(2008) 12 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Commissioner of Gift-tax APPELLANT

Vs

Om Parkash Munjal RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 126

Citation : (2010) 325 ITR 605

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition has been filed by the Revenue u/s 26(1) of the Gift-tax Act, 1958, proposing to question the correctness of the view taken by the Income Tax Appellate Tribunal in its order dated March 3, 1993, disposing of miscellaneous application filed by the Revenue.

2. The assessee declared value of two types of gifts made during the assessment year : (i) outright gift, and (ii) revocable gift. With regard to the revocable gift, protective assessment was made. It was observed that revocable gifts were void as the assessee avoided the liability under the Wealth-tax Act and also being against the provisions of Section 126 of the Transfer of Property Act.

3. The assessee preferred an appeal. The appellate authority affirmed the finding that the revocable gifts were void but set aside the protective assessment as being without any legal basis. The assessee preferred further appeal to the Tribunal. The Tribunal accepted the plea of the assessee with regard to valuation of outright gifts and further held that the revocable gifts could not be held to be void as the same were recognised under the provisions of the special law, i.e., u/s 6(2) of the Gift-tax Act.

4. The Revenue made an application stating that if the gift was revoked, bonus shares will revert back to the donor, which aspect was not considered by the Tribunal. The Tribunal rejected the said application on the ground that the said

issue was not raised earlier.

5. Learned Counsel for the Revenue fairly states that as far as the concept of revocable gift is concerned, this Court in Commissioner of Gift-tax Vs. Satya Nand Munjal, has upheld the view of the Tribunal that even though under the general law, a revocable gift is void, under the Gift-tax Act, the same could be recognised for taxation purpose and could not be treated to be void. It has also been held in the judgment of this Court in Commissioner of Income Tax Vs. Om Parkash Munjal, that after revocation, bonus shares continued to be the property of the donee and did not revert back to the donor.

6. In view of the above judgment, no ground is made out for direction to make a reference as no question of law arises from the order of the Tribunal.

7. Learned Counsel for the Revenue also submitted that even if the bonus shares or dividend income remained to be the income of the donee, u/s 6(2) of the Act, the donor was liable to pay gift-tax on the value to be determined under the said tax Act. This aspect is not shown to have been raised at any earlier stage and merely on an oral prayer, we cannot direct this question to be referred as the same does not arise from the order of the Tribunal.

8. The petition is, accordingly, dismissed.