

(1967) 09 KL CK 0009

In the High Court Of Kerala

Case No : Income-tax Referred Case No. 15 of 1966

Commissioner of Gift-tax, Kerala, Ernakulam

APPELLANT

Vs

Dr. V. Madhavan Valiathan

RESPONDENT

Date of Decision : 01-09-1967

Acts Referred:

Gift Tax Act, 1958 — Section 26(1)

Income Tax Act, 1922 — Section 66(1)

Citation : AIR 1968 Ker 80 : (1968) 68 ITR 729

Hon'ble Judges : M.S. Menon, C.J;V. Balakrishna Eradi, J;M.U. Isaac, J

Bench : Full Bench

Advocate : C.T. Peter, for the Appellant; K.S. Paripooranan, M. Radhakrishnan Nair and M.N. Sukumaran Nair, for the Respondent

Judgement

Balakrishna Eradi, J.—This is a reference made by the Income Tax Appellate Tribunal, Madras Bench (hereinafter referred to as the Tribunal) u/s 26(1) of the Gift Tax Act, 1958.

2. The relevant facts are stated in paragraphs 2 to 4 of the statement of the case forwarded to this court by the Tribunal and they are extracted below.

"The assessee and his wife jointly executed a gift deed on 13-1-1958 conveying certain immovable properties to their children. Some of these properties belonged exclusively to the assessee and some others were jointly owned by the assessee and his wife in equal shares. A copy of the gift deed is appendix "A" and forms part of this statement.

The gifted properties included a piece of land to the extent of 7.1 acres situated at Thiruvella. The Gift-tax Officer determined the value of this item of property at RS. 87,500/-. This valuation was confirmed by the Appellate Assistant Commissioner of Gift-tax. In the further appeal filed by the assessee before the Tribunal, valuers were appointed u/s 23(6) of the Gift-tax Act to value this item of property. The valuers determined the value of this item at Rs. 58.375/-. A

copy of the valuer's report is appendix "B" and forms part of the statement.

The assessee objected to the adoption of the valuation of this property as determined by the valuers and contended that out of the extent of 7.1 acres, an extent of 3.0 acres was in the possession of tenants under a permanent lease called Vechupathi lease, under which the tenant had to pay only an annual rent of Rs. 0.75 nP. for the land and was also entitled to purchase the land outright by paying 16 times the annual rent. In support of this contention, the assessee drew the attention of the Tribunal to the provisions of Kerala Act 1 of 1957 and Kerala Act 1 of 1964. The Tribunal accepted the contentions of the assessee and held that no value could be attached to these 3.0 acres of land so far as the assessee was concerned and that the value of these land as fixed by the valuers viz. Rs. 19,500/- had to be deducted from the total value of Rs. 58,375/- fixed by them for the entire extent of 7.1 acres. The Tribunal, therefore, determined the value of this item of property at Rs. 38,875/-. The order of the Tribunal is appendix "C" and forms part of this statement."

The Commissioner of Gift Tax, Kerala applied to the Tribunal u/s 26(1) for referring to this court a question of law said to arise out of the order of the Tribunal and the Tribunal has referred the following question to us:

"Whether on the facts and in the circumstances of the case the Tribunal was right in law in altering the valuation fixed by the valuers u/s 23(6) of the Gift-Tax Act, in respect of 7.1 acres of land at Thiruvalla?"

On behalf of the assessee a preliminary objection was taken before us that the reference made by the Tribunal is incompetent because the question of law referred by the Tribunal is not one "arising out of" its order within the meaning of Section 26(1) of the Gift Tax Act. It is urged on behalf of the assessee that the question whether it was open to the Tribunal to alter the valuation fixed by the valuers had not been raised at all before the Tribunal nor had it been dealt with or decided by them. It is contended that in such circumstances the question cannot be said to arise out of the order of the Tribunal and that therefore no reference on such question can be validly made u/s 26(1) of the Act.

3. There is nothing in the order of the Tribunal to show that any question relating to the jurisdiction or power of the Tribunal to alter the valuation fixed by the valuers had been raised before it on behalf of the department. The assessee had raised several objections to the said valuation and it would appear from the order of the Tribunal that elaborate arguments had been addressed before it regarding the correctness of the valuation fixed by the valuers, particularly in the light of the provisions contained in Kerala Act 1 of 1957 and Kerala Act 1 of 1964. It was after considering these arguments on the merits that the Tribunal held that Rs. 19,500 had to be deducted from the value fixed by the valuers for item 3. No objection whatever appears to have been taken before the Tribunal on behalf of the department that the value as determined by the valuers was final and could not be altered by it. Learned counsel appearing for the revenue is not in a

position to state that the question had been raised before the Tribunal by the department; and there is no complaint that despite such question having been raised, the Tribunal wrongly omitted to deal with it. We have therefore to proceed on the basis that the question covered by the reference is one which had not been raised before the Tribunal or considered by it.

4. In Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., the Supreme Court had occasion to consider the scope of the words "any question of law arising out of such order" occurring in Section 66 (1) of the Indian Income Tax Act (II of 1922) and their Lordships have laid down as follows at page 611 (of ITR) : (at p. 1645 of AIR).

"The result of the above discussion may thus be summed up;

(1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

Stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order." This position of law has been recently restated by their Lordships in the decision reported in The Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, .

5. In our opinion, the same construction has to be placed on the identical words occurring in Section 26(1) of the Gift Tax Act which corresponds to section 66 (1) of the Indian Income Tax Act, 1922. Applying to the present case proposition No. 4 enunciated by the Supreme Court, it has to be held that since the question of law covered by the reference had been neither raised before the Tribunal nor considered by it, it cannot be regarded as a question "arising out of" the order of the Tribunal.

6. In view of the categorical pronouncement of the Supreme Court, the observations of Chagla, C. J., in MADANLAL DHARNIDHARKA Vs. COMMISSIONER OF Income Tax, BOMBAY CITY., giving a wider interpretation to the expression "arising out of such order" occurring in Section 66 of the Indian Income Tax Act which were relied on by the counsel for the revenue, can no longer be regarded as good law.

7. In the result, it has to be held that the reference made by the Tribunal is in-

competent and on this ground we decline to answer the question referred by it.
We make no order as to costs.