(1988) 09 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 124 of 1988

Late Mrs. Banoo E. Cowasji (through legal representatives, Mrs. Kalayun Stedman and Others) — APPELLANT

Vs

Commissioner of Gift Tax — RESPONDENT

Date of Decision : 26-09-1988

Acts Referred:
Gift Tax Act, 1958 — Section 2, 26(3)

Citation : (1988) 73 CTR 199 : (1989) 177 ITR 234

Hon'ble Judges : G.G.Sohani, Acting C.J.;K.M. Agrawal, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. This is an application u/s 26(3) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act").

2. The material facts giving rise to this application briefly, are as follows :

The late E. Cowasji made a trust of his movable and immovable property by a deed of trust dated September 28, 1960. The beneficiaries under the said trust were Mrs. Banoo Cowasji, Shri Jall Cowasji and his two daughters. Mrs. Banoo Cowasji, by a deed of release dated November 12, 1973, released her right, title and interest in the trust property, in favour of the other three beneficiaries. While framing the assessment of Mrs. Banoo Cowasji to gift-tax under the Act for the assessment year 1974-75, the Gift-tax Officer treated the release by Mrs. Banoo Cowasji as a gift within the meaning of Clause (xii) read with Clause (xxiv) of Section 2 of the Act. The Gift-tax Officer accordingly valued one-fourth share of the assessee in the corpus of the trust and completed the assessment. On appeal, the Commissioner of Gift-tax (Appeals) held that it was not a gift within the meaning of Clause (xii) read with Clause (xxiv) of Section 2 of the Act. In this view of the matter, the Commissioner of Gift-tax (Appeals) did not decide the question of valuation of the gift. The Revenue preferred an appeal against the decision of the Commissioner before the Appellate Tribunal. The Tribunal upheld the finding of the Gift-tax Officer that there was a gift and remanded the case to the Commissioner for recording his finding on the question of valuation of the gifted property. Aggrieved by the order passed by the Tribunal, the assessee sought reference and at the instance of the assessee, the question as to whether, by the release deed executed by the assessee on November 12, 1973, the assessee had made a taxable gift, has been referred to this court. That reference is still pending. After the remand of the case, the Commissioner of Gift-tax (Appeals), by order dated January 12, 1987, held that the subject-matter of the gift was one-fourth share in the corpus of the trust property and that its value should be determined at Rs. 2,38,622. Aggrieved by that order, the assessee preferred an appeal before the Tribunal. That appeal was, however, dismissed Aggrieved by the order passed by the Tribunal, the assessees sought reference but as the application submitted in that behalf was rejected, the assessees have filed this application.

3. Having heard learned counsel for the parties, we have come to the conclusion that the following question of law does arise out of the order passed by the Tribunal:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the subject-matter of the gift was one-fourth share in the corpus of the trust property and not in the interest of the assessee as a beneficiary ?"

4. The application is, therefore, allowed. The Tribunal is accordingly directed to state the case and to refer the aforesaid question of law to this court for its opinion. In the circumstances of the case, parties shall bear their own costs of this application.

