

(2007) 09 DEL CK 0193
In the Delhi High Court
Case No : GTA No. 1 of 2006

P.S. Khanna

APPELLANT

Vs

Gift Tax Officer

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Gift Tax Act, 1958 — Section 15(6), 16(1)

Citation : (2007) 5 ILR Delhi 225 : (2008) 305 ITR 415 : (2007) 165 TAXMAN 609

Hon'ble Judges : Madan B. Lokur, J; Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : K. Sampath and R.K. Raghavan, for the Appellant; P.L. Bansal and Vishnu Sharma, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, J.—The assessed is aggrieved by an order dated 26th August, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "B" in GTA No. 10/DEL/1999 relevant for the assessment year 1993-94.

2. After hearing learned Counsel for the parties, we are of the view that the following substantial question of law arises for consideration -

Whether the valuation report dated 13th September, 1995 obtained u/s 15(6) of the Gift Tax Act, 1957 when no proceedings were pending for the assessment year 1993-94 in relation to a sale of property that took place on 6th March, 1992 (registered on 4th November, 1992) could constitute material to record a belief in terms of Section 16(1) of the Act that a deemed gift of Rs. 68,31,732/- has escaped assessment?

3. Filing of paper books is dispensed with.

4. The assessed had entered into a sale transaction for a plot of land measuring 2.56 acres along with boundary wall for a consideration of Rs. 9.59 lacs by an

agreement to sell executed on 6th March, 1992. The sale deed was actually registered on 4th November, 1992.

5. For the assessment year 1992-93, the Assessing Officer charged capital gains tax on the assessed in respect of this transaction and the said tax was paid.

6. For the subsequent assessment year 1993-94, the Gift Tax Officer came to the conclusion, based on a reply that he had called from the Departmental Valuation Officer (DVO), that the sale price had been greatly depressed and in fact the market value of the land with the boundary wall was Rs. 68,31,732/-. According to the Gift Tax Officer the difference of Rs. 58,72,132/- was liable to tax as a deemed gift under the Gift Tax Act, 1957 (for short the Act).

7. The contention urged by the assessed was that since it had already paid tax on capital gains in respect of the same transaction concerning the same property in the assessment year 1992-93, there was no question of a deemed gift, if any, having taken place in the assessment year 1993-94. According to the assessed, the property could be transferred only once and, Therefore, the year of assessment both for the purposes of capital gains as well as for gift tax will have to be the same; there cannot be separate assessment years in respect of the same transaction, one for capital gains and the other for a deemed gift.

8. The Assessing Officer did not accept the contention of the assessed and brought the transaction to gift tax in the assessment year 1993-94. In the appeal filed by the assessed, the Commissioner of Income Tax (Appeals) [CIT(A)] came to the conclusion that the assessment order cannot be upheld under the circumstances. The CIT (A) held that there cannot be a deemed gift for the assessment year 1993-94 when capital gains had been levied on the same transaction in the assessment year 1992-93.

9. Feeling dissatisfied with the order passed by the CIT (A), the Revenue preferred an appeal before the Tribunal, which was allowed. We are afraid, the Tribunal completely overlooked the reasoning given by the Commissioner. The Tribunal appears to have been impressed by the fact that the difference in value was about 600% and, Therefore, it shocked the conscience of the Tribunal. It came to the conclusion that even though there was a procedural irregularity in the Gift Tax Officer calling for a reply from the DVO for the assessment year 1993-94, that could be overlooked.

10. Unfortunately, the Tribunal has completely misdirected itself in law. There can be no doubt about the fact that the transaction could have taken place either in the assessment year 1992-93 or in the assessment year 1993-94. The Assessing Officer was of the view that the transaction had taken place in the previous year relevant to the assessment year 1992-93 and had charged tax on capital gains thereon, which was paid by the assessed. That being the position, the same transaction could not have been treated as a deemed gift in the previous year relevant to the assessment year 1993-94.

11. We are of the view that it was not proper for the Tribunal to have proceeded on the basis that merely because there was a considerable difference in the value of the property, the "procedural" irregularity committed by the Gift Tax Officer, could be overlooked. This was certainly not a procedural irregularity, but a substantive one. The sale transaction having taken place in the assessment year 1992-93, at best it could be said that the deemed gift, if any, took place in the assessment year 1992-93. The Assessing Officer was not at all justified in proceeding on the basis of a deemed gift, if any, having been made in the assessment year 1993-94.

12. We are of the opinion that since the Tribunal has misdirected itself in law, the substantial question of law framed for our consideration deserves to be answered in the negative, in favor of the assessed and against the Revenue.

13. The impugned order of the Tribunal is set aside and the appeal is allowed.