
(2004) 04 RAJ CK 0040

In the Rajasthan High Court

Case No : IT Appeal No. 169 of 2003 and GT Appeal No. 1 of 2004

Satya Narain Modani

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Gift Tax Act, 1958 — Section 4(1)(a)
Income Tax Act, 1961 — Section 2(14), 45(1)

Citation : (2004) 190 CTR 507 : (2005) 272 ITR 138 : (2004) 140 TAXMAN 655

Hon'ble Judges : Y.R. Meena, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Sanjay Jhanwar and S. Singhal, for the Appellant; J.K. Singh and Anuroop Singhi, for the Respondent

Judgement

1. These appeals are directed against the impugned order of learned Tribunal, dt. 13th March, 2003. It was ordered that both the appeals shall be disposed of at admission stage.

2. The assessee-appellant has raised the following questions of law in GT Appeal :

"(1) Whether, on the facts and in the circumstances of the case the provisions of Section 4(1)(a) of GT Act were attracted and that there was any deemed gift taxable in the hands of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the nomination of membership seat by the assessee to another person is a transfer of property within the meaning of Section 4(1)(a) of the GT Act and this is subject to tax as deemed gift u/s 4(1)(a) of the GT Act ?

(3) Whether, on the facts and in the circumstances of the case, the membership seat of a stock exchange is a "property" within the meaning of the provisions of Section 4(1)(a) of the GT Act or merely a personal privilege granted to a member by the stock exchange ?

(4) Whether the deemed gift u/s 4(1)(a) of the GT Act can be charged to tax with reference to an amount of consideration for which assessee has been charged to Income Tax by considering the same amount of consideration as full value of consideration received for the purpose of Section 48 r/w Section 45 of the IT Act, 1961 ?

(5) Whether the burden u/s 4(1)(a) of the GT Act, 1958, is not on the Department to prove the market value of the property transferred and whether such burden can be said to have been discharged in the present case when learned Tribunal did not accept the value taken by the GTO ?

(6) Whether, on the facts and in the circumstances of the case, it is possible in law to determine the value of membership fees merely on estimate and in ad hoc manner and charge the tax on deemed gift on that basis u/s 4(1)(a) of the Act ?"

3. The assessee-appellant has raised the following questions of law in IT Appeal :

"(1) Whether, on the facts and in the circumstances of the case, the membership seat of a stock exchange is a property or merely a personal privilege granted to a member by the stock exchange and whether the same can be treated as "capital asset" within the meaning of Section 2(14) of the Act ?

(2) Whether, on the facts and in the circumstances of the case, nomination is a transfer within the meaning of Section 2(47) of the Act ?

(3) Whether admission fees paid by the appellant can be considered as cost of acquisition within the meaning of Section 55 of the Act for the purpose of computing the capital gains u/s 45 of the Act ?

(4) Whether the learned Tribunal was justified in upholding that the consideration received by the appellant on account of nomination of another person in his place in respect of membership of stock exchange when the right of such nomination is not a capital asset, is chargeable as capital gains u/s 45 of the Act ?

(5) Whether, on the facts and in the circumstances of the case, it is possible in law to make an addition in the value of the consideration received merely on estimate and in ad hoc manner by stating the basis of equity, justice and good conscience ?

(6) Whether capital gains u/s 45 of the Act are to be computed on the basis of actual consideration received or on the basis of notional consideration determined by the Department ?

(7) Whether the capital gain can be charged to tax with reference to an amount of consideration for which assessee has been charged to gift-tax by deeming that such consideration has not been received by it and whether such contradictory order of the learned Tribunal is not liable to be quashed ?

(8) Whether learned Tribunal can enhance the income assessed by learned AO?

(9) Whether, on the facts and in the circumstances of the case, the order passed

by the learned Tribunal is not perverse, illegal, unjust, improper and contrary to the material on record and without application of mind ?"

4. The main controversy in these appeals is whether the membership of the stock exchange is a property and on its transfer whether capital gain tax is attracted. The controversy has also been raised that whether the value of the property should be taken at Rs. 10,00,000.

5. The appellant was the member of Jaipur Stock Exchange and was running the business of stock-brokership in the name of M/s S.N. Modani. The appellant has transferred his membership card on 3rd June, 1993. Thus, relevant assessment year is 1994-95. This transaction has been disclosed in the return filed by the assessee. A note was appended in the return that against the nomination card of stock exchange, he received Rs. 6,00,000 and claimed that it is not taxable.

6. Notice u/s 143(2) of the Act was issued. As he obtained the membership card in 1987, the long-term capital gain has been assessed by AO. The AO has also applied the provisions of GT Act and, market value of the card of membership of stock exchange has been estimated at Rs. 25,25,000. The difference between Rs. 25,25,000 and Rs. 6,00,000 has been treated as gift u/s 4(1)(a) of the GT Act.

7. In appeal, CIT(A) has confirmed the order of the AO on both counts, i.e., long-term capital gain on Rs. 6,00,000 and difference of Rs. 25,25,000 minus Rs. 6,00,000 and amount has been taxed under the GT Act.

8. In appeal before the Tribunal, the Tribunal has estimated the value of the membership card of the stock exchange at Rs. 10,00,000, but he has directed that the difference between Rs. 10,00,000 and Rs. 6,00,000 be assessed as deemed gift u/s 4(1)(a) of the GT Act and when the value of the membership has been estimated at Rs. 10,00,000, the Tribunal further directed the AO to compute the long-term capital gain on that amount.

9. Mr. Jhanwar, learned counsel for the assessee, submits that firstly there should not be tax either capital gain tax or gift-tax on the transfer of card of membership of the stock exchange. Even if it is taxed and the value of the card on the date of transfer has been estimated at Rs. 10,00,000 when assessee disclosed Rs. 6,00,000 consideration against transfer of the card of membership, then capital gain can be taxed upto Rs. 6,00,000, which he received against the transfer of membership card of the stock exchange and on Rs. 4,00,000 gift-tax can be charged, but here the Tribunal has taken the view to charge the gift-tax between the difference in the consideration shown and market value and also taxed the entire amount of Rs. 10,00,000 for the purpose of capital gain tax. This will result in double taxation.

10. Mr. Singhi, counsel for the Revenue, submits that when the assessee has transferred membership card at a lower value than its market value, the difference should be taxed as gift under GT Act.

11. The similar issue has been considered under the provisions of GT Act on transfer of the membership of Jaipur Stock Exchange in case of Ravindra Kumar Jain v. CIT and Ors., DB IT Appeal No. 5 of 2003; decided on 23rd April, 2004 wherein we have taken the view that when a card of membership of the stock exchange is transferred against the consideration, that attracts the gift-tax if the consideration received is less than its market value.

12. Following our view in case of Ravindra Kumar Jain v. CIT and Ors. (supra), we see no infirmity in the order of Tribunal so far the direction given by the Tribunal that the value of the transaction should be taken at Rs. 10,00,000 and when assessee has shown the consideration at Rs. 6,00,000, the balance amount, i.e., Rs. 4,00,000 attracts the gift-tax.

13. However, we agree with Mr. Jhanwar that once the difference between Rs. 10,00,000 and Rs. 6,00,000 is taxed under the provisions of GT Act taking the difference as deemed gift, that amount cannot be taxed again in the IT Act.

14. In the Income Tax, the assessee himself has shown the consideration against the transfer of membership of the stock exchange at Rs. 6,00,000. He got this membership in 1987 and transferred it on 3rd June, 1993. Therefore, difference between the amount, on which he received the membership and its sale consideration should be taxed as long-term capital gain.

15. In the result, the appeals arising out of the Income Tax proceedings and gift-tax proceedings are disposed of at admission stage, as directed above.