

(1984) 08 KL CK 0018

In the High Court Of Kerala

Case No : Income-tax Reference No. 269 of 1979

Commissioner of Gift Tax

APPELLANT

Vs

V.M. Philip

RESPONDENT

Date of Decision : 01-08-1984

Acts Referred:

Gift Tax Act, 1958 — Section 15(1), 24(2)

Citation : (1987) 61 CTR 283 : (1985) 154 ITR 819

Hon'ble Judges : T. Kochu Thommen, J; K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; G. Sivarajan, for the Respondent

Judgement

Kochu Thommen, J.—The following question has been, at the instance of the Revenue, referred to us by the Income Tax Appellate Tribunal, Cochin Bench, u/s 26(1) of the G.T. Act, 1958 :

"Whether, on the facts and circumstances of the case, Rs. 1 lakh contributed by the assessee's son as his share of the capital for the partnership business can be considered as consideration for the gift involved in the conversion by the assessee of his proprietary business into a partnership business ? "

2. In response to a notice u/s 15(1), the assessee filed a nil return. The GTO found that the assessee, who had transferred 50 per cent. of his interest in his proprietary business to his son who was admitted into a partnership was liable to pay gift-tax on 50 per cent. of the value of the assets gifted minus the sum of Rs. 1,00,000 contributed by the son. The sum which was thus computed as the amount on which gift-tax was payable was Rs. 44,787.

3. The Commissioner of Gift-tax initiated proceedings u/s 24(2). He held that the sum of Rs. 1,00,000 contributed by the son was not a payment to the assessee in consideration of the assets transferred but it was only a contribution to the capital of the firm in his personal account. He held that this sum could not be taken into account in computing the amount on which tax was payable.

4. The assessee appealed to the Tribunal against the order of the Commissioner. The Tribunal found that the sum of Rs 1,00,000 paid by the son was towards consideration for the assets transferred. The Tribunal thus accepted the contention of the assessee and set aside the order of the Commissioner.

5. The accepted facts show that during the relevant year, the father decided to take his son into partnership for the purpose of running an existing business. Admittedly, the father owned a plantation and operated it as a proprietary business. There is no evidence that the father sold the landed properties to his son. What the father did was to enter into a partnership agreement with his son as evidenced by annexure A for the purpose of taking over the plantation business. The deed of partnership shows that each of the two partners contributed Rs. 1,00,000. After the formation of the partnership, the business held by the father as the sole proprietor was taken over by the partnership. On the face of this transaction, no gift is involved. But the finding of the GTO as to the existence of a gift and the liability to pay tax thereon was not challenged by the assessee. Assuming, therefore, that the transaction was in the nature of a gift, even so, as rightly, in our view, found by the Tribunal, consideration in the sum of Rs. 1,00,000 had passed from the son to the father, for the benefits conferred on the son by being admitted into the partnership. In the circumstances, we are of the view that, if there was a gift, the only amount on which tax was payable was the balance amount of Rs. 44,787 as computed by the GTO.

6. In the light of what we have stated above, the question referred to us must be answered in favour of the assessee and against the Revenue. We do so. We direct the parties to bear their respective costs in this tax referred case.

7. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.