
(1990) 07 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 523 of 1986

Commissioner of Gift-tax

APPELLANT

Vs

Vinod Kumar Agarwal and Another

RESPONDENT

Date of Decision : 09-07-1990

Acts Referred:

Gift Tax Act, 1958 — Section 2

Citation : (1990) 185 ITR 507 : (1991) 54 TAXMAN 317

Hon'ble Judges : S.K. Jha, C.J.;K.M. Agarwal, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; None, for the Respondent

Judgement

K.M. Agarwal, J.—This is a reference u/s 26(1) of the Gift-tax Act, 1958 (for short, the "Act"), at the instance of the Revenue. The Tribunal has referred the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to pay gift-tax ?"

2. The non-applicants, Vinod Kumar AGRAWAL and Ramlal AGRAWAL, were partners in M/s. Vinod Traders, Dhamtari, having 40% and 60% shares, respectively, in the profits and losses of the firm. During the previous year relevant to the assessment year 1979-80, two new partners, viz., Shri Sharad and Shri Ashok, were taken into the partnership and were given a share of 20% each in the profits and losses of the firm. As a result of this, the shares of Vinod Kumar AGRAWAL and Ramlal AGRAWAL were respectively reduced from 40% to 20% and from 60% to 40% in the profits and losses of the firm. The Gift-tax Officer was of the view that the reduction of the shares of the assessee, Vinod Kumar Agarwal and Ramlal Agarwal, amounted to a gift from the assessees to the new partners. Accordingly, gift-tax was imposed on them. The appeal preferred by the assessees was allowed by the Appellate Assistant Commissioner

of Gift-tax by holding that the reducing of the sharing ratios of the assesseees did not constitute a gift, on the basis of two decisions of the Bombay and Karnataka High Courts respectively in Commissioner of Gift-tax (Central), Bombay Vs. J.N. Marshall, and D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, . The second appeal preferred by the Revenue was dismissed by the Tribunal by preferring the aforesaid two decisions of the Bombay and Karnataka High Courts to that of the Madras High Court in the case of Commissioner of Gift-tax Vs. K.P.S.V. Duraiswamy Nadar (Decd.) (By Legal Representative), . Being aggrieved, the Revenue applied for a reference and, accordingly, the aforesaid question of law has been referred to us by the Tribunal.

3. The non-applicants were not represented before us. In addition to the aforesaid cases referred to by the Tribunal in its statement of case, learned counsel for the Revenue cited M.K. Kuppuraj Vs. Commissioner of Gift-tax, and Commissioner of Gift-tax Vs. A.M. Abdul Rahman Rowther, in support of his contention that the reduction of the assesseees' shares in the profits and losses of the firm constituted gifts.

4. Although the statement of case does not disclose the appellate order of the Appellate Assistant Commissioner of Income Tax as forming part of the statement of case, it does show that, according to the agreement of partnership, Shri Ashok had contributed a sum of Rs.52,850 towards his share capital and Shri Sharad was taken into the partnership as a working partner. It would, thus, appear that Ashok and Sharad were not given shares, in the partnership business without consideration. Shri Ashok was taken as a partner because he had contributed Rs. 52,850 towards the partnership capital. This would amount to consideration paid for the share given to him in the partnership. Similarly, the services to be rendered by Sharad as a working partner of the firm would constitute consideration for the share given to him in the partnership. u/s 3 of the Act, gift-tax is leviable in respect of gifts as defined in the Act. Section 2(xii) of the Act defines "gift" as follows :

""gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section."

5. In the present case, transfer of 20% share to each of the two new partners cannot be said to be transfer of property made voluntarily and without consideration. As pointed out earlier, the consideration paid by Ashok was his contribution towards the partnership capital and that by Sharad was his agreement to work for the partnership business as a working partner. For all these reasons, the aforesaid question of law deserves to be decided in favour of the assessee and against the Department.

6. The contrary decisions of the Madras High Court need no consideration as, in those cases, it was found that the relinquishment of share by an existing partner

or proprietor of the firm was without consideration.

7. For the foregoing reasons, the aforesaid question of law is answered in favour of the assessee and against the Department as follows :

"The Appellate Tribunal was right in law in holding that the assessees were not liable to pay gift-tax."

8. We make no order as to costs of this reference.