(2007) 07 KL CK 0068

In the High Court Of Kerala

Case No : OP No. 15248 of 1997 (S)

The Commissioner of Gift Tax — APPELLANT

Vs

A.J. Raju — RESPONDENT

Date of Decision : 25-07-2007

Acts Referred:
Gift Tax Act, 1958 — Section 26(1), 26(3)

Citation : (2007) 07 KL CK 0068

Hon'ble Judges : H.L. Dattu, C.J;K.T. Sankaran, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon, for the Appellant; No Appearance, for the Respondent

Judgement

H.L. Dattu, C.J.—This is a petition filed by the Revenue u/s 26(3) of the Gift-tax Act, 1958 (Act for short) for the assessment year 1983-84.

2. The respondent was a partner in a firm ''M/s.Hotel Yuvarani''. He retired from the partnership firm with effect from 1.1.1982 during the accounting year relevant to the assessment year 1983-84. The assessing officer has completed the assessment determining the taxable gift at Rs. 52,280/- being of the opinion that the right to share in future profit of the firm as goodwill is forfeited by the assessee by retiring from the partnership firm. Aggrieved by the findings and conclusions reached by the assessing officer, the assessee had filed appeal before the Deputy Commissioner of Income Tax (Appeals), Thiruvananthapuram. The said appellate authority has confirmed the order passed by the assessing authority under the provisions of the Gift Tax Act.

3. The assessee , aggrieved by the aforesaid order, had carried the matter in second appeal before the Income Tax Appellate Tribunal. The Tribunal following the decision of this Court in the case of Commissioner of Gift-tax Vs. Smt. R. Sarojini (Legal heir of late Rajagopalan), has allowed the appeal filed by the assessee.

4. Aggrieved by the aforesaid order, the Revenue had filed an application before the Tribunal u/s 26(1) of the Act requesting the Tribunal to refer the following question of law for consideration and decision by this Court. The said questions of law reads as under:

1. Whether, on the facts and in the circumstances of the case,

a) the Tribunal is right in holding that ''he is fully qualified and became a working partner in the firm of M/s.Hotel Yuvarani '' and are not the findings wrong, against facts and law, unreasonable and unrealistic?

b) did Jose Pradeep have the qualification found by the Tribunal at the time of his induction in the partnership?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding that there is no gift in the case?

5. The Tribunal rejected the application filed by the Revenue u/s 26(1) of the Act.

6. The Revenue is before us in this petition filed u/s 26(3) of the Act to state the case and refer the aforesaid question of law for our consideration and decision.

7. The question of law to which the Revenue wants us to consider and decide is already decided by the apex Court in the case of The Commissioner of Gift Tax, Trivandrum Vs. T.M. Louiz, . In the said decision the apex Court has stated as under:

The definition of ''gift'' makes it clear that there has to be a transfer by one person to another of movable or immovable property; such transfer has to be voluntary and without consideration in money or money''s worth. What is, therefore, absolutely essential for the purpose of a gift is a transfer of property. "Transfer of property" is defined for the purpose of the Gift-tax Act as any disposition or conveyance, or assignment or settlement or delivery or payment or other alienation of property.

When a partner retires from a partnership, the partnership continues. The assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm. All that the retiring partner gets is the value of his share in the partnership assets less its liabilities. It cannot, in such circumstances, be held assuming that the retiring partner received less than what was his due, that the difference was something that he had transferred to the continuing partners within the meaning of "transfer of property" for the purposes of the Gift-tax Act, 1958, or that there was a gift liable to gift-tax. The word "settlement" in the definition of "transfer of property" in the Gift-tax Act takes colour from the context of the definition and its neighbouring words and means a settlement upon trust and not a settlement of accounts.

During the accounting year relevant to the assessment year 1973-74, the assessee retired with effect from April 1, 1972, from two firms in which he was a partner. The Gift-tax Officer assessed him to gift-tax on the basis that, upon such retirement, there was a gift because the assessee had surrendered his rights in the firms. However, the Tribunal and the High Court held that gift-tax could not be levied. On appeal to the Supreme Court:

Held, dismissing the appeal, that when the assessee retired from the two firms, he received the value of his shares therein. There was merely an adjustment of rights between the retiring partner and the continuing partners in the assets of the partnership and there was no element of transfer of interest by the retiring partner to the continuing partners. Gift-tax could not be levied.

8. In view of the pronouncement of the apex Court, at this stage, it may not be necessary for this Court to direct the Tribunal to state the case and refer the questions of law framed by the Revenue for our consideration and decision.

In view of the above, the original petition filed by the Revenue requires to be rejected and it is rejected.

Ordered accordingly.

