(2009) 01 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Commissioner of Gift Tax APPELLANT

Vs

Ripan Kumar RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 221 CTR 571 : (2009) 311 ITR 157

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The CGT, Jalandhar has approached this Court with a prayer for adjudication on the following question of law:

Whether on the facts and in the circumstances of the case, the Tribunal was right that in valuing the unquoted shares of M/s Kakkar Complex (P) Ltd. for the purposes of working out the value of the deemed gift on 20th March, 1979 and 31st March, 1979, reference should be made to the balance sheet of the said company as on 31st March, 1978 and not with reference to the balance sheet as on 31st March, 1979?

2. It has been claimed that the aforementioned question has arisen out of the order of the Tribunal dt. 6th Feb., 1984 rendered in GT Appeal No. 3 of 1983.

3. Brief facts which emerge from the statement prepared by the CGT are that the assessee had sold during the accounting year relevant to the asst. yr. 1979-80, 150 shares (100 shares to Ripan Kumar, son of the Karta of the assessee joint family and 50 shares to Ms. Ekta, another member of the family). He had sold shares @ Rs. 1,000 per share. According to the GTO the shares were sold at value of Rs. 2,086 per share which was not the full market value. He has applied the break up formula to reach the value of the share. The full consideration of the share according to him was calculated at Rs. 3,12,900 but the shares have been sold for a consolidated consideration of Rs. 1,60,000. There was shortfall of Rs. 1,62,900 in the consideration. Therefore, the short fall was considered as deemed gift under the provisions of Section 4(1)(a) of the GT Act, 1958. He

assessed the deemed gift at Rs. 1,52,900 and assessed the taxable gift accordingly. On appeal, the CGT(A) did not feel persuaded by the argument of the assessee that it was a bona fide sale which had no element of deemed gift and that the GTO did not take into consideration the balance sheet of the company as on 31st March, 1979. He did not consider the Expln. (1) to Rule 1D of the WT Rules, 1957. The balance sheet which was in existence for the year ending 31st March, 1978 and the same was required to be taken into account. Accordingly, the CGT(A) found the break up value of the share of M/s Kakkar Complex with reference to the balance sheet as on 31st March, 1979 (sic-1978) at Rs. 1,115 instead of Rs. 2,086. He modified the quantum of gift and granted relief to the assessee.

4. The Revenue felt aggrieved and challenged the order of the CGT(A) before the Tribunal. However, the Tribunal upheld the finding of the CGT(A) and dismissed the appeal of the Revenue as is evident from the perusal of para 4 which reads thus:

We first take up the appeal of the Revenue for disposal. We are not moved by the plea that it was a transaction of sale only and there is no element of gift involved in it, because the sale was made to the members of the family. The respondent assessee has not been able to rebut this presumption that the sale of shares at Rs. 1,000 per share could be made only to a member of the family and not to a third party. If there had been any sale made to a third party at Rs. 1,000 per share, the assessee could have controverted the plea that the sales to the members of the family were not coloured by the element of personality. But, having rejected the plea of the assessee, that the transaction was one relating to the sale, which had no element of gift involved in it, we cannot accept the contention of the Departmental Representative that the CGT had misdirected himself in working out the break up value with reference to the balance sheet as on 31st March, 1978 and not with reference to the balance sheet as on 31st March, 1979. No doubt, he supported his plea with the Madras High Court decision in Commissioner of Gift-tax Vs. K. Ramesh, . Kerala High Court, on similar facts, have held out in Commissioner of Gift-tax Vs. H.H. Sethu Parvathi Bai, that in valuing the shares, the provision contained in Expln. (1) could not be ignored. According to the provision, the balance sheet to be referred to was that which was available on that date, either indicating the assets and liabilities as on the date of sale or the one indicating the position of assets and liabilities on a transfer prior to the date of the transaction. One balance sheet which was here available on 23rd March, 1979 was the balance sheet relating to the date, which fell on 31st March, 1978. It was only with reference to this balance sheet that the two parties concerned with the sale, could have reached a finding about the valuation of the shares. Accordingly, following one of the two views, the Kerala view favourable to the assessee, we find no error in the finding of the CGT(A) who had reached a break up value of the shares with reference to the balance sheet as on 31st March, 1978. We accordingly, uphold finding of the CGT(A) and reject the plea of Revenue to the contrary as of no substance and merit.

5. Mr. Vivek Sethi, learned Counsel for the Revenue has made an attempt to attack the order of the Tribunal by asserting that the GTO had rightly assessed the gift-tax by applying the break up method.

6. However, he was not able to explain the view taken by the Division Bench of this Court in the case of Commissioner of Gift-tax Vs. Shakuntala Devi, . The Division Bench by following the view taken by the Kerala High Court in the case of Commissioner of Gift-tax Vs. H.H. Sethu Parvathi Bai, has decided the question of law in favour of the assessee and against the Revenue. Mr. Sethi, learned Counsel for the Revenue, has not been able to cite any contrary view so as to enable us to differ with the view taken by the learned Division Bench in Shakuntala Devi''s case (supra).

7. Therefore, we answer the reference in terms of the view taken by the Division Bench in Shakuntala Devi''s case (supra) in favour of the assessee and against the Revenue.