(1991) 03 KL CK 0043

In the High Court Of Kerala

Case No : Income Tax R. No. 176 of 1980

M. K. STEPHEN (DECEASED) AND OTHERS APPELLANT

Vs

COMMISSIONER OF GIFT-TAX. RESPONDENT

Date of Decision : 02-03-1991

Acts Referred:

Citation : (1992) 97 CTR 120 : (1992) 195 ITR 192

Hon'ble Judges : K. P. Radhakrishna Menon, J

Bench : Division Bench

Judgement

K. P. RADHAKRISHNA MENON J. - The assessee is before us.

The questions referred for our opinion read as under :

"A. What is the proper interpretation of the gift deed dated March 21, 1970, executed by the assessee in favour of his four children ?

B. Was the Appellate Tribunal justified in law in holding that, for the purposes of section 5(1)(xii) of the Gift-tax Act, where the donor expresses a desire that the income be utilised for education, it is a circumstance of the case to which regard had to be paid to determine the quantum eligible for exemption, and that it is different from other cases there is no such wish expressed ?

C. Is the income estimated of the gifted properties at Rs. 6,000 per annum based on any material ?

D. Was the appellate Tribunal justified in law in holding that only a sum of Rs. 21,500 out of the corpus of the gift need be exempted in the instant case ?"

Facts relevant and requisite to decide these issues lie in a narrow compass. The assessee made a gift of 27.75 acres of land situate in Amarambalam Village in Eranadu Taluk of Malappuram District in favour of his favour children for the purpose of education. This transaction was the subject-matter of an assessment dated August 19, 1971. The assessee was not satisfied with assessment order and therefore, he filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals), as per his order dated August 18, 1973, set aside the assessment order and remitted the matter to the Gift-tax Officer to make a fresh assessment. The Gift-tax Officer, thereafter, made an assessment and, while determining the value of the property gifted, treated the income the donees were getting as part of the corpus. The order was under challenge before the Commissioner (Appeals). The Commissioner, by his order dated December 26, 1974, allowed the appeal. Relevant part of the said order reads :

"... On a plain reading of the Gift-tax, I am not convinced that the Act requires that the future possible income from the property is to be deducted from the anticipated expenditure while computing the exemption available u/s 5(1)(xii). The Gift-tax Officer is, therefore, directed to allow the deduction of Rs. 80,000 from the value of the asset gifted. The taxable gift is, therefore, reduced by Rs. 58,500."

The Revenue challenged this order before the Appellate Tribunal and the Appellate Tribunal, by order dated May 5, 1976, has restored the order of the gift-tax Officer. It is from this order of the Tribunal that the above question are said to arise. The short point that arises for consideration is whether the Tribunal was justified in holding that the gift requires to be determined taking into account the value of the corpus as also the income from the property.

It is relevant in this context to note that the approach to the issue adopted by the Tribunal is not justifiable in view of the ruling of this court in Commissioner of Gift Tax Vs. P.V. John, After considering an identical point as the one now before us, this court held as follows (headnote) :

"... that once the market value of the property as defined in section 2(xxii) of the Gift-tax Act, 1958, was determined, the computation of tax must be made with reference to its market value determined as indicated in section 6 and, thereafter, no further additions such as the income derived from the property for a particular period or for all time was possible or permissible under the provisions of the Act. Therefore, the Tribunal was right in law in holding that the income derived from the gifted properties by the assessee was not one of the circumstances to be taken note of in determining what would be the reasonable amount of gift for the purpose of education of the donees u/s 5(1)(xii) of the Gift-tax Act, 1958."

In the light of the above observation of the Division Bench, we are of the view that the order of Tribunal to the contrary is not sustainable.

To put it differently, the Tribunal went wrong in holding that the market value of the property will be the value determine in terms of section 6 plus the income from the property. The order of the Tribunal, therefore, is not sustainable in law.

Accordingly, we answer question (B) in the negative and in favour of the assessee. In the light of the answer above, it is not necessary to answer the other questions and such we decline to answer them.

A copy of this judgment under the signature of the Register and the seal of this court will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.