(1998) 10 MAD CK 0057

In the Madras High Court

Case No : T.C. No. 1209 of 1991 (Reference No. 51 of 1991)

Commissioner of Gift-tax — APPELLANT

Vs

R. Damodaran — RESPONDENT

Date of Decision : 28-10-1998

Acts Referred:
Gift Tax Act, 1958 — Section 16, 4(1)

Citation : (2001) 247 ITR 698

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; Philip George, for the Respondent

Judgement

A. Subbulakshmy, J.—At the instance of the Revenue, the following question has been referred to us for consideration :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right and had valid materials in holding that in the assessee''s

case, it could not be taken that transfers were for inadequate consideration ?

2. The assessment year involved is 1976-77.

3. The assessee is assessed in the status of a Hindu undivided family. The original assessment on the assessee was completed on August 17, 1978,

on a gift of Rs. 1,60,000. Subsequent to the completion of the original assessment, there was a report by the audit in which it was pointed out that

the property gifted by the assessee in Big Bazar Street, Coimbatore, to his elder brother, Krishnan, the value of which is shown at Rs. 1,10,000

had been shown in the document of gift at Rs. 1,37,700 which was the capitalised value for the purposes of stamp duty. Another item of house

property sold to his brother was shown for stamp duty purposes at Rs. 1,37,340, whereas the claim of the assessee was that the property was

sold for only Rs. 70,000. The Gift-tax Officer reopened the assessment in view of that information and he brought to tax an additional amount of

Rs. 27,700 in respect of the first item of property gifted and Rs. 67,340 in respect of the second item of property. The assessee appealed before

the Commissioner of Gift-tax. The Commissioner found that the reopening of the assessment was without jurisdiction and cancelled the assessment

as made. The Tribunal disagreed with the view of the Commissioner and upheld the re-opening of the assessment made by the Gift-tax Officer and

on the merits accepted the value stated and did not adopt the guideline value. On that the reference has arisen.

4. Counsel for the Revenue submitted that the transfers were for inadequate consideration and so the value as stated by the assessee cannot be

taken that the assessment as effected was for inadequate consideration. This court has held in the case of Commissioner of Gift-tax Vs. Indo

Traders and Agencies (Madras) P. Ltd., that (headnote) :

The investigation to be made u/s 4(1)(a) of the Gift-tax Act, 1958, can only be to see whether there is any attempt at evasion of tax or whether

the relevant transaction is bona fide. If the consideration which passed between the parties can be considered to be reasonable or fair, it cannot be

considered to be inadequate. Adequate consideration is not necessarily what is ultimately determined by some one else as market value. Unless the

price was such as to shock the conscience of the court, it would not be possible to hold that the transaction is otherwise than for adequate

consideration.

5. The Gift-tax Officer has reopened the assessment on information received by him on the audit report. The information received by the Gift-tax

Officer on the audit report cannot form the basis for reopening the assessment. The information received was not based on any relevant materials

and the Gift-tax Officer did not conduct any enquiry with regard to the value. The registered conveyance deed showed the value of Rs. 1,70,000.

The Commissioner has found that the enhanced stamp duty was paid as the registering authorities had their own method of evaluating properties.

On the facts, it has been found by the Commissioner that there is no material to show that the assessee had received excess consideration. So, it is seen from the records that the properties gifted were not for inadequate consideration and the consideration appears to be reasonable. The

information received by the Gift-tax Officer on the audit report would not be a valid ground to come to the conclusion that the transfers were for

inadequate consideration. The decision reported in Commissioner of Gift-tax Vs. Indo Traders and Agencies (Madras) P. Ltd., states that unless

the price was such as to shock the conscience of the court, it would not be possible to hold that the transaction is otherwise than for adequate

consideration. The records reveal that the contention raised by the Revenue is not sustainable. We answer the question referred to us in favour of

the assessee and against the Revenue.