

(1987) 07 KL CK 0049

In the High Court Of Kerala

Case No : Income-tax Reference No. 96 of 1982

K.K. Achuthan

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 10-07-1987

Acts Referred:

Gift Tax Act, 1958 — Section 5(1)

Citation : (1988) 170 ITR 518

Hon'ble Judges : K.S. Paripoornan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Respondent

Judgement

K.S. Paripoornan, J.—The Income Tax Appellate Tribunal has referred the following three questions of law for the decision of this court at the instance of the assessee :

" 1. Whether the Income Tax Appellate Tribunal was right in holding that the reduction of the applicant's share of profit in the firm amounted to a gift in favour of the partners and liable to gift-tax under the Act ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in its conclusion that the applicant was not entitled to exemption u/s 5(1)(xiv) of the Gift-tax Act ?

3. Whether the Appellate Tribunal was right in its conclusion that the relinquishment of profit-sharing ratio inter se partners amounted to a gift attracting gift-tax ? "

2. The respondent herein is the Revenue. The short facts are the following: We are concerned with the assessment year 1974-75. The assessee (applicant) and his three sons were partners in a firm, M/s. Great Oriental Circus. The assessee had 40% share in it till March 31, 1973. On April 11, 1973, a new deed of partnership was entered into by the assessee and his three sons who were the

existing partners in the firm. In that partnership, the assessee's share was reduced to 25%. The assessee willingly surrendered 15% of his share to the three sons. This relinquishment was held to be a deemed gift by the assessing authority and on that basis, and on the basis of the profit of the firm for the earlier years, the profits relatable to 15% was fixed at Rs. 50,850. On appeal, the Appellate Assistant Commissioner accepted the plea of the assessee that he is entitled to exemption u/s 5(1)(xiv) of the Gift-tax Act. On further appeal by the Revenue, the Appellate Tribunal held that there was a gift exigible to gift-tax by the assessee relinquishing 15% of his share in the profits in the firm, M/s. Great Oriental Circus. It was further held that the assessee is not entitled to exemption u/s 5(1)(xiv) of the Act. Thereupon, the assessee moved the Appellate Tribunal for referring the three questions of law extracted hereinabove for the decision of this court and that is how this reference has come up before us.

3. We heard counsel for the Revenue, Mr, Menon. The assessee was not represented. We requested Mr. P.R. Raman, advocate, to assist us as *amicus curiae*. He did so and placed before us the relevant facts and the law.

4. As stated, by entering into a new deed of partnership, the assessee relinquished 15% of his right to share the profits in the firm. Even after the said surrender, the assessee continued to be a dominant partner with control over all major matters. The conduct of the business of the firm did not change in any way by the above adjustment of the profit and shares. The firm was carrying on the business of putting on circus shows. Even after surrender of 15% of his share of profits, the assessee continued to occupy a pivotal role in the conduct of the business. On these premises, the Appellate Tribunal held that this was a case where the assessee voluntarily relinquished 15% of his right to share of profits of the firm to his three sons and to that extent there was a gift. When a partnership firm is reconstituted resulting in the reduction of the share of profits of some partners and the consequential increase in the share of profits of others, it would result in a gift exigible to tax under the Gift-tax Act. It has been held so by the Madras High Court in *Commissioner of Gift-tax Vs. T.S. Shanmugham*, (by LR.), (See also *Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal*,). In view of the above decisions, we hold that there was a gift exigible to gift-tax by the assessee in relinquishing 15% of his share in the profits of the firm.

5. The only other question is whether the assessee is entitled to the relief contemplated by Section 5(1)(xiv) of the Act. The Appellate Tribunal held that it has difficulty in accepting the plea of the assessee that the gift had been made for the purpose of the business. This is a pure finding of fact. There is no material to hold contra. That apart, in order to attract Section 5(1)(xiv) of the Act, the gift should have been made in the course of carrying on the business. There should be complete identity between the person who makes the gift and the person who carries on the business. In this case, the assessee is an individual. He surrendered 15% of his share of profits to his three sons. The

business was carried on by the firm and not by the individual. It cannot be said that there is an integral connection between the new arrangement that was made and the business that was carried on. The gift is not of a property of the firm. These factors will disentitle the assessee (individual) from claiming relief u/s 5(1)(xiv) of the Act. This position is also clear from the decision of the Supreme Court in Commissioner of Gift-Tax, Kerala Vs. P. Gheevarghese, Travancore Timbers and Products, . It should be stated that, in this case, the assessee, who surrendered his 15% of the share of profits, as also the three persons, in whose favour the surrender was made, were all majors. There was no question of any minor being involved in the above transaction. So, the Appellate Tribunal was justified in distinguishing the decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, . It should also be stated that the said decision of the Gujarat High Court in Commissioner of Gift Tax, Gujarat I Vs. Chhotalal Mohanlal, was reversed by the Supreme Court in Commissioner of Gift Tax, Gujarat Vs. Chhotalal Mohanlal, .

6. We are of the opinion that the decision of the Appellate Tribunal is justified in law. So we answer question No. 1 in the affirmative, against the assessee and in favour of the Revenue. We answer question No. 2 in the affirmative, against the assessee and in favour of the Revenue. We answer question No. 3 in the affirmative, against the assessee and in favour of the Revenue.

7. Before parting, we should express our sincere appreciation of the services rendered by Mr. P.R. Raman, Advocate, who acted as amicus curiae, at our request.

8. 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.