(1996) 07 KL CK 0028

In the High Court Of Kerala

Case No : O.P. No. 4681 of 1992 and Income Tax Reference No. 160 of 1991

H. Sai Lakshminarayanan APPELLANT

Vs

Commissioner of Gift Tax RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:
Gift Tax Act, 1958 — Section 26(3)

Citation : (1998) 230 ITR 574

Hon'ble Judges : V.V. Kamat, J;P.A. Mohammed, J

Bench : Division Bench

Advocate : C. Kochunni Nair, M.A. Firoz and Dale P. Kurion, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Kamat, J.—The Income Tax Appellate Tribunal, Cochin Bench, with regard to the proceedings under the Gift-tax Act has referred only one question and it is as follows :

"Whether, on the facts and in the circumstances of the case, the gift executed by the assessee is in violation of Section 23 of the Tamil Nadu Land Reforms Act, 1961, and void ab initio ?"

2. This was in the background of the contention of the assessee for a reference of all eight questions, out of which the question reproduced above is somewhat similar to question No. 1 thereof. For the purpose of this judgment, its completion, the eight questions are as follows :

"1. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that there is a valid gift by the assessee to his grandfather ?

2. Whether, on the facts and circumstances of the case the Tribunal was right in law in holding that the assessee had a transferable interest as on the date of the gift, namely, April 14, 1970 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee''s transferable interest in the property will be extinguished only when the final statement is passed u/s 12 and gazetted u/s 18 of the Madras Land Reforms Act, 1961 ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fact that the father of the assessee had an option to include the instant property in the extent (?) to be held by him is a relevant consideration for ascertaining the validity of the gift ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not adverting to the fact that the reason for the non-exercise of option by the assessee''s father in respect of lands which he would include in his holding is the pendency of Civil Appeal No. 695 of 1975 before the Supreme Court and that the dismissal of the same and the option of the assessee''s father to exclude the instant property from his holding would make the gift invalid and inoperative ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the value of land taken by the authorities for the purpose of registration and stamp is concrete evidence and is preferable to the report of the approved valuer ?

7. Was the Appellate Tribunal justified in ignoring the valuation report of the approved valuer filed in support of the revised return as opinion-evidence ?

8. In view of the fact that the title to the gifted property is doubtful and the valuation report of the approved valuer, was the Appellate Tribunal justified in rejecting the return filed by the assessee ?"

3. This judgment, therefore, would dispose of both these proceedings, as virtually answer to the question referred would answer the questions wanted by the assessee.

4. The controversy relates to the gifted property of land admeasuring 12.81 acres, an agricultural land in Theroor Village, Kanyakumari District, Tamil Nadu State. A voluntary return was filed on October 4, 1971, by the assessee who is the grandson in the pedigree with regard to the gift dated April 14, 1970, by the assessee to his grandfather. The voluntary return disclosed consideration of Rs. 1,28,100 as a valuation which was arrived at by the Registration Department of the Tamil Nadu Government for the purpose of registration of the gift deed in question.

5. On December 31, 1973, thereafter another return styled as a revised return was filed by the assessee-grandson showing the valuation at Rs. 84,500 for the purpose of tax under the Gift-tax Act. This time it is contended that the basis of valuation was a valuation report by Shri P. Padmanabha Iyer, an approved valuer, along with a contention that the earlier valuation at Rs. 1,28,100 was not based on any reliable data and in preference the valuation of the approved valuer

deserves acceptance.

6. It appears that under the provisions of the Tamil Nadu Land Reforms Act, 1961, the father of the assessee was facing proceedings before the authorised officer under the said Act, to contend that by virtue of the gift, the above property could not be considered for inclusion in the ceiling limit under the Act. The travel of the proceedings under the Tamil Nadu Land Reforms Act, 1961, clears this position that the land in question is the land held to be the property of the father of the assessee includible within the ceiling limit of the father for the purposes of the Tamil Nadu Land Reforms Act, 1961. The said decision undisputedly is confirmed by the Madras High Court and the concluded position is that the property is property within the ceiling limits of the father of the assessee under the provisions of the said Land Reforms Act, 1961. It is obvious that under the provisions of Section 23 of the said Act, the authorised officer acting under the provisions of the said Act cannot take into consideration any transfer, gift, exchange, surrender, settlement or any other of its kind as well as Sub-division by a partition, for the purposes of determination of the ceiling area of the land-holder therein. On the basis of pendency of proceedings, a contention was raised by the assessee-grandson that there is no transferable interest in the property and for the said situation the taxation proceedings ought to have been postponed till the situation of finality with regard to the character of the land in regard to the provisions of the Tamil Nadu Land Reforms Act, 1961.

7. In this situation, the assessing authority by order dated March 29, 1979--annexure "A", has firstly observed that the valuation as per the original return is acceptable for adoption for the purpose of assessment. The officer considered that the Tamil Nadu Government fixed certain lower limits for properties for the purpose of registration in each area and while fixing the prices, only an average value is understood to have been adopted and, therefore, it cannot be said that the valuation is without any basis. The authority has also observed with regard to the valuation of the approved valuer that the same is based on the income capitalisation method. A finding of fact is recorded, as stated above, accepting the value as stated in the original voluntary return dated October 4, 1971.

8. With regard to the second aspect, the authority observed that as the assessment was getting time-barred within another three days, pendency of the proceedings under the Tamil Nadu Land Reforms Act with regard to the question of determination of ownership in the context of operation of the Land Reforms Act would not be a justifiable reason for postponement of the assessment proceedings.

9. The first appellate authority--the Appellate Assistant Commissioner of Income Tax, Trivandrum, has also considered the question of valuation. The appellate authority has seen that the father of the assessee executed a gift deed dated June 21, 1954, in favour of the assessee when he was a minor. The proceedings were initiated by the Government of Tamil Nadu against the assessee''s father. Thereafter under the Madras Land Reforms Act of 1961 on its coming into force

on April 6, 1960, when the assessee was a minor and in regard to the property in question there was a contention before the land reforms authorities that the properties gifted to the minor son could not be included in his ceiling limit. The contention was not accepted by the land reforms authorities. The appellate authority has further recorded that even before the appellate land Tribunal and also before the High Court of Judicature at Madras, this plea was not accepted at any of these levels. A conclusion is recorded that in view of the provisions contained in the Tamil Nadu Land Reforms Act, the property gifted to the minor son of the land-holder could not be excluded from the ceiling limit of the father of the assessee. The appellate authority found the contention based on the pendency of the proceedings worth rejection. It has been considered by the appellate authority that there was no contention before the land reforms authorities that the assessee did not have any title over the gifted property, but in fact the contention was that by reason of the gift deed the assessee must be held to have had the full right, title and interest in the property in question and in fact by reason of the said title of the assessee the contention before the land reform authorities was that the property would have to be excluded from the ceiling limit of the land-holder--the father of the assessee. The appellate authority has observed that the land reforms authorities were concerned with the computation of the ceiling limit of the assessee''s father, and thus, proceeds the reasoning, that the assessee would not have any benefit for the purpose of postponement of the taxation proceedings. The appellate authority also considered the question of valuation and confirmed the same by endorsing the finding that the approved valuer who sought to fix the value at Rs. 84,500 adopted an arbitrary figure by adopting the capitalisation method, with no supporting evidence to justify the presumption of the valuer.

10. Further, travel of the proceedings before the Income Tax Appellate Tribunal has endorsed these factual positions, to the effect that the ceiling area in the proceedings was to be determined as the holding of the father of the assessee. In the said proceedings the land in question before the present proceedings has not been allowed to be excluded and, therefore, the land in question having been determined as land within the ceiling area of the father of the assessee, the situation does not attract the provisions of Section 23 of the said Land Reforms Act in view of the clear enactment in regard thereto that the transfers made before the final settlement under the said Act would have to be ignored for fixing the ceiling area. The Tribunal has also considered the observations of the ceiling authority that the father of the assessee may choose to include the property within the ceiling in which event it would not be declared as a surplus land.

11. Again with regard to the question of valuation, the Tribunal has also endorsed the findings that it is without any merit. It is observed that for the purposes of stamp and registration if the value of the property was taken at Rs. 1,28,100, the report of the approved valuer being only opinion-evidence was rightly rejected as against the concrete evidence of the Department fixing the value for the purpose of registration and stamp. In our judgment, the question

regarding valuation is a question of pure and simple factual position, the question with regard to governance of the provisions of the Tamil Nadu Land Reforms Act, 1961, and assumed pendency of proceedings in regard thereto would have no connection whatsoever with regard to the transferable interest of the present assessee, once the land gets included within the ceiling limit of the land holder--the father of the present assessee--in the proceedings before the authorised officer under the Tamil Nadu Land Reforms Act, 1961.

12. For the above reasons, we answer the question referred in ITR No. 160 of 1991 in the negative--in favour of the Revenue and against the assessee. As regards other questions sought to be raised in O. P. No. 4681 of 1992, for the above reasons no referable question arises and the original petition stands dismissed.

13. A copy of this judgment under the seal of this court and the signature of the Registrar shall be sent to the Income Tax Appellate Tribunal, Cochin Bench, for passing consequential orders.

