
(2004) 01 GUJ CK 0028
In the Gujarat High Court
Case No : GT Ref. No's. 4, 5 and 6 of 1995

Commissioner of Gift Tax

APPELLANT

Vs

Rameshchandra Ravjibhai

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Gift Tax Act, 1958 — Section 2, 4(1)

Citation : (2004) 188 CTR 543 : (2004) 269 ITR 146

Hon'ble Judges : M.S. Shah, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

M.S. Shah, J.—All these references involve the following common question of law which has been referred to us for our opinion in respect of the asst. yrs. 1979-80 and 1980-81:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that on reconstitution of partnership firm, where the existing partner surrendered a portion of his share and the incoming partner brought in capital, the transaction did not amount to gift?"

2. We have heard Mr. Manish R. Bhatt, learned standing counsel for the Revenue. Though served, none appears on behalf of the respondent-assessee.

3. The brief facts are that the firm M/s Patel Brass Works, Rajkot, was constituted with the following partners as per partnership deed dt. 4th Nov., 1975:

1. Shri Ravjibhai Chhaganlal 45% 2. Shri Gandadal Bavalal 20% 3. Shri Rameshchandra Harjibhai 35%

There was a change in the constitution when two trusts were taken into partnership as per partnership deed dt. 25th Nov., 1977 and the share of partners in the reconstituted firm were as under:

Ravjibhai Chhaganlal 25% Gandamal Bavalal 20% Rameshchandra Ravjibhai 25% Dalsukh Gandamal, trustee of Parul trust 15% Pragjibhai Gandamal, trustee of Naresh trust 15%

It would thus be seen that Shri Ravjibhai surrendered 20 per cent share and Rameshchandra Ravjibhai surrendered 10 per cent share in favour of the two trusts taken into partnership on reconstitution.

The firm was again reconstituted on 1st Nov., 1978 where Maheshkumar Ravjibhai (minor) was admitted to benefit of partnership and the shares of partners in the reconstituted firm were as under:

Shri Ravjibhai Chhaganlal 20% Shri Gandamal Bavalal 10% Shri Rameshbhai Ravjibhai 20% Shri Dalsukhbhai Gandamal, trustee of Parul trust 15% Shri Pragjibhai Gandamal, trustee of Naresh trust 15% Shri Maheshkumar Ravjibhai (Minor) 20%

It would be seen from the above constitution that S/Shri Ravjibhai, Gandamal and Rameshchandra relinquished share to the extent of 5 per cent, 10 per cent and 5 per cent in favour of the new partners admitted to benefits of partnership, respectively, The AO held that relinquishment of right in share of profit is a deemed gift.

On appeal it was claimed that the new partners brought capital to the partnership as under:

Parul Trust 40,000 Naresh Trust 40,000 Maheshkumar Ravjibhai 1,25,000

It was also claimed that as per the terms of partnership Shri Gandamal Bavalal was not entitled to any benefit in the goodwill and the position being so he could gift away anything to the third person. It was also claimed that the incoming partners, thus, either contributed capital or agreed to work actively for the firm and that would constitute adequate consideration for the benefits of partnership.

Ultimately in appeal, the Tribunal upheld the finding of the CGT and held that both the trusts and Shri Maheshkumar contributed capital in the firm and they also agreed to share losses and this establishes the fact that the aforementioned three continuing partners relinquished right in share of benefits of the firm in consideration of capital contribution by the incoming partners and, therefore, there was no gift.

4. Mr. Manish R. Bhatt, learned standing counsel for the Revenue, has drawn our attention to the decision of the Supreme Court in the case of Commissioner of Gift Tax, Gujarat Vs. Chhotamal Mohanlal, and contended that on introduction of minor, Mahesh Ravjibhai, son of existing partner Ravjibhai, the latter relinquished a part of share in favour of his son and, therefore, there was relinquishment of share of Ravjibhai in the partnership firm.

5. Apart from the aforesaid decision in Chhotamal Mohanlal (supra), our attention is also drawn to the latest decision of the apex Court in Sree Narayana Chandrika

Trust Vs. Commissioner of Gift Tax, Kerala, wherein the apex Court has referred to all its previous decisions on the controversy and has held that when the incoming partner brings any contribution towards the capital of the firm, the said fact together with the obligations undertaken by the incoming partners of sincerely and faithfully carrying on the business for the common advantage of the firm was adequate consideration for reallocating the share of the profits. The apex Court has also held that even if there is a managing partner or administrative partner, it is a matter of convenience. The apex Court has held in the aforesaid decision that obligations to sincerely and faithfully carrying on business for the common advantage of the firm is an obligation arising out of the partnership and also ordinarily under the partnership deed in almost every case. Hence, when the incoming partner makes contribution towards capital such capital together with such obligation of sincerely and faithfully carrying on business for the common advantage of the firm is adequate consideration for reallocating of the shares of the profits of the firm.

6. In view of the finding given by the Tribunal that incoming partners brought in capital to the partnership i.e., Parul Trust Rs. 40,000, Naresh Trust Rs. 40,000 and Maheshkumar Ravjibhai Rs. 1,25,000 and in view of the aforesaid obligations of the incoming partners of sincerely and faithfully carrying on the business for the common advantage of the firm, there was adequate consideration and, therefore, the Tribunal rightly held that there was no gift.

7. As regards reliance placed on Chhotalal's case (supra) that was a case of minors who were admitted to the benefit of partnership firm without bringing in any capital and the share of the existing partner, who was the father of the newly admitted partners, was reduced and, therefore, the Court held in the facts of that case that there was a deemed gift by the father in favour of his minor sons. In view of the finding recorded by the Tribunal that incoming partners had brought in capital, the ratio in Chhotalal's case (supra) cannot apply to the facts of the present case.

8. In view of the above discussion, we answer the common question in all the three references in the affirmative i.e., in favour of the assessee and against the Revenue.

The references stand disposed of accordingly.