

(1978) 07 AHC CK 0051

In the Allahabad High Court

Case No : Income-tax Reference No. 222 of 1975

Hasan Mumtaz

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-07-1978

Acts Referred:

Income Tax Act, 1961 — Section 45, 48, 49, 49(1)

Citation : (1979) 8 CTR 204 : (1979) 116 ITR 573

Hon'ble Judges : Satish Chandra, C.J;K.C. Agrawal, J

Bench : Division Bench

Advocate : S.N. Agarwal, for the Appellant; Ashok Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

K.C. Agrawal, J.—At the instance of the assessee the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court :

"Whether, on the facts and circumstances of the case, the transaction dated 26th July, 1956, was in law a sale or a gift ?"

2. The relevant facts are these :

One Shiraj Hasan was an advocate, who used to practice, at Lucknow. He died in 1950. During his lifetime he accumulated a huge wealth. He deposited Rs. 26,000 free of interest with one Zamir Ahmad out of his savings from his professional income for purchasing a house at Bareilly. The instructions left by the deceased were that the house would be purchased in the name of Hasan Mumtaz, the assessee, who was minor at the time of the deposit of the money by the deceased, Shiraj Hasan, with Zamir Ahmad. After the death of Shiraj Hasan, Zamir Ahmad sold his own bungalow No. 204, Civil Lines, Bareilly, for a consideration of Rs. 26,000 which was lying in deposit with him in favour of the assessee. On March 1, 1967, the assessee sold the aforesaid bungalow for a sum of Rs. 1,00,000. In the assessment year 1967-68, the ITO did not accept the transaction as sale. , According to him the sale price was much more than what

was mentioned in the sale deed and the transaction as disclosed was collusive. After obtaining the valuer's report he held that the fair market value of the property was Rs. 4,50,000. In appeal, the AAC reduced the valuation to Rs. 2,59,000. The assessee went in appeal before the Tribunal, which was dismissed. However, on an application u/s 256(2) of the Act, the Tribunal was called upon to refer the question of law indicated above for the opinion of this court.

3. The argument raised before the Tribunal as well as before us was that the deed dated July 26, 1956, executed by Zamir Ahmad was really a gift and that the Income Tax authorities committed an error in treating it as a sale. The case of the assessee was that as it was a gift deed, the valuation of the property had to be computed in accordance with Section 49(1)(ii) of the Act. The case of the revenue, however, was that the document dated July 26, 1956, was a sale deed and the capital gain earned by the assessee had to be computed in accordance with Section 48(ii) of the Act.

4. The two rival stands taken by the assessee and the department raise a controversy whether the transaction in question was a sale or a gift. The word "sale" has been defined in Section 54 of the Transfer of Property Act as follows:

" "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

5. There is no definition of the word "price" in this Act. It is, however, settled that the word "price" is used in the same sense as in Section 4 of the Sale of Goods Act (See Commissioner of Income Tax, Hyderabad Vs. Motors and General Stores (P.) Ltd., . Section 2(10) of the Sale of Goods Act defines "price" as meaning the money consideration for a sale of goods. The presence of money" consideration is, therefore, an essential element in a transaction of sale.

6. Construing the document dated July 26, 1956, we find that the same fulfils all the requirements of being a sale. By this document ownership of the property was transferred by Zamir Ahmad in favour of the assessee for a consideration of Rsr 26,000, At places more than one, the deed clearly recites that the property had been sold in lieu of the consideration of Rs. 26,000 which had been deposited with the vendor by the said Shiraj Hasan and was lying with him as "amanat". There is nothing in this document which could be construed as meaning that a gift was intended to be executed. It may be correct that a document purporting to be a sale may be shown to be in reality a gift but the test is whether there was any consideration for the transaction. In the instant case the Tribunal found that the property was sold for consideration. If there is consideration, the transaction cannot be considered to be a gift inasmuch as it is necessary that a gift must be without monetary consideration. It is a settled rule of construction that the plain and ordinary meaning is to be adopted in construing a document. After applying the aforesaid rule of construction to the facts of the present case we feel no hesitation in agreeing with the view of the Tribunal that the deed could by no stretch of imagination be considered as a gift

and was rightly interpreted as a sale.

7. The learned counsel for the assessee, however, urged that as it is necessary that every sale must be preceded by an agreement to sell and since there was no agreement in this case, the court must find that the document was not a sale deed. It is true that a sale really consists of two separate and distinct elements, viz., (i) a contract of sale which is completed when the offer is made and accepted, and (ii) delivery of property that may precede the payment of the price as may have been agreed to between the parties. It is thus clear that every sale necessarily implies a previous agreement to sell but in our opinion the previous agreement may take place only a moment or two before. The arrival of previous agreement to sell can be proved from the circumstantial evidence. The recitals of a sale deed can also be relied upon. In the instant case, the recitals of the document demonstrate and prove that an agreement had been arrived at between the vendors and the vendees before the sale deed was executed. It is, therefore, not possible to hold that the finding of the Tribunal that the document was a sale is erroneous and illegal.

8. The learned counsel for the assessee attempted to challenge the finding of the Tribunal also on the ground that there was no consideration for the document. He referred to the definition of the word "consideration" given in Section 2(d) of the Contract Act and submitted that Rs. 26,000 which was a consideration in the sale deed not having been paid at the "desire of the promisor" does not fall within the meaning of Section 2(d) of the Contract Act. Reliance was also placed by the learned counsel on a decision of the Privy Council in AIR 1948 150 (Privy Council) . In our view, the submission made by the learned counsel has no merit. The Tribunal found proved from the recitals of the sale deed that a sum of Rs. 26,000 had been deposited with the vendor of the sale deed by the father of the assessee. The father of the assessee had also instructed the vendor to purchase a property in the name of the assessee during his lifetime. The money deposited with the vendor was thus the consideration which had to be paid for the purchase of the property, when made. It was in pursuance of these instructions of the deceased, Shiraj Hasan, that the property was purchased. In these circumstances, it cannot be said that the consideration for the, sale deed had not been paid in pursuance of the desire of the promisor. The view of the Tribunal, therefore, holding the documents to be a sale deed cannot be said to be illegal.

9. For these reasons we answer the question by holding that the transaction in question was a sale and not a gift. The Commissioner of Income Tax would be entitled to get costs which we assess at Rs. 200.