would be applicable to the facts of this case and whether it is permissible to the Commissioner to rely upon a material subsequently surfaced after the completion of the original assessment and

whether the report can be regarded as a part of the record of the gift-tax assessment and other questions touching upon the jurisdiction of the Commissioner of Gift-tax. Hence, it is necessary for the Tribunal to decide the question afresh whether the Commissioner has validly exercised the power u/s 24(2) of the Act. It is open to the parties to raise all the contentions at the time of the hearing of the appeal before the Appellate Tribunal. Though we answer the question of law referred to us in the negative and in favour of the Revenue, the Tribunal is directed to go into the question again and consider the question afresh.

7. Accordingly, we answer the question of law referred to us in the negative and in favour of the Revenue and the Tribunal is directed to consider the question afresh.