(2005) 01 AHC CK 0184

In the Allahabad High Court

Commissioner of Wealth Tax APPELLANT

Vs

Rakesh Mohan RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:
Trusts Act, 1882 — Section 6

Citation : (2007) 289 ITR 308 : (2006) 155 TAXMAN 419

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following two questions of law u/s 27(1) of the Wealth-tax Act, 1957, hereinafter referred to as "the Act" for opinion to this Court:

1. Whether in law and on facts of the case the Tribunal was justified in confirming the Commissioner of Wealth-tax (Appeals)''s decision deleting the addition of Rs. 6,87,077 made on account of value of shares transferred to the trust?

2. Whether in law and on facts of the case, the Tribunal was justified in holding that there was a valid trust in existence even if the basic conditions of Section 6 of the Indian Trusts Act were not satisfied/fulfilled?

2. The reference relates to the assessment year 1980-81.

3. Briefly stated the facts giving rise to the present reference are as follows:

4. The respondent/assessee claimed to have created a trust known as First Son of Pankaj Mohan on May 22, 1993. He had transferred certain shares valued at Rs. 6,87,077 to the trust. The Wealth-tax Officer included the value of the aforesaid shares transferred to the trust, while making the assessment under the Act, on the ground that the Department has found the trust to be invalid as the sole beneficiary was not in existence. The respondent took the matter in appeal before the Commissioner of Wealth-tax (Appeals), who upheld the claim of the respondent/assessee and deleted addition, which order has been upheld by the

Tribunal.

5. We have heard Sri Shambhoo Chopra, learned standing counsel for the Revenue, and find that the Delhi High Court in the case of CIT v. Brig. Kapil Mohan [2001] 252 ITR 830 has held that such a trust is a valid trust and a trust can be created for an unborn child also. This Court in W.T.R. No. 132 of 1982, Wife of Rakesh Mohan Private Trust and Others Vs. Commissioner of Wealth Tax, decided on September 27, 2004, has also upheld the validity of such type of trust. In this view of the matter, the Tribunal was justified in deleting the addition made in respect of the value of the shares transferred to the trust.

6. We, accordingly, answer both the questions referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there will be no order as to costs.

