(2002) 09 MAD CK 0230

In the Madras High Court

Case No : Tax Case No. 390 of 1997

Commissioner of Gift Tax — APPELLANT

Vs

P. Vijayakumar Reddy — RESPONDENT

Date of Decision : 23-09-2002

Acts Referred:

Citation : (2003) 181 CTR 451

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T.C.A. Ramanujam, for the Appellant; N. Devanathan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The questions referred to us for our consideration, at the instance of the Revenue, are as follows :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the gift-tax assessment holding that there was no gift involved in the reduction of share to the existing partner on the induction of new partners to the firm ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fresh capital brought in by the new partners on their agreeing to work for the firm and to share not only the profits but also the losses of the firm would constitute adequate consideration for the assessee''s relinquishment of his share in the profit and loss of the firm ?

The assessment year is 1986-87.

2. The assessee was a partner of the firm M/s Apex Agencies, along with his sister. The firm was reconstituted.

After such reconstitution the assessee''s share in the firm was reduced from 15 per cent to 5 per cent and the share of his sister was increased to 40 per cent from 30 per cent. The AO considered the decrease in assessee''s share accompanied by increase in the share of the sister as gift to the extent of 10 per cent. The CGT(A) did not agree with that view the AO and set aside the assessment. The Tribunal agreed with the CGT(A).

3. The Tribunal has held that the sister was a working partner that the firm continued its business and that there was no goodwill for the firm and the goodwill was only for the goods which are not manufactured by the firm. The apex Court, in the case of The Commissioner of Gift Tax, Trivandrum Vs. T.M. Louiz, has held that when a partner retires from the firm and receives the value of his shares therein, it results in adjustment of rights between a retiring partner and the continuing partners in the assets of the partnership and there is no element of transfer of interest by the retiring partner to the continuing partners.

4. Though in this case, it cannot be said that there is any adjustment as there is no retirement, and there can indeed be a. transfer when an existing partner gives away his or her rights to the other partners newly inducted or continuing, the finding of fact recorded by the Tribunal is that there was consideration for the transfer and that consideration cannot be said to be inadequate. The questions referred are, therefore, answered against the Revenue and in favour of the assessee.