(2008) 04 AHC CK 0033

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Jaypee Chemicals Ltd. RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:
Gift Tax Act, 1958 — Section 16(1)

Citation : (2008) 04 AHC CK 0033

Hon'ble Judges : S.S. Chauhan, J;Rajes Kumar, J

Bench : Division Bench

Judgement

Rajes Kumar, J.—Heard Sri D.D. Chopra, learned Standing counsel appearing on behalf of Income Tax department.

2. This is an appeal under the Gift Tax Act (hereinafter referred to as "the Act"). Following substantial questions of law have been involved:

1. Whether on the fact and circumstances of the case, Income Tax AppellateTribunal was justified in law in holding that the reassessment proceedingsunder Section 16(1) of the Gift Tax Act have not been validly initiated on the ground that nothing was brought on record to show that the shares had been transferred at a value less than the fair market value especially when the assessing officer had valid reason to believe u/s 16(1) of the Gift Tax Act that on transfer unquoted shares was to be valued as per rule ID of the Act and not at face value.

2. Whether on the facts and circumstances of the case, the finding of the Income Tax Appellate Tribunal while confirming the order passed by Commissione (Appeals) that no material or evidence has been brought on record by the assessing officer while recording me reasons was not perverse.

3.The brief facts of the case are that the assessing officer has framed the assessment u/s 16(1)/15(3) of the Gift Tax Act (hereinafter referred to as the "Gift Act") vide order dated 18-1-1989. Notice u/s 16(1) of the Gift Act was issued on 5-9-1986. The assessee filed return showing nil gift. The assessing officer observed that the assessee company had transferred 11,972 shares to various companies. The assessing officer found that the company had sold shares on the face value of Rs. 100 each and he was of the view that the shares in question had been transferred at a value less than the fair market value. The assessing officer recorded the reasons for initiation of proceedings u/s 16(1) of the Gift Act as follows:

3. daiuh us t; izdkk ,lksfl,V ds 19972 ks;j dqN dEifu;ksa dks cspsa A eq>s ;g fookl gS fd ;g VzklQj Fair Market Value de consideration esa gqvk gS A vr% milgkj dj vf/kfu;e dh /kkjk 4 ds izko/kkuksa ds vUraZxr milgkj djus ds fy, dEiuh liable gS A vr% /kkjk 16(1) dh uksfVl tkjh djs A

4. The assessing authority after hearing the assessee completed the assessment taking the value of the taxable gift at Rs. 65,88,190. Being aggrieved by the order, assessee filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) allowed the appeal and set aside the assessment order. Being aggrieved by the order of the Commissioner (Appeals), revenue filed appeal before the Tribunal vide order dated 8-12-2006 dismissed the appeal filed by the revenue. The Tribunal held as follows:

The reasons recorded by the assessing officer only indicate a suspicion in the mind of the assessing officer, no material has been brought on record to show that shares have been transferred at a value less than the fair market value. There is nothing on record to show what was the fair market value as on the date of transaction. In the case of H. Noronha Vs. Income Tax Officer, Circle-II, Bangalore, the Karnataka High Court observed that when an Income Tax Officer is required to form an opinion on the basis of information and is required to record his reasons before proceeding to issue notice u/s 148, at that point he should record in full details, source of information on the basis of which he had formed his belief reasonably which has led to the conclusion that there has been escapement of income from being assessed. In the instant case, the reasons recorded by the assessing officer do not disclose any material or information on the basis of which the assessing officer has formed his belief, it is merely an opinion/suspicion, which do not confer jurisdiction on the assessing officer to reopen proceedings. It would also be relevant to state that the assessing officer has not given any indication as to what was the nature of information on the basis of which he has reasons to believe. In the instant case, no material or evidence has been brought on record by the assessing officer while recording the reasons in view of the above, we fully agree with this observation of Commissioner (Appeals) that the proceedings u/s 16(1) of the Gift Tax Act have not been validly initiated in this case. Accordingly, we uphold the order of Commissioner (Appeals).

In the result, the appeal filed by the department is dismissed.

5. Learned Counsel for the appellant states that the order of the Tribunal is erroneous inasmuch as the assessment proceeding has been initiated on the

ground that less value of the share was disclosed which was less than the fair market value.

6. We do not find any substance in the argument of the learned Counsel for the revenue. Tribunal held that there was no material on record to show that the shares have been transferred at a value less than the fair market value. There is nothing on record to show that what was the fair market value as on the date of transaction. The finding of the Tribunal is finding of fact. It is settled principle of law, that the proceeding u/s 16(1) which is pari materia to Section 147 of the Act, cannot be initiated merely on subjective opinion. There should be some material on the basis of which believe could be formed that there was any escaped assessment.

7. In the case of Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, it has been held that if there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonable entertain the belief, the conclusion would be inescapable that the assessing officer could not have reason to belief.

8. In the case of Indra Prastha Chemicals (P) Ltd v. CIT (2005) 142 Taxman 205, this Court held as follows:

Thus, it is well-settled that the reason to believe u/s 147 must be held in good faith and should have a rational connection and relevant bearing on the formation of the belief and should not be extraneous or irrelevant....

9. In the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, the Honble Supreme Court held that the reasons for the formation of the belief contemplated by reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief. The Honble Supreme Court further observed that though it is true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening the assessment yet at the same time we have to bear in mind that it is not any and every material, however, vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

10. In the case of CST v. Bhagwan Industries (P.) Ltd (1973) 31 STC 293, it was held that reasonable grounds necessarily postulate that they must be germane to the formation of the belief regarding escaped assessment. If the grounds are of an extraneous character, the same would not warrant initiation of proceedings under this section. If however, the grounds are relevant and have a nexus with the formation of belief regarding escaped assessment, the Assessing Authority would be clothed with jurisdiction to take action under this section.

11. In the present case, Tribunal held that there was no material on record to show that shares have been transferred at a value less than the fair market value and no material has been brought on record in this regard.

12. In view of the above, we do not see any error in the order of the Tribunal.

13. In the result, appeal fails and is, accordingly, dismissed.

