

(1982) 11 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 30446 and 30447 of 1981

Hajee Mohammed Ibrahim

APPELLANT

Vs

Gift Tax Officer (Spl.), Mysore Circle, Mysore

RESPONDENT

Date of Decision : 24-11-1982

Acts Referred:

Gift Tax Act, 1958 — Section 16, 16 (1), 16 (1) (a)
Income Tax Act, 1961 — Section 147

Citation : (1983) 36 CTR 117 : (1983) 143 ITR 333 : (1983) 15 TAXMAN 163

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : P.A. Bhat, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Chandrakantaraj Urs, J.—These two writ petitions are directed against the two notices issued by the respondent, GTO (Special), Mysore Circle, Mysore, under s. 16 of the G.T. Act, 1958 (hereinafter referred to as "the Act") By the said notices relating to the assessment years 1974-75 and "1975-76, the respondent, GTO had proposed to bring to tax under the Act certain gifts made by the assessee which had escaped assessment in the relevant assessment years. He has also called upon the petitioner to file the returns for those assessment years for the purpose of bringing to tax the escaped gifts. Aggrieved by the same, the petitioner has approached this court under art. 226 of the Constitution, inter alia, contending that the respondent, GTO, had no jurisdiction to reopen the assessment under s. 16(1) of the Act as none of the ingredients required for such reopening of the assessment is to be found in the case of the petitioner for the aforementioned assessment years. For expeditions disposal of these petitions, this court issued notice to the respondent, GTO, calling upon him to show cause why Rule should not be issued. In response to the same, the respondent has entered appearance and it is contended for the respondent that the petitioner, for the assessment years in question, had not disclosed in his return gifts made to his wife, as evidenced by the notes of the respondent, before issuing the impugned notices, and therefore, the notices. The short

question which falls for determination in these petitions is whether the respondent on the admitted facts can be said to acquire jurisdiction in the case of the petitioner for the relevant assessment years to reopen the assessment in terms of s. 16(1) of the Act. I may straightway say that s. 16(1) of the Act is in pari materia with s. 147 of the I.T. Act. Section 16(1) of the Act reads as follows :

"16. (1) If the Gifts-tax Officer -

(a) has reason to believe that by reason of the omission or failure on the part of the assessee to make a return u/s 13 of the gifts, made by him or any other person in respect of which he is assessable under this Act for any assessment year, or to disclose fully and truly all material facts necessary for assessment of the gifts made by him or such other person for that year any taxable gifts has escaped assessment for that year, whether by reason of under assessment or assessment at too low a rate or otherwise : or."

2. There are a number of decisions under s. 147 of the I.T. Act as well as under s. 16(1) of the Act explaining the scope of the sections to which I will make reference shortly hereafter. The plain language of s. 16(1) of the Act indicates that one of the first requisites for assuming jurisdiction under that section is that the GTO should have reason to believe that the assessee had omitted or failed to make the return under s. 13 of the Act in respect of gifts made by him or any other person in respect of which the assessee is liable under the Act in any assessment year, or when the assessee has failed to disclose fully and truly all material facts necessary for the assessment of the gifts made by him or such other person for the relevant year (or when) any taxable gifts of his escaped assessment at too low a rate or otherwise. The other instance which confers jurisdiction on the GTO under s. 16(1) of the Act to take action is that as a consequence of any information in his possession, he has reason to believe that even though there was no omission or failure on the part of the assessee as indicated in clause (a) of sub-s. (1) of s. 16 of the Act that any taxable gift had escaped assessment for any year whether on account of under - assessment or assessment at too low a rate or otherwise.

3. As already pointed out, in the instant case of the petitioner, the GTO formed the opinion that some gift had escaped assessment in the two relevant years on account of the assessee claiming in respect of his wealth-tax deductible items in the revised returns filed on December 13, 1979, in in respect of the two assessment years which disclosed that gifts had been made in favour of some persons in those relevant assessment years which had escaped gift-tax. This is seen form the records of the respondent GTO.

4. Shri P. A. Bhat, learned counsel appearing for the petitioner, has argued that on the facts borne out by the records of the case, the GTO could not assume jurisdiction to issue the impugned notice under clause (b) of sub-s(1) of s. 16 of the Act for under assessment or assessment at too low a rate or for any other reason, as, in the relevant assessment years, the assessee had filed separate

return under the act in accordance with s. 13 of the Act and that orders had come to be passed on those returns as evidenced by annexes. D and D-1 for the relevant assessment years, 1974-75 and 1975-76, respectively. He has further contended that as is evidenced by the assessment orders of the GTO aforementioned, the gift disclosed and in respect of which exemption had been claimed under s. 5 of the Act, on one or the other ground, was rejected by the GTO while only one item was accepted as a gift made in the year 1975-76 and that gift was in fact subjected to tax. Therefore, he has argued that even the transfer of properties made to his wife in payment of dower was in fact disclosed, at the time of assessment, to the GTO and he did not accept that transfer to be a genuine transfer made in consideration of payment of dower to his wife and in that circumstance with reference to whatever may have happened in the wealth-tax returns, the respondent, GTO could not disclose the gifts made in those relevant years.

5. Perusal of the assessment orders for the assessment years 1974-75 and 1975-76 clearly disclose that there is considerable discussion in the matter of certain transfer of properties in favour of his wife. It was contended by the petitioner that it was not gift but payment of consideration as dower. In other words, the GTO was aware that in the relevant assessment years properties had been transferred to the wife, the GTO contending them to be gift and the assessee contending them to be transfer in payment of consideration of dower. The orders also disclose that gifts in respect of which exemption was claimed under s. 5 of the Act was disallowed by him except for the assessment year 1975-76 in respect of one item.

6. Therefore, there is no scope for clause (a) of sub-s (1) of s. 16 of the Act to be attracted to the facts disclosed in the assessment orders themselves.

7. The question is whether clause (b) is attracted. In clause (b) of sub-s(1) of s. 16 of the Act the GTO must have information in his possession on the basis of which he must have reason to believe that any taxable gifts had escaped assessment at too low a rate or other wise. What is clear from the perusal of annex. D the order of assessment under the Act for the assessment year 1974-75, list the fact that the exemption claimed was disallowed by the GTO holding them not to be gifts at all. In the result, no demand notice was issued. In the case of assessment year 1975-76 while all the gifts were not held to be gifts, one gifts alone was recognised in the value of Rs. 26,000 and that was subjected to tax. In that circumstance it is evident from annexes D and D-1 that the respondent formed the opinion that the gifts disclosed were not gifts at all and therefore, did not bring them to 1975-76.

8. Now, forming such an opinion does not amount to either under-assessment or assessment at too low a rate or otherwise. The GTO evidently formed an opinion of his own that the acts of the petitioner in the relevant assessment years in gifting certain properties for the education of his children in their favour did not constitute gifts at all and therefore naturally on such a finding being

recorded by him, he could not subject those items to tax. That becomes clearer if the last sentence in the assessment orders of both the years is perused. They are to the following effect that there were no valid gifts made in favour of the minor children and hence the assets would continue to be in the hands of the assessee for wealth-tax purposes. This discloses that the properties which were claimed to have been gifted to the children were treated as the properties of the assessee liable to wealth-tax in his wealth-tax returns under the Act.

9. I, therefore, do not see how the Revenue can now contend that either the petitioner had suppressed the materials, attracting clause (a) of sub-s. (1) of s. 16 of the Act, or there was any scope for information being available to the respondent, GTO, after the assessments were concluded for the relevant assessment years, by virtue of which information he had reason to believe that there was an under-assessment or the assessee had been assessed at too low a rate or for any other reason.

10. As held by the Supreme Court while construing s. 61 of the E. D. Act, which confers power of rectification on the EDO, in the case of *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, change of opinion in the light of subsequent event will not confer jurisdiction upon the officer to reopen the assessment as a mistake apparent on the face of the records either of law or of fact. In the light of the facts which I have discussed above, all the gifts referable to in the relevant assessment years have been disclosed in the returns filed by the assessee and they have not been treated as gifts by the GTO except in respect of one item in the assessment year 1975-76. Having formed that opinion and passed the order which the assessee had accepted, it cannot now be said that it is a case for reopening under s. 16(1) of the Act. It is unnecessary on the facts of these cases to rely upon the decision of this court in the case of *First Income Tax Officer, Davanagere Circle Vs. A.Y. Panduranga Rao and Others*, in which this court came to the conclusion that, on the facts of that case, the case did not fall within the scope of clause (b) of sub-s (1) of s. 147 of the I.T. Act which is in pari materia with clause (b) of sub-s (1) of s. 16 of the Act. Similarly, reliance was placed upon the decision of the Supreme Court in the case of *Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad*. There also the Supreme Court said that the mere discovery of the fact that a particular document had not been produced in the subsequent assessment year did not confer jurisdiction on the Revenue to reopen the assessment under s. 147 of the I.T. Act when the fact of trusts having been created in favour of the ladies described as wives was already on the records, in the earlier years.

11. For the above reasons, I must necessarily conclude that the Revenue had no jurisdiction in the instant case to reopen the assessment of the petitioner under the Act for the assessment years 1974-75 and 1975-76. The impugned notices at annexes. E and E-1 are clearly without jurisdiction and, therefore, liable to be quashed. They are accordingly quashed. Rule will accordingly issue and be made

absolute.

12. In the circumstances, the parties are directed to bear their own costs.