(2004) 06 KL CK 0044

In the High Court Of Kerala

Case No : Income Tax R. No. 172 of 1997

Govindan	APPELLANT
Vs	
Commissioner of Gift Tax	RESPONDENT

Date of Decision : 11-06-2004

Acts Referred:
Gift Tax Act, 1958 — Section 4

Citation : (2004) 191 CTR 516 : (2004) 3 ILR (Ker) 130 : (2005) 272 ITR 220 : (2004) 2 KLT 834

Hon'ble Judges : S. Sankarasubban, J;A.K. Basheer, J

Bench : Division Bench

Advocate : P. Balachandran, for the Appellant; P.K. Raveendranatha Menon and George K. George, for the Respondent

Judgement

S. Sankarasubban, J.—The above case has been referred to us by the Income tax Appellate Tribunal, Cochin Bench on a reference by the assessee. The assessee is a partner in the Firm of M/s. Hindustan Engg. Co., Calicut. A reconstruction deed of the partnership was executed on 25th May, 1982. That deed shows that there are three partners, K. Govindan, K.P. Prabhakaran & K.G. Krishnakumar. It is further seen that K.G. Manojkumar was a minor and he was admitted to the benefit of the partnership. Capital of the Firm was Rs. 25,000/- provided by the three partners and the minor in proportion of Rs. 10,000/-, Rs. 5000/- and Rs. 5000/- respectively. Clause 7 of the deed says that the first partner will be entitled to a profit of 50% and a liability to the extent of 62.5%, second partner is entitled to a profit of 25% and a liability of 25%, third partner is entitled to a profit of 32.5% and a liability of 12.5% and the minor K.G. Manojkumar is entitled to a profit of 12.5%.

2. By agreement dated 1st April, 1984, Clause (7) of the Partnership Deed was altered. By the alteration, the assessee first partner''s profit was reduced from 50% to 30%. The profit of the second partner K.P. Prabhakaran was reduced from 25% to 10%. The profit of the third partner and the minor was increased to

30%. The Assessing Officer took the view that on the basis of the reconstitution of the Firm, the assessee surrendered 20% of the share in the firm in favour of the two partners, which included the minor. It was also found that there was a gift by the assessee and that was held to be a gift assessable under the Gift Tax Act. The matter was taken in appeal by the assessee. The Appellate Authority rejected the contentions. An appeal was filed before the Tribunal. The Tribunal also held that there was a transfer and it was a gift under the Gift Tax Act. It is thereafter that the following questions of law have been referred to us. The questions of law referred to us are as follows:

"(1) Whether on facts and in the circumstances of the case the Appellate Tribunal was justified in holding that the applicant was liable to gift-tax on surrender of his share on a reconstitution of the firm?

(2) Whether there were materials for the Tribunal to come to the conclusion that the alleged gift made by the applicant was without consideration in money or money''s worth within the meaning of the Gift Tax Act?

3. Learned counsel for the assessee contended that there was no gift. There was only a reduction in the share of profit of the assessee and that does not amount to a gift. On the other hand, learned counsel for the Revenue submitted that there was no consideration for the transfer and hence, it is a gift.

4. In Commissioner of Gift-tax Vs. D.C. Shah and Others, , the Supreme Court held as follows: "That the share of partner in a firm is decreased and that of another partner correspondingly increased does not lead to the inference that the former had gifted the difference to the latter. The profit-sharing ratio in a firm can vary for a number of reasons, among them the ability of the partners to devote time to the business of the firm. The gift of a part of a partner''s share to another has to be established by relevant evidence. The onus of doing this on the Revenue". Another case cited was Sree Narayana Chandrika Trust Vs. Commissioner of Gift Tax, Kerala, . In that case, the Supreme Court held thus:

"The facts found in the present case are that the incoming partner (M.U. Indira) had contributed Rs. 25,000/- towards her share of the capital. The value of her services or usefulness to the firm as partner has not been disputed by the Revenue authorities. As pointed out by this Court in Commissioner of Gift-tax Vs. D.C. Shah and Others, , the mere fact that upon reconstitution of the firm the share of one partner decreased and that of another increased cannot lead to the inference that the former had gifted the difference to the incoming partner. There is no other material placed on record by the Revenue to show that the facts and circumstances of the case, particularly taking into consideration the obligations of all the partners in the partnership deed dated October 1982, there was inadequate consideration for the reallocation of 12 percent of the share in favour of the incoming partner. In our view, the contribution of Rs. 25,000/- towards the capital together with the obligations undertaken sincerely and faithfully carrying on the business for the common advantage of the firm was adequate consideration for reallocating the share of the profits and giving 12 per cent of the share in favour of the incoming partner....".

5. Learned counsel for the Revenue submitted that in so far as the decision in Sree Narayana Chandrika Trust Vs. Commissioner of Gift Tax, Kerala, , is concerned, the Supreme Court has taken into consideration the fact that an amount of Rs. 25,000/- was contributed by the incoming partner. He tried to distinguish the present case on the ground that there has been no fresh contribution. On the other hand, learned counsel for the assessee submitted that it is not necessary for the new partner to contribute. According to him, the present case falls within the decision of the Supreme Court in Commissioner of Gift-tax Vs. D.C. Shah and Others, .

6. After giving our anxious consideration, we find that so far as the present case is concerned, it cannot be said that there is a gift. It is not a reconstruction of a Firm.

By the amendment, there has been a reallocation of the profits. There has been a decree in the percentage of profit of the assessee while there has been an increase in the profits of two partners. Excepting this, there is nothing to show that there has been a gift as stated in the Shah''s case. The Revenue has not proved any fact to show that there is a gift.

7. In the above view of the matter, we are of the view that there is no gift. Hence, we answer question No. 1 in the negative and against the Department. Question No. 2 is also answered in the negative and against the Department.

I.T.Rs. are disposed of as above.

