(1993) 08 MAD CK 0027

In the Madras High Court

Case No : Tax Case No. 1009 of 1980

Commissioner of Gift Tax APPELLANT

Vs

S.C.M. Zackariya RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Citation : (1995) 215 ITR 186

Hon'ble Judges : K.A. Swami, C.J;T. Somasundaram, J

Bench : Division Bench

Advocate : J. Jayaraman for C.V. Rajan, for the Appellant; R. Janakiraman, for the Respondent

Judgement

K.A. Swami, C.J.—The Revenue sought for referring the following question to this Court for decision :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in its view that the amount of Rs. 28,250 representing half

share of the difference between the document price and the market value is not assessable as deemed gift for purposes of the GT Act, 1958 ?

2. As per the order passed by the Tribunal, a sum of Rs. 28,250, which represents the difference of the amount between the amount of

consideration mentioned in the sale deed and the actual market value of the property in question sold, is stated to be in the hands of the assessee

and on that basis, it has been assessed to wealth-tax and the assessment made under the WT Act has become final. On that basis only, the

Tribunal has held that it cannot be considered to be a gift because it has been actually received by the assessee. This finding is based upon the WT

assessment order. Therefore, it is also not permissible for the Revenue to contend to the contrary. When once the difference of the amount is stated to be in the hands of the assessee, the question of application of s. 4(1)(a) of the GT Act does not arise because that relates to a case where

the property is transferred otherwise than for adequate consideration, the amount by which the market value exceeds the value of the consideration

shall be deemed to be a gift made by the transferor. Therefore, it is clear that s. 4(1)(a) of the GT Act will be covering a case where the difference

of the amount between the sale consideration mentioned in the sale deed and the market value of the property had not been received by the

transferor. On the other hand, in the instant case by reason of the WT assessment, it cannot be held that it has not been received by the transferor,

namely, the assessee. In this view of the matter, it is not necessary to refer to the several other contentions urged by learned counsel for the

Revenue. It is also not necessary to refer to the decisions in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , Commissioner of

Gift-tax Vs. Indo Traders and Agencies (Madras) P. Ltd., , Commissioner of Income Tax Vs. Bharani Pictures, and Commissioner of Gift-tax Vs.

B. Sathiar Singh, .

3. For the reasons stated above, the question is answered in the affirmative and against the Revenue. No costs.