(1982) 03 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous C. C. No. 68 of 1980

Poonamchand APPELLANT

Vs

Commissioner of Income Tax, M.P. RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 64(1)(v)

Citation : (1982) MPLJ 760

Hon'ble Judges : K. N. Shukla, J;G. G. Sohani, J

Bench : Division Bench

Advocate : A. K. Chitale, for the Appellant; R. C. Mukati, for the Respondent

Judgement

G.G. Sohani, J.

By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the income tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law to this Court for its opinion :-

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the provisions of clauses (iv) and (v) of section 64(1) of the Income Tax Act, 1961, were applicable to the gifts made by Shri Chandanmal and Shri Poonamchand ?

The material facts giving rise to this reference, briefly are as follows:-

During the course of assessment proceeding in the case of Shri Chandanmal and his brother Poonamchand, the income tax Officer found that Shri Chandanmal had made a gift of Rs. 25,000 on 6th of August 1978 as under:-

(a)

Rs. 10,000

to Smt. Pukhrajbai,

wife of ShriPoonamchand,

(b)

Rs. 8,000

to Smt. Shardabai, wife of Parasmal, son of Poonamchand,

(c)

Rs. 3,500

to KumariAngurbala, daughter of ShriPoonamchand,

(d)

Rs. 3,500

toKumariMadhubala, daughter of Poonamchand.

Total Rs. 25,000

The income tax Officer also found that on 7th October, 1974, Shri Poonam-chand had made a gift of equal amount, that is to say, Rs. 25,000 as under:-

(a)

Rs. 10,000

to Smt. Motanbai, wife of Chandanmal,

(b)

Rs. 5,000

to ShriRajendrakumar (minor), son of Chandanmal,

(c)

Rs. 10,000

toShriRamanlal (minor), son of Chandanmal.

Total Rs. 25,000

In view of these facts, the income tax Officer concluded that there were cross-gifts to the extent of Rs. 17,000 (excluding the gift of Rs. 8,000 by Shri Chandanmal to Shrimati Shardabai) and, hence, he invoked the provisions of clauses (iv) and (v) of section 64(1) of the Act and included in the total income of Shri Chandanmal, a sum of Rs. 2,083 being the income by way of interest of Shrimati Motanbai, Shri Rajendra Kumar and Shri Ramanlal-Similarly, the Tribunal included in the total income of Shri Poonamchand Rs. 2,040 the income by way of interest of Shrimati Pukhrajbai, Kumari Angurbala and Kumari Madhubala. Aggrieved by these orders, the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the orders passed by the income tax Officer. On further appeal the Tribunal held as follows :-

It is clear from the two sets of transactions of gifts in these cases that Shri Chandanmal gifted certain amounts of money to the wife and minor children of Shri Poonamchand, while Shri Poonamchand, in turn, gifted equivalent amount to the wife and minor children of Shri Chandanmal within a period of two months. The intention of the donors in these gifts can be nothing but to evade the implications of clauses (iv) and (v) of section 64(1) of the income tax Act." The Tribunal relying on the decision of the Supreme Court in Commissioner of income tax, Bombay City II v. Keshavji Morarji and another 66 fT R 142 and of the Bombay High Court in J.B. Greaves Vs. Commissioner of Income Tax, Bombay City I, , upheld the order passed by the income tax Officer. Aggrieved by the order passed by the Tribunal, the assessees have sought a reference and it is at the instance of the assessees that the aforesaid question of law has been referred to this Court for its opinion.

Having heard the learned counsel for the parties, we have come to the conclusion that the question has to be answered in the affirmative and in favour of the department. The Tribunal has found on the basis of the material on record that the two transfers by Poonamchand and Chandanmal, the two assessees, were so interconnected as would justify the finding that they were parts of the same transaction. It is, thus, clear that a circuitous method was adopted by the assessees to evade the implications of clauses (iv) and (v) of section 64(1) of the Act. In view of the finding, no question of law really arises for our consideration. The Tribunal, in our opinion, was right in holding that the provisions of clauses (iv) and (v) of section 64(1) of the Act were applicable to the gifts made by the assessees.

Our answer to the question is, therefore, in the affirmative and in favour of the Department. In the circumstances, the parties shall bear their own costs of this reference.

