

(1977) 11 MAD CK 0031

In the Madras High Court

Case No : Tax Case No. 131 of 1974 (Reference No. 24 of 1974)

Commissioner of Gift-tax

APPELLANT

Vs

Prema Srinivasan

RESPONDENT

Date of Decision : 14-11-1977

Acts Referred:

Gift Tax Act, 1958 — Section 6

Citation : (1978) 114 ITR 78

Hon'ble Judges : P. Govindan Nair, C.J;A. Varadarajan, J

Bench : Division Bench

Advocate : Nalini Chidambaram, for the Appellant; K.R. Ramamani, for the Respondent

Judgement

P. Govindan Nair, C.J.—The question arises under the Gift-tax Act, 1958, and the point is whether the valuation fixed by the Tribunal for certain shares that have been gifted by the assessee on March 28, 1968, and held by the assessee in M/s. Southern Roadways (P.) Ltd. has been rightly fixed by the Tribunal at Rs. 104.30 per share.

2. The assessee had filed a return showing the value of shares as on the date of gift at Rs. 139 per share. She had gifted 1,000 shares. She, therefore, valued the gift at Rs. 1,39,000. However, she got wise and on October 28, 1968, filed a revised return showing the value of shares at Rs. 104.30 per share. The reduction of the value per share was sought to be supported on the basis that there had been issue of bonus shares by the company and that the company had also paid dividend out of the general reserves of the company and if the value of the bonus shares as well as the amount that had been withdrawn for the purpose of dividend are taken into account, the value of the shares would have gone down to Rs. 104.30 per share. This submission of the assessee has been accepted by the Tribunal. The method of valuation is provided by Section 6 of the Act, It is in these terms:

"(1) The value of any property other than cash transferred by way of gift shall,

subject to the provisions of Sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date on which the gift was made.

(2) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from the property gifted during the period for which the gift is not revocable.

(3) Where the value of any property cannot be estimated under Subsection (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner."

3. The question always is, therefore, what the property, according to the Gift-tax Officer, would have fetched, if sold in the open market on the date on which the gift was made. The search must always, therefore, be to find out the market value of the property gifted on the date of the gift. Since the date of the gift is important, the state of affairs as on that date will have to be ascertained. We have, therefore, no doubt that changes which might have happened after the shares were valued--we expect bona fide for the purpose of the business of the company as indicated by the balance-sheet of the company-- will and can and should be taken note of by the Gift-tax Officer. There will be no error, therefore, if the position as on the date of the gift is ascertained assuming that the real position is ascertainable. That is the method which the Tribunal has attempted to adopt. It has taken note of, no doubt, as we have stated already, the payment of dividend by the company as also the issue of bonus shares.

4. The complaint by counsel on behalf of the revenue is that the profits made by the company during the year April 1, 1967, to March 31, 1968, had not been taken note of by the Tribunal. Counsel for the revenue also brought to our notice the fact that the balance-sheet of the company as on March 31, 1968, had taken into account the prosperity of the company and had valued the shares at Rs. 156 per share. If, therefore, there has been payment of dividend and issue of bonus shares, naturally out of the reserves as have been indicated in the balance-sheet as on March 31, 1967, that is more than compensated by the profits made during the year and the company was able to value the shares at Rs. 156 per share as on March 31, 1968, which is within three days of the date of the gift. The failure to take note of this factor has vitiated the order of the Tribunal as it has omitted to take into account relevant considerations in attempting to fix the value which the shares would have fetched had they been sold in the open market as on March 28, 1968. The tangible material that was available was the value of shares as shown on March 31, 1967, in the balance-sheet. There was no contention or submission that that was not the real value of the shares as on that date. The other concrete material that was available was the value attributed to shares by the company as on March 31, 1968, which is well above Rs. 139 per share. If this factor was taken into consideration, the Tribunal could not have come to the conclusion that the value worked out only to Rs. 104.30 as on March 28, 1968. No shareholder of the company would have sold the shares

at that price. When determining the question as to what the shares would have fetched had they been sold in the open market, one has to visualise that a sale would take place in the open market. Even in the case of the shares in a private limited company, it has to be so assumed and the market value of the shares as on the date of the gift deed will have to be ascertained. This is often a difficult task. In given cases, therefore, the value shown in the existing balance-sheet as on the date of the gift can be taken to be the market value. In view of the restrictions regarding the transfer of the shares in a private limited company, depreciation from the value so fixed may have to be allowed. We have dealt with the matter in our judgment pronounced today in COMMISSIONER OF GIFT-TAX, TAMIL NADU-III Vs. S. VENU SRINIVASAN AND ANOTHER., . The Tribunal has not considered the aspects which have to be considered. So, following the principle laid down by the Supreme Court in the decisions in Commissioner of Income Tax, Bombay City I Vs. Greaves Cotton and Co. Ltd., and Commissioner of Income Tax v. Indian Molasses Co. P. Ltd. [1978] 78 ITR 474 and following what we did in the above mentioned case, we direct the Tribunal to take back the appeal, G. T. A. No. 10 (MDS) 69-70, on its file and deal with it afresh in the light of what we have stated in the judgment read with the principles stated in our judgment in T. Cs. Nos. 588 and 595 of 1975 COMMISSIONER OF GIFT-TAX, TAMIL NADU-III Vs. S. VENU SRINIVASAN AND ANOTHER., and pass fresh orders. We direct the parties to bear their respective costs.