

(1992) 02 GUJ CK 0021
In the Gujarat High Court

Case No : Income-tax Application No. 23 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Nirupamaben P. Modi

RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 49(1), 55(2)

Citation : (1992) 103 CTR 409 : (1992) 196 ITR 752

Hon'ble Judges : J.M. Panchal, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : B.J. Shelat, for the Appellant; K.C. Patel, for the Respondent

Final Decision : Dismissed

Judgement

G.T. Nanavati, J.—By his will dated August 29, 1952, Bhagubhai Chunilal had bequeathed the ground floor of his bungalow in favour of his

widowed daughter-in-law, Subhadhrabai, and her daughter, Nirupamaben, and created a right of residence therein during their life time. After their

death, the property was to go to his three sons. During the assessment year 1982-83, the mother and the daughter surrendered their respective life

interests in the said property in favour of the three sons of the testator for a consideration of Rs. 1,38,000 each. The Income Tax Officer

determined the fair market value of the property at Rs. 10,000 as on January 1, 1964, and, after allowing permissible deductions, subjected the

balance of Rs. 73,800 to capital gains tax in the case of the daughter. It may be stated that, so far as the mother's case is concerned, the mother

had claimed exemption in her return and that case was accepted u/s 143(1) of the Act.

2. The assessee, i.e., daughter, preferred an appeal against that part of the order

of the Income Tax Officer whereby the balance of Rs. 73,800 was treated as capital gains. The Commissioner of Income Tax (Appeals) allowed the appeal holding that it had cost nothing to the appellant, when she acquired the life interest. The Commissioner was also of the opinion that the Income Tax Officer erred in showing the market value at Rs. 10,000 as on January 1, 1964, as the market value of the life interest in 1964 was certainly more than its value in 1982 when it was surrendered.

3. The Revenue went in appeal to the Tribunal. The Tribunal held that the assessee had not acquired the capital asset in 1952 for any consideration. The assessee had neither opted for cost of acquisition of the asset to her nor the fair market value thereof as on January 1, 1954, nor was she ever required by the Income Tax Officer to exercise such an option. The Tribunal also held that the Income Tax Officer did not find the cost of acquisition of the property in the hands of the previous owner. As the computation provisions clearly failed, there could have been no levy of capital gains tax. The Tribunal agreed with the view taken by the Commissioner that the fair market value of the life interest in 1964 would have been much more than that in 1982.

4. The Commissioner, aggrieved by that order, wanted the Tribunal to refer the following question to this court :

Whether the Appellate Tribunal is right in law and on facts in deleting the capital gain of Rs. 73,800 ?

5. The Tribunal refused to refer the question holding that no referable point of law arises out of its order.

6. What is submitted by learned counsel for the applicant is that the finding of the Tribunal that the computation provisions clearly failed in this case

and, therefore, no capital gains tax could have been levied is incorrect, and therefore a question of law does arise.

7. In our opinion, the Tribunal was not wholly right in the view that it took. Admittedly, this case was covered by sub-section (1) of section 49 and,

therefore, the cost of acquisition was required to be determined in terms of section 55(2)(b)(ii) of the Act. Therefore, what was material to be

determined was the cost of acquisition of the capital asset to the previous owner and not to the assessee. The Tribunal was also not right in

observing that the assessee was not required by the Income Tax Officer to

exercise in option. It was for the assessee to exercise that option and it was not an obligation of the Income Tax Officer to call upon the assessee to exercise that option.

8. Even though we are of the view that the Tribunal committed these errors, we do not think it fit to direct the Tribunal to refer the proposed

question to this court, as it will be a futile exercise in view of the fact that both the Commissioner and the Tribunal have clearly recorded a finding

that the fair market value of the life interest in 1964 was much more than that in 1982, and, therefore, if a proper computation had been made,

there would have been no profit or gain in the hands of the assessee.

9. Subject to the observations made above, this application is dismissed.