
(2008) 12 P&H CK 0150
In the Punjab And Haryana At Chandigarh

Commissioner of Gift-tax

APPELLANT

Vs

Om Parkash Munjal

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Finance Act, 1998 — Section 76

Citation : (2009) 181 TAXMAN 213

Hon'ble Judges : L.N. Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the revenue under the Gift-tax Act, 1958 ("the Act") against the order of Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh passed in GTA No. 13/Chandi/1998 on 23-5-2000 for the assessment year 1989-90, (by virtue of Section 76 of the Finance Act, 1998, Section 27A of the Wealth-tax Act has been made applicable to the Gift-tax cases), proposing to raise following question of law:

Whether on the Facts and Circumstances of the Case, the ITAT was right in law in quashing the Gift-tax Assessment in the Assessee's Case?

2. The assessee declared value of two types of gifts - outright gift and revocable gift. The revocable gift related to gift of 6000 equity shares. The gift was revocable after 74 months but before 82 months from the date of transfer. On account of equity shares, the donee received bonus shares. The gift of equity shares was revoked while bonus shares were allowed to remain with the transferee. The Assessing Officer gave notice u/s 16 of the Act alleging that gift had escaped assessment. The assessee filed nil return, The Assessing Officer held that value of bonus shares was liable to tax. Accordingly, assessment was made, determining the value of taxable gift. The said assessment was affirmed by the appellate authority. On further appeal of the assessee, the Tribunal set aside the assessment. It was held that bonus shares were part and parcel of the

original shares and the same became property of the transferee without any gift tax, as per order of assessment for the assessment year 1982-83. As regards the judgment of the Hon"ble Supreme Court in Escorts Farms (Ramgarh) Ltd. Vs. Commissioner of Income Tax, New Delhi, , relied upon by the Gift Tax Officer, it was held that the said case related to computation of capital gains.

3. We have considered the matter arising out of assessment year 1982-83 in CGT v. Om Parkash Munjal GTC No. 1 of 1994, dated 10-12-2008] (sic). Reference was made to judgment of this Court in Commissioner of Gift-tax Vs. Satya Nand Munjal, holding that even though under the general law, revocable gift is void, under the Act, the same could be recognised for taxation purpose and could not be treated to be void. Reference was also made to the judgment of this Court in Commissioner of Income Tax Vs. Om Parkash Munjal, holding that bonus shares continued to be property of the donee and did not revert back to the donor after revocation of gift. Referring to the contention raised on behalf of the revenue, that even after revocation of the gift, value of bonus shares in the hands of the donee is liable to gift tax u/s 6(2) of the Act, it was observed that that aspect has not been gone into in the assessment order and further proceedings and, therefore, could not be gone into by this Court.

4. Learned Counsel for the revenue submits that the Gift Tax Officer and the Appellate Authority rightly held that value of bonus shares was liable to Gift Tax u/s 4(1)(c) of the Act. The Tribunal erred in interfering with the same on the basis of assessment year 1982-83 which did not deal with valuation of bonus shares but only with the question whether revocable gift was void. In the present case, gift was not revocable for the period of 74 months and was revoked thereafter. Income from the gifted equity shares was, thus, liable to be taken as the value of the gift. This view is also supported by provisions of Section 6(2) of the Act. It has been held by the Hon"ble Supreme Court in Escorts Farms (Ramgarh) Ltd."s case (supra) that bonus shares are income from the equity shares. The said judgment has been distinguished by the Tribunal on the ground that the same related to computation of capital gains. The fact remains that the principle laid down therein that bonus shares were income from the original shares and have the effect of reducing the value of original shares, remained undisputed. To the extent of value of bonus shares, gift tax was clearly attracted. The Tribunal was not, thus, justified in holding that value of bonus shares in the hands of the donee after the gift was revoked could not be taxed under the Act.

5. In view of above, we allow this appeal and set aside the order of the Tribunal and restore that of the Assessing Officer.