(1991) 07 KL CK 0059

In the High Court Of Kerala

Case No : IT Reference No. 176 of 1980

M.K. Stephen — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:
Gift Tax Act, 1958 — Section 2(xxii), 5(1)(xii), 6

Citation : (1992) 62 TAXMAN 205

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

Bench : Division Bench

Advocate : G. Sivarajan, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

K.P. Radhakrishna Menon, J.—The assessee is before us. The question referred for our opinion read:

A. What is the proper interpretation of gift deed dated 21-3-1970 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, 1958 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 where 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 four children for the purpose of education. This transaction was the subject-matter of the assessment dated 19-8-1971. The assessee was not satisfied with the assessment order and therefore he filed an appeal before the Commissioner. The Commissioner as per his order dated 18-8-1973, set aside the assessment order and remitted the matter to the GTO to make a fresh assessment. The GTO 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. This order was under challenge before the Commissioner (Appeals). The Commissioner, by his order dated 26-12-1974 allowed the appeal. Relevant part of the said order reads:

On a plain reading of the GT Act 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 GTO 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 Tribunal and the Tribunal by order dated 5-5-1976 has restored the order of the GTO. It is from this order of the Tribunal the above questions 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.

2. 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:

...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." (p. 226)

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

3. To put is differently the Tribunal went wrong in holding that the market value of the property will be the value determined 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 answer above, it is not necessary to answer the other questions and as such we decline to answer them.