(1998) 12 MAD CK 0122

In the Madras High Court

Case No : Tax Case No. 316 of 1994

Commissioner of Income Tax APPELLANT

Vs

AL. Ramanathan RESPONDENT

Date of Decision : 12-12-1998

Acts Referred:

Gift Tax Act, 1958 — Section 2(xxiv), 4(1)(a), 4(2)
Income Tax Act, 1961 — Section 47

Citation : (2003) 128 TAXMAN 87

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

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

Mrs. A. Subbulakshmy, J.—The assessee is an HUF. The karta of this joint family is Shri AL. Ramanathan son of Shri L. Alagusundaram Chettiar. On 12-4-1952, there was a partition between Shri Alagusundaram Chettiar and his brother Shri L. Narayanan Chettiar. On 12-9-1955, there was a partition in the joint family of which L. Alagusundaram Chettiar was the karta and his three sons, viz., A.L. Lakshmanan, AL. Periannan and A.L. Ramanathan were the other coparceners. Dispute arose in the family and an interim agreement was entered into on 19-8-1980, under which the assessee''s side was to receive Rs. 8 lakhs and certain lands in Kothagai Village and in return they were required to transfer half of their share-holdings in Mahalakshmi Textile Mills Ltd., Lakshmi Lines Ltd. and Charlie Engg. Co. Ltd. to the other side subject to full settlement later. On 20-8-1981, the final agreement was drawn up according to oral agreement dated 6-5-1981 under which the assessee''s side was to receive a further amount of Rs. 11 lakhs which was paid on 19-6-1981, in addition to Rs. 8 lakhs paid on 9-9-1980 and also to keep the land transferred to them on 10-9-1990 as well as the brick chamber transferred by another registered transfer deed and in return, the other side was to retain the shares in Mahalakshmi Textile Mills Ltd., Lakshmi Lines Ltd. and Charlie Engg. Co. Ltd., etc., transferred by the assessee''s side to them in accordance with the earlier agreement dated 19-8-1980. So, by virtue of that agreement the rights between the parties were settled. The assessee claimed that the agreement dated 19-8-1980 and 20-6-1981, should be taken as supplement to the earlier partition dated 12-9-1955, thus, not amounting to a transfer u/s 47 of the income tax Act, 1961 (''the Act'') or in the alternative as a family arrangement net amounting to a transfer such that the capital gains from these transactions could not be assessed to tax. The assessee further contends that the consideration paid was not only for the transfer of assets but also to avoid continuous friction and to buy peace and, the amount had to be excluded from the capital gains. The ITO rejected the contentions of the assessee and took the view that the transactions amounted to transfer of title in respect of which capital gains was exigible to tax. The assessee preferred appeal to the Commissioner (Appeals) and the Commissioner (Appeals) has rejected the contentions of the assessee. On appeal to the Tribunal, the Tribunal came to the conclusion that the transaction is only a family arrangement and it does not involve any transfer of title of the properties transferred and the transaction of family arrangement does not give rise to capital gains. On that, the reference has arisen and at the instance of the revenue, the following question has been referred to this Court for our opinion: Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the transactions of the assessee amount to a family arrangement and cannot be termed as a transfer and there was no chargeable capital gains arising from that transaction?

A perusal of the records goes to establish that dispute arose in that family and the family arrangement was arrived at in consultation with the panchayatdars and, accordingly, realignment of interest in several properties had resulted. The family arrangement was arrived at in order to avoid continuous friction and to maintain peace among the family members. The family arrangement is an agreement between the members of the same family intended be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. So, the family arrangements are governed by principles which are not applicable to dealings between strangers and the family arrangement among them is for the interest of the family, for the harmonious way of living. So, such realignment of interest by way of effecting family arrangement among the family members would not amount to transfer.

2. This Court has held in Commissioner of Income Tax Vs. R. Ponnammal, that:

...the family arrangement had been brought about by the intervention of the panchayatdars and this clearly shows that the sons and daughters of the assessee were laying claims to the property which the assessee got under the will of her father and it was not relevant at the time when the family arrangement was entered into to find out as to whether such claims if made in a

Court of law would be sustained or not. If the assessee found it worthwhile to settle the dispute between herself, her sons and daughters by making the family arrangement, the said arrangement could not be ignored by a tax authority. In view of the finding of the Tribunal, the family arrangement dated December 17th, 1971, had to be held to be a valid piece of document and, hence, the Tribunal was right in its view that no transfer of property was involved within the meaning of section 2(xxiv) of the Gift-tax Act and, hence, there was no liability to gift-tax either u/s 4(1)(a) or u/s 4(2) and consequently no question of inclusion of the income of the minor in the hands of the assessee would also arise.

It is the settled law that when parties enter into a family arrangement, the validity of the family arrangement is not to be judged with reference to whether the parties who raised disputes or rights or claimed rights or a certain properties had in law any such right or not. In Maturi Pullaiah v. Maturi Narasimham AIR 1966 SC 1836, the Supreme Court has observed that:

17. Briefly stated, though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.

In Kale and Others Vs. Deputy Director of Consolidation and Others, the Supreme Court has laid down the propositions which are essentials of a family arrangement that:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

3. The Tribunal, on facts, found that the family arrangement involved in this case appears to be a bona fide one inasmuch as it has been shown to have been made voluntarily and not induced by any fraud or collusion and the conduct of the parties referred to by the revenue is consistent with the bona fide family arrangement particularly when it was arrived at in the presence of panchayatdars. So, the family arrangement is a bona fide one and it was effected to dissolve the family dispute. Applying the principles laid down in the decisions cited supra, we hold the family arrangement involved in this case does not amount to transfer. The Tribunal is perfectly justified, in taking the view that the transaction of the assessee being a family arrangement, did not amount to transfer and, therefore, there was no chargeable capital gain arising from that transaction. So, the transaction of the assessee did not amount to transfer and

there was no chargeable capital gain arising from that transaction.

We answer the question of law in favour of the assessee and against the revenue. No costs.

