

(1979) 01 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 383 of 1972

Commissioner of Wealth Tax

APPELLANT

Vs

Manilal C. Desai

RESPONDENT

Date of Decision : 17-01-1979

Acts Referred:

Wealth Tax Act, 1957 — Section 4(1)

Citation : (1981) 127 ITR 793

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; S.M. Javer, for the Respondent

Judgement

Oza, J.—This is a reference made by the Income Tax Appellate Tribunal under the W.T. Act on the following questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was in law justified in coming to the conclusion that the gift can be said to have been made by the assessee himself ?

2. Whether the Tribunal, on the facts and in the circumstances of the case, was right in upholding the deletion of the amount of gift of Rs. 50,000 together with its accretions for each of the two years ? "

2. The assessee, Shri Manilal C. Desai of Indore, is an individual and the assessment years involved are 1962-63 and 1963-64. The assessee had a share in the firm, Manilal C. Desai and Sons. In the books of the firm there are also accounts in the names of the assessee's wife and his mother. The mother of the assessee died on or about 27th May, 1956, and after her death a sum of Rs. 52,466 standing to her credit was transferred to the account of the assessee's wife. On June 27, 1958, two credits of Rs. 25,000 each were made to the assessee's two grandsons, Pratesh kumar and Lalith-kumar, and these gifts by the wife were incorporated in writing in a gift deed dated June 27, 1958, where the assessee among others has also signed as one of the attesting witnesses. For

each of these two years, the WTO added as part of the assessable net wealth of the assessee not only the amount standing to the credit of the wife's account as on the corresponding dates of the valuation but also the sum of Rs. 50,000 alleged to have been gifted to the grandsons on June 27, 1958, together with the accretion of interest thereto up to the dates of valuation.

3. In respect of the assessment years 1962-63 and 1963-64, the assessments have been made for the first time. The WTO, therefore, made an addition of Rs. 1,45,563 in the net wealth of the assessee for the assessment year 1962-63 and for the next assessment year 1963-64 he similarly made an addition of Rs. 1,60,446.

4. Against these orders of assessment for these two years the assessee went up in appeal before the AAC and the said Commissioner by his common order followed the order of the Bombay Bench of the Tribunal as the Tribunal had held that so far as the quantum of gift made by the assessee's wife in favour of the two grandsons along with accretions thereto are concerned the fact that the assessee had signed the gift deed as witness goes to show that the assessee himself made the gift of the amount in question through his wife and, therefore, the amounts of gifts to each of the two grandsons along with their accretions must be excluded from the net wealth of the assessee. The AAC, therefore, deleted the amount of Rs. 66,500 and Rs. 73,000 for the years under appeal.

5. The Appellate Tribunal in regard to the question of gift made by the wife in favour of her two grandsons held that the assessee had signed as one of the attesting witnesses to the gift deed dated June 27, 1958, though the wife of the assessee was only a benamidar in respect of the amounts standing in her name ; the assessee having authorized her to make a gift, it may be said that the assessee himself had made the gifts. Thus, the amount of Rs. 50,000 would, therefore, be excluded from the net wealth of the assessee along with interest accrued thereon. Aggrieved by this decision, the CWT sought a reference and at his instance the present reference has been made.

6. As regards the same assessee, in respect of the assessment years 1964-65 and 1965-66, there were already original assessments and a notice for reopening of the assessment u/s 17 of the W.T. Act was issued. Similarly, for the assessment years 1957-58 to 1961-62 also the assessments were reopened u/s 17 of the Act. For the years 1957-58 to 1961-62 ultimately a reference was sent to this court and this court by its order in Commissioner of Wealth Tax Vs. Shri Manilal C. Desai, , maintained the order passed by the Tribunal. For the assessment years 1964-65 and 1965-66 also a reference came to this court and by orders dated October 23, 1978 in Misc. Civil Case No. 384 of 1972 (Indore)* the view taken by the Tribunal had been upheld. In these two references, the question arose because of proceedings for reopening of assessment u/s 17 of the Act whereas in the reference in hand the question has arisen from the original assessment itself.

7. The Tribunal on the facts has held that although the amounts were standing in the name of the wife, they were the assets of the assessee himself and by the gift deeds dated June 26, 1958, the amounts have been gifted in favour of the minor grandsons. And, therefore, the Tribunal took the view that the gift can be said to have been made by the assessee himself.

8. Section 4, Sub-section (1), Clause (a), Sub-clause (v) of the W.T. Act, provides that in computing the net wealth of the individual there shall be included even the assets standing in the name of the son's wife or the son's minor child, if such assets have been transferred directly or indirectly by the individual on or after the 1st day of June, 1973.

" 4. (1) In computing the net wealth of an individual, there shall be included, as belonging to that individual--

(a) the value of assets which on the valuation date are held--...

(v) by the son's wife, or the son's minor child, of such individual, to whom such assets have been transferred by the individual, directly or indirectly on or after the 1st day of June, 1973, otherwise than for adequate consideration,....."

9. This sub-Clause (v) was inserted by the Taxation Laws (Amend.) Act, 1975, and has come into effect from 1st April, 1976. The gifts in question are gifts made in 1958. Apparently, this clause is not attracted ; and, therefore, it could not be said that this amount standing in the name of the grandsons could be added to the wealth of the assessee.

10. Consequently, our answer to both the questions referred to us is in the affirmative. In the circumstances of the case, parties are directed to bear their own costs.