(1997) 07 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Gift-tax Case No. 1 of 1992

Karan Kumar APPELLANT

Vs

Commissioner of Gift Tax RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:

Citation : (1998) 232 ITR 605 : (1997) 95 TAXMAN 572

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : A.K. Mittal, for the Appellant; Sanjay Bansal, for the Respondent

Judgement

Ashok Bhan, J.—An assessee, a minor, has filed this petition u/s 26(3) of the Gift-tax Act, 1958, for issuance of a mandamus directing the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, to refer the following six questions of law to this court, along with the statement of the case, for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that valuation of shares at Rs. 3,000 per share was inadequate ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction of tax liability at Rs. 10,70,308, i.e, equivalent to the advance fax paid by the company and not Rs. 16,19,000 being provision for tax liability as appearing in the balance-sheet of the company ?

3. Whether, on the facts and in the circumstances the case, the Appellate Tribunal was right in law in treating gift by minor as valid ?

4. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the valuation of gifted shares on the basis of the balance-sheet as on March 31, 1984, instead of the balance-sheet as on March 31, 1983 ?

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in not allowing any deduction or discount from the value of gifted shares as determined by the Gift-tax Officer on account of:

(a) restrictions on transfer of shares ;

(b) non-marketability of shares.

6. Whether, on the facts and in the circumstances of the case, the gifted shares should have been valued as per yield basis instead of Rule 1D ?"

2. Kakkar Complex Steels, a private limited company, is controlled by three brothers, namely, Sarvshri Dipan Kumar, Vipan Kumar and Ravinder Kumar. Karan Kumar (minor) son of Shri Vipan Kumar, the assessee, held 125 equity shares of the face value of Rs. 1,000 per share in the company. The assessee transferred/sold his entire holding of 125 shares to his real uncle, Dipan Kumar, on June 1, 1984, at the rate of Rs. 3,000 per share. Dipan Kumar was the main shareholder and was controlling the affairs of the company. Against the assessee''s working of the value of the gift on the basis of the sale price mentioned above, the Gift-tax Officer computed the value of the gift by applying the break-up valuation method on the total assets of the company which, according to him, gave the value per share at the rate of Rs. 5,898. He, accordingly, held that the total value of the shares transferred should have been Rs. 7,37,250 as against the consideration of Rs. 3,75,000 declared and, therefore, the difference between the two amounting to Rs. 3,62,250 was taken as deemed gift and assessed. An appeal carried by the assessee was dismissed by the Gift-tax Commissioner. Further appeal to the Tribunal met with the same fate. The questions of law claimed by the assessee were declined on the ground that no referable question of law arose from the order of the Tribunal.

3. After hearing counsel for the parties, we are of the opinion that questions Nos. 1, 2, 4, 5 and 6 reproduced above, do arise from the order of the Tribunal, which require consideration by this court. However, question No. 3 does not arise from the order of the Tribunal as the same was not taken as a ground before the Tribunal. There is no discussion on this point in the order of the Tribunal and, therefore, it cannot be said that this question arises from the order of the Tribunal. The same is, therefore, declined.

4. We direct the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, to refer questions Nos. 1, 2 and 4 to 6, reproduced above, along with the statement of the case to this court for its opinion. No costs.