(1997) 11 MAD CK 0059

In the Madras High Court

Case No : Tax Case No. 499 of 1984

Commissioner of Gift-tax APPELLANT

Vs

Padma Santhanam RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Gift Tax Act, 1958 — Section 16(1)(B), 26(3)
Gift Tax Rules, 1958 — Rule 10(2)
Wealth Tax Rules, 1957 — Rule 1D

Citation : (1999) 240 ITR 308

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; S.A. Balasubramanian, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is a holder of shares in Sundaram Industries Ltd., Madras, and she made a gift of 4,000 shares to

individual trusts. In the original assessment made for the asst. yr. 1974-75, the value of the shares was determined at Rs. 121 per share. The GTO

subsequently, on the basis of the Board''s Circular dt. 29th October, 1974, came to the conclusion that r. 10(2) of the GT Rules 1958, does not

permit 15 per cent deduction which was given in the original assessment and, therefore, the assessment was liable to be reopened. After giving

notice to the assessee, he reopened the assessment and determined the value of the shares at Rs. 142.30 per share.

2. The assessee preferred an appeal before the CIT(A) and the CIT(A) came to the conclusion that there are two methods of valuation and since

the GTO adopted one method of valuation during the course of original assessment, it is not open to him to adopt another method of valuation in the reassessment proceedings and, therefore the reassessment done by the GTO was liable to be cancelled. The CIT(A) held that there was no

jurisdiction to reopen the completed assessment.

3. The Revenue preferred an appeal before the Tribunal. The Tribunal, following its earlier order in GTO vs. Miss Malini Srinivasan [GTA No. 55

(Mad) of 1979, GTA No. 57 (Mad) 57 of 1979 and 58 (Mad) of 1979, dt. 26th August 1980], came to the conclusion that the reopening of

assessment was invalid. It is this order which is the subject-matter of the present tax case reference. The Tribunal has stated a case and referred

the following question of law for our opinion in pursuance of the direction of this Court under s. 26(3) of the GT Act, 1958 :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the reassessment made under s. 16(1)(b) of the GT

Act, 1958, for the asst. yr. 1974-75 as bad in law ?

4. The earlier order of the Tribunal in the cases [GTA No. 55 (Mad) of 1979, GTA No. 57 (Mad) of 1979 and GTA No. 58 (Mad) of 1979),

came up for consideration before us in T.C. No. 1215 to 1217 of 1984 in CGT vs. Nalini Srinivasan [TC S36.3348] and we have, by judgment

of even date held that the reopening of assessment was not valid in the eye of law. In the instant case, the GTO refused to grant 15 per cent

deduction which was originally granted in the earlier assessment. This Court in the case of Commissioner of Gift-tax Vs. Sundaram Industries Ltd.,

, held that the provisions of r. 1D of the WT Rules would equally apply for the purpose of valuation of shares for gift tax and if the said r. 1D of the

WT Rules is applicable, the assessee is entitled to the deduction provided under the said rule. This Court in the above cited case held that the

assessee would be entitled to the discount of 30 per cent . But, in the instant case, the GTO originally deducted 15 per cent and the assessee has

not challenged the same and therefore, that part of the order has become final. As we have already held that the provisions of r. 1D of the WT

Rules would be applicable to determine the assessable gift for the purpose of gift-tax also, we find that there is no underassessment in the original

assessment which compelled the GTO to reopen the assessment by invoking the provisions of s. 16(1)(b) of the GT Act. Accordingly, we are of

the view that there is not infirmity in the order of the Tribunal and there is no error of law committed by the Tribunal in coming to the conclusion

that the reassessment under s. 16(1)(b) of the Act was not valid in the eye of law.

5. In fine, we answer the question of law referred to us in the affirmative and against the Revenue. However, in the circumstances of the case, there

will be no order as to costs.

