
(1986) 10 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 292 of 1982

COMMISSIONER OF GIFT-TAX

APPELLANT

Vs

SHRAVENKUMAR P. PATEL.

RESPONDENT

Date of Decision : 09-10-1986

Acts Referred:

Citation : (1987) 57 CTR 284 : (1987) 167 ITR 496

Hon'ble Judges : G. G. Sohani, Acting C.J.

Bench : Division Bench

Judgement

G. G. SOHANI, ACTG. C.J. - By this reference u/s 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Jabalpur (Bench Jabalpur), has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that there was no taxable gift for the assessment year 1972-73 when the assessee entered into partnership and converted his proprietary business into partnership."

The material facts giving rise to this reference briefly are as follows : The assessee is an individual and the assessment year in question is 1972-73. While framing the assessment, the Gift-tax Officer found that the assessee was running a proprietary business of publishing a newspaper; that during the accounting year in question, the assessee had converted his proprietary business into a partnership concern by admitting his brother, Shri Siddharth Kumar Patel, as a partner; that the balance sheet of the proprietary business indicated development rebate reserve of Rs. 31,904 and that the proprietary business had goodwill and that by admitting Shri Siddharth Kumar Patel as a partner, the assessee had made a gift of 50% of the development rebate reserve and the goodwill. The Gift-tax Officer accordingly valued the taxable gift of development rebate reserve at Rs. 15,952 and of goodwill at Rs. 92,500. Aggrieved by the order passed by the Gift-tax Officer, the assessee preferred an appeal before the

Appellate Assistant Commissioner which was allowed. The second appeal preferred by the Revenue before the Tribunal was dismissed. Hence, at the instance of the Revenue, the aforesaid question of law has been referred to this court by the Tribunal for its opinion.

Having heard learned counsel for the parties, we have come to the conclusion that the reference has to be answered in the affirmative and against the Revenue. Learned counsel for the Revenue contended that the Tribunal had considered the question as to whether the gift was exempt from taxation in view of the provisions of section 5(1)(xiv) of the Act and that the Tribunal had, therefore, impliedly found that the assessee had made a gift. The contention cannot be upheld. It is true that the Tribunal has referred to the provisions of section 5(1)(xiv) of the Act, but that was in view of the alternative submission made by the assessee. The Tribunal has not reversed the finding given by the Appellate Assistant Commissioner that there was no element of gift when the assessee entered into partnership with Shri Siddharth Kumar Patel and converted his proprietary business into partnership. This finding is based on the material on record that the incoming partner had agreed to invest Rs. 2,50,000 as capital and had also agreed to look after and manage the business of the firm. In these circumstances, it could not be held that the admission of Shri Siddharth Kumar Patel as a partner in the business was gratuitous or without any consideration. The Gift-tax Officer, however, picked up certain assets of the assessee's proprietary business and regarded them as the subject matter of gift. As observed by the Supreme Court in *Commissioner of Gift-Tax, Kerala Vs. P. Gheevarghese, Travancore Timbers and Products*, this approach is wholly incomprehensible. As found by the Appellate Assistant Commissioner and which finding was not reversed by the Tribunal, there was adequate consideration for the conversion of the business into a partnership and thus there could be no question of any gift of goodwill or development rebate reserve by the assessee to the other partner.

For all these reasons, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of the reference.