
(2002) 08 MAD CK 0226
In the Madras High Court
Case No : T.C. No. 960 of 1992

Ramesh Enterprises

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Gift Tax Act, 1958 — Section 2, 3, 5(1)

Citation : (2003) 180 CTR 49 : (2002) 258 ITR 658

Hon'ble Judges : R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench : Division Bench

Advocate : P.P.S. Janardhana Raja, for the Appellant; T.C.A. Ramanujam, for the Respondent

Judgement

R. Jayasimha Babu, J.—Three questions have been referred to us at the instance of the assessee. They are :

"1, Whether, on the facts and in the circumstances of the case, a firm is liable to be assessed as a taxable entity under the Gift-tax Act, 1958 ?

2. Whether, on the facts and in the circumstances of the case, there was a gift made under the provisions of the Gift-tax Act ?

3. If the answer to the second question is in the affirmative, whether it is exempt u/s 5(1)(xiv) of the Gift-tax Act ?"

The assessment year is 1978-79.

2. The assessee, a firm, was initially constituted under a deed dated March 30, 1974. One of the partners retired on April 1, 1977. The firm was carrying on a business in money-lending and was also engaged in the export of coffee seeds. On May 2, 1977, a company with the name similar to that of the firm, viz., Ramesh Enterprises Pvt. Ltd., was registered. Between May 2, 1977, and July 8, 1977, that company lent a sum of Rs. 64,66,650 to the firm. On July 8, 1977, under an agreement between the firm and the company, the entire coffee export

business together with the goodwill, the exclusive right of the use of the name, as also the stock of 509.460 tonnes of coffee seeds were transferred to the company. Though the agreement mentioned that the excess of the assets over liabilities of that firm as on the date of transfer would be paid over to the firm, no proof of such payment was at any time produced by the assessee. The amounts borrowed by the firm from the company were not treated as consideration for the transfer and that amount continued to be shown as outstanding and due by the firm to the company.

3. The Gift-tax Officer regarded this transaction as amounting to a gift by the firm to the company of the entire export business together with the stock of coffee held by the firm at that time. Though the firm successfully appealed against that order, on further appeal the order of the Assessing Officer was restored by the Tribunal.

4. A question similar to the first question referred to us has already been considered by this court in the case of Commissioner of Income Tax Vs. Bharani Pictures, . The court rejected the contention that the definition of the word "person" in Section 2(xviii) of the Gift-tax Act does not take within its fold a firm, as firm is not referred to therein. The court referred to the decision of the Supreme Court in the case of Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, , wherein it was held that the firm is certainly an association or body of individuals. Section 2(xviii) of the Gift-tax Act defines a "person" as including a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not. The firm, being a body of individuals, is clearly covered by this definition.

5. A view similar to the one taken by this court has been taken by various other High Courts. One such is by the High Court of Karnataka in the case of Khoday Eswarsa and Sons Vs. Commissioner of Gift Tax, . A contrary view expressed by a single judge of the Calcutta High Court in the case of AMINCHAND PYARELAL Vs. GIFT-TAX OFFICERS AND OTHERS., , which is inconsistent with the view already taken by the Division Bench of this court in the earlier ruling, cannot with respect be regarded as having laid down the law correctly.

6. The first question referred is, therefore, answered in favour of the Revenue and against the assessee.

7. We have already referred to the fact that there was no proof produced by the assessee that any consideration was paid for the transfer of the entire export business in coffee by the firm to the company. It was never the case of the assessee that what was transferred did not have a value. A valuable running business having been transferred for no consideration at all, it clearly amounted to a gift and the tax levied thereon under the provisions of the Gift-tax Act was perfectly proper. "Gift" is defined in Section 2(xii) of the Gift-tax Act as meaning a transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's

worth. The transfer of the movable properties including the coffee stocks as also the goodwill of the business together with the right to use the name without any consideration, was a gift liable to be brought to tax u/s 3 which imposes the charge of gift-tax. The answer to the second question has to be and is in favour of the Revenue and against the assessee.

8. Section 5(1)(xiv) of the Act as it stood at the relevant time exempted gift made "in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made bona fide for the purpose of such business, profession or vocation". This clause contemplates a running business making gifts in the course of the conduct of such business to others for the purpose of its own business, and such gifts being made bona fide. That provision has no application to a gift of the business itself, which is what the assessee has done in this, case. The Tribunal has rightly held that, that gift is not exempted u/s 5(1)(xiv) of the Gift-tax Act. We, therefore, answer the last question also in favour of the Revenue and against the assessee.