

(1999) 06 MAD CK 0069

In the Madras High Court

Case No : Tax Case No. 471 of 1988 17 June 1999

Commissioner of Gift Tax

APPELLANT

Vs

T. Abdul Wahid

RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

Gift Tax Act, 1958 — Section 5(1)(xiv)

Citation : (2001) 117 TAXMAN 481

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

Bench : Full Bench

Advocate : Mrs. Chitra Venkataraman, for the Revenue and R. Janakiraman, for the Assessee, for the Appellant;

Judgement

Jayasimha Babu, J.

The questions referred to us arise out of a demand for gift-tax consequent to the reconstitution of a firm, by which reconstitution, the share of the

assessee was reduced and the shares allotted to another partner who was newly-inducted and to a minor to whom the benefits of the partnership

were extended. The GTO regarded that reconstitution effected on 1-4-1971, as resulting in a gift from the assessee to Smt. P. Fareeda Begum,

who was the newly admitted partner and to the minor Mohammed Akhtar, who was admitted to the benefits of the partnership to each of whom a

10 per cent share in the profits was allotted, as consequent to their admission, the profit-sharing ratio of the other partners was reduced. That view

of the GTO was upheld by the Commissioner but was reversed by the Tribunal.

2. The following questions have been referred to us at the instance of the revenue :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in cancelling the gift-tax assessment made in the case ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that

reduction in profit-sharing ratio of the assessee in the firm of T. Abdul Wahid and Co., from 35 per cent to 25 per cent would be held to be a

relinquishment or surrender of the assessee's interest in the firm and that, hence, there would be no liability to gift-tax ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the surrender or relinquishment of

the assessee's interest in the firm of T. Abdul Wahid and Co. was for adequate consideration and, as such, there would be no liability to gift-tax ?

4. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal's view that even if the surrender of the assessee's interest in

the firm was a gift, it was exempt u/s 5(1)(xiv) of the Gift Tax Act, is sustainable in law ?

3. The Tribunal, in our opinion, has rightly followed the decision of this court in the case of COMMISSIONER OF GIFT-TAX, TAMIL NADU

Vs. ALI HUSSAIN M. JEEVAJI AND ANOTHER., , wherein, it was held that the contribution of capital, rendering of service, sharing in future

liabilities and losses would all constitute consideration for the admission of new partners into the firm, and such consideration precluded the

admission of the partner or the allotment of share to the partner so admitted, being construed as a gift liable to tax.

4. There is no dispute here about the fact that the new partner was, in fact, inducted, that the transaction was not sham or nominal, and that capital

also was contributed by her. As a partner, she would be liable to share in the future liabilities and losses of the firm, and was bound to exercise due

diligence over the conduct of the business of the firm. All these did constitute consideration and this was not a case of gift. The allotment of a share

in the profits of the firm to the minor cannot per se be regarded as constituting a gift of part of the share earlier held by other partners, as the minor

in this case had brought capital into the firm.

5. Question Nos. 1 to 3 referred to us are, therefore, in favour of the assessee and against the revenue. Consequently, question No. 4 does not

require consideration and is returned unanswered.