Commissioner of Gift-tax Vs Prafulla Chandra Goswami

Court: Gauhati High Court

Date of Decision: May 23, 1996

Acts Referred: Gift Tax Act, 1958 â€" Section 15(3), 16, 4, 4(1), 6

Citation: (1996) 220 ITR 641

Hon'ble Judges: N.S. Singh, J; D.N. Baruah, J

Bench: Division Bench

Advocate: G.K. Joshi and U. Bhuyan, for the Appellant; A.K. Saraf and K. Gupta, for the Respondent

Judgement

D.N. Baruah, J.
In this gift-tax reference u/s 26(1) of the Gift-tax Act, 1958 (for short, ""the Act""), the following two questions have been

referred to this court for opinion :

(1) Whether, under the facts and circumstances of the case and on a proper reading of Section 4(1)(a) of the Gift-tax Act, the Tribunal was

justified in upholding the order of the Appellate Assistant Commissioner who held that there was no deemed gift in this case ?

(2) Whether, under the facts and circumstances of the case, the Tribunal did not err in law as well as in facts in upholding the order of the

Appellate Assistant Commissioner who annulled the gift-tax assessment made u/s 15(3) read with Section 16(1) of the Gift-tax Act ?

2. The facts for the purpose of answering these two questions may be narrated as follows :

The assessee is the owner of a plot of land measuring 1 bigha, 3 kathas, 1/2 lecha. In the assessment order of gift-tax for the assessment year

1971-72, the Gift-tax Officer, B-Ward, Nagaon, mentioned that the assessee sold the back portion of the land located at Lowkhowa Road,

Nagaon, measuring 1 bigha, 3 kathas, 1/2 lecha, at a consideration of Rs. 15,000 by a deed of conveyance dated May 4, 1970. The Gift-tax

Officer observed that in the wealth-tax assessment for the assessment year 1969-70, the said land was valued at Rs. 12,500 per katha, i.e., Rs.

1,06,250 for 1 bigha, 3 kathas, 1/2 lecha, of land. The Gift-tax Officer also observed that the said valuation of the land made by the Wealth-tax

Officer was not challenged by the assessee in appeal and, therefore, it was final. Accordingly, the Gift-tax Officer made assessment for the year

1970-71 u/s 15(3) read with Section 16 of the Gift-tax Act. The share of the assessee was valued at Rs. 1,00,3.13 for the purpose of charging

capital gains u/s 48 of the Income Tax Act, 1961. This came up before the Appellate Assistant Commissioner and by order dated October 10,

1985, following the decision of the apex court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, the Appellate Assistant

Commissioner held that on the facts and circumstances of the case, the Gift-tax Officer could not substitute the value of Rs. 1,00,313 as the fair

market value as on the date of the transfer. However, the assessment made by the Gift-tax Officer, on appeal, was annulled by the Tribunal as

according to the Tribunal, this could not be a part of transaction for the assessment year 1970-71, the sale having taken place in the month of May,

1970. The Gift-tax Officer did not accept the valuation given in the sale deed and initiated proceedings u/s 16 of the Act and completed the

assessment of tax taking the value of the property as assessed by the Wealth-tax Officer. After considering the basic exemption u/s 4, the balance

amount of Rs. 80,310 was, considered as a taxable gift. The assessee brought the matter before the Appellate Assistant Commissioner. The

Appellate Assistant Commissioner, by order dated March 20, 1986, held that there was no gift. Against that the Revenue approached the

Tribunal. The Tribunal also by judgment and order dated July 31, 1989, upheld the decision of the Appellate Assistant Commissioner and rejected

the appeal. Hence, the present reference at the instance of the Revenue.

3. The Tribunal, while rejecting the case of the Revenue, held that the property in question was jointly owned by the assessee and his brother and

the share of the assessee was valued at Rs. 1,00,313 for the purpose of charging capital gains when the documented price was Rs. 15,000. That

Income Tax assessment was appealed against before the Appellate Assistant Commissioner who also held that the Assessing Officer could not

substitute the value by saying that the price was higher than the price shown, The Tribunal further held that the Appellate Assistant Commissioner

rightly followed the decision of the apex court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, in which it was held that while

taxing capital gains the difference between the market value and the consideration declared was not sufficient to establish understatement and that

the assessee must be shown to have received more than what was declared or disclosed by him as consideration and that the burden of proof lay

on the Revenue. Accordingly, the Tribunal did not agree with the contention of the Revenue and upheld the order of the Appellate Assistant

Commissioner annulling the gift-tax assessment made u/s 15(3) read with Section 16(1) of the Act.

4. Heard Mr. G.K. Joshi, learned standing counsel appearing on behalf of the Revenue, and Dr. A.K. Saraf, learned counsel appearing on behalf

of the assessee.

5. Mr. Joshi submits that as the valuation of property made by the Wealth-tax Officer was not challenged before a higher authority, it should be

deemed that the assessee accepted the same and it became final. For the purpose of Section 4 that should be the price and if that was the price,

Rs. 15,000 was not the price of the property and in that view of the matter the decision of the Appellate Assistant Commissioner and for that

matter the decision of the Tribunal were wrong. Dr. Saraf, on the other hand, submits that merely because the Wealth-tax Officer assessed the

valuation of the property that cannot be the ultimate finding so far as the gift-tax is concerned. The Gift-tax Officer has to determine the value of the

property on his own as indicated u/s 6. Dr. Saraf further submits that the Appellate Assistant Commissioner having held that the Assessing Officer

could not substitute Rs. 1,00,313 when the documented price was Rs. 15,000, there cannot be a deemed gift.

6. For the purpose of answering the questions, the provisions of Sections 4 and 6 of the Act may be noticed. u/s 4(1)(a) where property is

transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the

value of the consideration shall be deemed to be a gift made by the transferor. Therefore, in order to attract the provisions of Section 4(1)(a) the

value of the property should exceed the value of the consideration. u/s 6, the value of any property other than cash transferred by way of gift shall,

subject to the provisions of Sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer, it would fetch if sold

in the open market on the date on which the gift was made. Therefore, Section 6 requires the Gift-tax Officer to find out the value of the property

for the purpose of assessing gift-tax and this has to be done only on the basis of materials available before the Gift-tax Officer.

7. We have perused the orders passed by the Gift-tax Officer, the Appellate Assistant Commissioner and also of the Tribunal. The Assessing

Officer took the value of the property as assessed by the Wealth-tax Officer and the Appellate Assistant Commissioner took the value as Rs.

15,000 as the Revenue failed to show that it was above Rs. 15,000. The same view was expressed by the Tribunal. On a perusal of Section 6 it is

abundantly clear that it is the duty of the Gift-tax Officer to make assessment on the materials available. No attempt whatsoever was made by the

Assessing Officer or by the Appellate Assistant Commissioner and also by the Tribunal to determine the value on the basis of some materials. The

Assessing Officer took the value as assessed by the Wealth-tax Officer and the Appellate Assistant Commissioner and the Tribunal took the value

of the property as shown by the assessee. There was no independent finding as required u/s 6.

8. In view of the above, we are of the view that the Tribunal was not justified in upholding the order of the Appellate Assistant Commissioner who

held that there was no deemed gift in this case and the Tribunal also erred in law in upholding the decision of the Appellate Assistant

Commissioner. Accordingly, we answer both the questions in the negative. The matter is remanded to the Gift-tax Officer to decide the matter

afresh in the light of our observations made above and in accordance with the provisions of Sections 4 and 6 of the Act.