
(2000) 11 KL CK 0034

In the High Court Of Kerala

Case No : Income Tax R. No. 105 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Anand

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Citation : (2001) 165 CTR 436

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and George K. George, for the Appellant;
C. Kochunny Nair, Dale P. Kurian and S. Vinodkumar, for the Respondent

Judgement

S. Sankarasubban, J.—This ITR is at the instance of the Revenue and it arises under the Gift Tax Act. The assessee in this case is M/s. S. Anand & Ors. One K.N. Sreedhara Shenoy was the proprietor of a Jewellery shop. On first April, 1984 he converted the business into a partnership Firm. In the new partnership Firm, his three children were inducted. It is stated that the new partners have contributed capital to the Firm. The profits are to be shared equally by the partners. The Gift Tax Officer took the view the transfer to the children represented gift made by the assessee and determined the value of the gift at Rs. 3,48,860/- and the gift tax payable was determined as Rs. 69,465/-.

2. The assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Appellate Authority relied on the decision of the Karnataka High Court in C.G.T. v. C.S. Patil (1989) 78 C.T.R. (Kar) 194 and held that since there has been contribution to the capital by the new partners, there was no gift. Against that, the matter was taken before the Tribunal by the Revenue. The Tribunal also relied on the decision of the Karnataka High Court and dismissed the appeal. It is thereafter that this reference is made on the following questions of law:

"1) Whether on the facts and in the circumstances of the case, the Tribunal is

right in law and fact in holding that there is no element of gift in this case?

2) Whether, on the facts and in the circumstances of the case, contribution of capital by the children to the firm would amount to consideration to the father whose full share in the business got reduced?

3) Whether, there is consideration/adequate consideration for the father whose full share had been reduced?

4) Whether on the facts and in the circumstances of the case, as laid down by the Kerala High Court in 196 ITR 518 should not the Tribunal have directed the assessment of balance gift after taking into account the capital contribution?"

3. Learned counsel for the Revenue Shri. P.K. Ravindranatha Menon argued that even though capital has been contributed that may be only with regard to the share of the profit. But there was goodwill of the shop and for the goodwill, there is no consideration and hence, there is a gift. Learned counsel also relied on Lord Lindley on Partnership, Sixteenth Edition, Chapter 17 to bring to the notice of this Court the distinction between the capital and assets. Learned counsel also relied on the decision of this Bench in ITR No. 256 of 1997.

4. Learned counsel for the respondent submitted that the only question before the Tribunal was whether there was a gift or not. The adequacy or inadequacy of the consideration did not arise. The Assessing Officer took the view that even though capital was contributed, there is a gift of the goodwill. But this was negated by the Appellate Authority as well as the Tribunal. Learned counsel relied on the decision of the Karnataka High Court in Commissioner of Gift Tax Vs. C.S. Patil, and the decision of the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, and also contended that the inadequacy of consideration cannot be now challenged before this Court, as that was not raised before the Tribunal. According to us, the argument of the counsel for the Revenue cannot be accepted. The decision in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, stands on a different footing. There, the minors were admitted to the benefit of the partnership. It was argued that there was reduction in share in the goodwill. It was in that context that the Supreme Court held that goodwill is property and when minors are admitted to the benefits of partnership in a firm and the share of an existing partner is reduced thereby, the right to the money value of the goodwill stands transferred. So far as the decision in ITR 256 of 1997 is concerned, we are of the view that the question considered in that case is different from the question that arises in this case. There, the Tribunal took the view that even though there was a transfer by the assessee in favour of the income partner and existing partner, consideration of the transfer could not be evaluated during the subsistence of the partnership and so, the adequacy or inadequacy of consideration could not be quantified. That question does not arise in this case. Learned counsel for the assessee brought to our notice the decision in Commissioner of Gift Tax Vs. C.S. Patil, . In that case, six new partners were admitted, in whose favour the erstwhile four partners

surrendered 10 per cent of their right to share profit. The six new partners had also contributed capital to the Firm. The Gift Tax Officer held that the surrender of 10 percent share of profit by the erstwhile partners in favour of the incoming partners amounted to gift and charged gift tax on it. The Appellate Assistant Commissioner affirmed the order of the Income Tax Officer. The Tribunal held that since the six new partners had contributed capital to the Firm, the erstwhile partners were not chargeable to gift-tax in respect of the reduction in their share interest on the admission of the new partners. The contention taken before the Tribunal was repelled by the High Court and it was held as follows: "the six partners admitted to the firm had contributed capital to the firm and hence there could be no question of gift even in respect of goodwill because unless a business had goodwill, no person would like to join that business as a partner and contribute capital. It was the goodwill of the firm itself which attracted new capital. Therefore, the capital contributed by the new partners constituted adequate consideration not only in respect of the right to share future profits but also respect of the property in the goodwill". The decision of the Supreme Court in Chhotalal Mohanlal's case was cited before the Karnataka High Court. That was distinguished by the Karnataka High Court.

5. According to us, so far as this case is concerned, there were no facts to establish that the contributions made are inadequate. Hence, we agree with the Tribunal that there is no gift in this case. Hence, we answer questions 1 and 2 in the affirmative in favour of the assessee and against the Revenue. According to us, question Nos.3 and 4 do not arise for consideration in this case as the adequacy of consideration was not in issue.