
(1990) 06 BOM CK 0070

In the Bombay High Court

Case No : Gift-tax Reference No. 4 of 1976

Jagmohan Gokuldas Shah

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 04-06-1990

Acts Referred:

Gift Tax Act, 1958 — Section 3

Citation : (1990) 185 ITR 574

Hon'ble Judges : T.D. Sugla, J; Sujata V. Manohar, J

Bench : Division Bench

Advocate : S.J. Mehta, for the Appellant; G.S. Jetley, for the Respondent

Judgement

T.D. Sugla J.

1. The Income Tax Appellate Tribunal has referred to this court the following two questions of law for opinion u/s 26(1) of the Gift-tax Act, 1958 :

ABAD"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the settlement in trust of the 150 equity shares of Lallubhai Amichand Pvt. Ltd. effected by the assessee amounted to a gift in part and is hence to be brought to tax to that extent under the provisions of the Gift-tax Act, 1958 ?

(2) If the answer to question No. 1 is in the affirmative, whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the gift to be taxed is the difference between the market value of the transferred shares as determined by the Gift-tax Officer and the capitalised value of the annual obligation of the assessee vis-a-vis his son, Shri Khetan Kumar, for a period of 14 years from the date of the trust at the rate of Rs. 10,000 per year ?"

2. The first question is at the instance of the assessee while the second one is at the instance of the Department. It was fairly admitted by Shri Mehta, learned counsel for the assessee, that the question of law referred to this court at the

assessee's instance is covered by the ratio of this court's decisions in the case of *Shardaben Jayantilal Mulji and Others. Vs. Commissioner of Wealth-tax, and K.M. Sheth Vs. Commissioner of Gift-tax*, and that, in view thereof, it has to be held that the settlement in trust of the 150 equity shares of *Lallubhai Amichand Pvt. Ltd.* by the assessee amounted to a gift taxable under the Gift-tax Act, 1958. He, however, faintly argued that the Tribunal had given a finding that the settlement herein amounted to a gift in part only as the other part represented the amount in lieu of the obligation of the assessee to maintain his son. It is pertinent to mention that though the Tribunal had found that the settlement in question amounted to a gift in part, it had done so on the basis of the legal provision of the Hindu Adoptions and Maintenance Act and the Gift-tax Act as it stood then, therefore, this is a decision on a question of law and the Tribunal has rightly referred the question to this court for opinion. Following the abovesaid two decisions of this court, we hold that the settlement in trust of the 150 equity shares of *Lallubhai Amichand Pvt. Ltd.* by the assessee amounted to a gift taxable under the Gift-tax Act, 1958.

3. Accordingly, we answer the first question in the affirmative and in favour of the Revenue. In view of our answer to the first question, the second question referred to us at the instance of the Department does not survive and, accordingly need not be answered. No order as to costs.