G. Ramesan Vs Commissioner of Gift Tax

Court: High Court Of Kerala

Date of Decision: Sept. 24, 1996

Acts Referred: Gift Tax Act, 1958 â€" Section 24(2)

Citation: (1997) 139 CTR 167 : (1997) 226 ITR 305 : (1998) 97 TAXMAN 520

Hon'ble Judges: V.V. Kamat, J; K. Narayana Kurup, J

Bench: Division Bench

Advocate: C.N. Ramachandran Nair, Amicus curiae, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Judgement

V.V. Kamat, J.
The following two questions are to be answered in this reference sent to this court by the Income Tax Appellate Tribunal,

Cochin Bench, u/s 26(1) of the Gift-tax Act, 1958 :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Commissioner of Gift-tax was

justified in passing the order u/s 24(2) of the Gift-tax Act, 1958 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the order dated March 22, 1988, of

the Commissioner of Gift-tax u/s 24(2) is not hit by the doctrine of merger though the assessment order had been the subject-matter of appeal to

the Commissioner (Appeals) in view of Clause (c) of the Explanation to Section 24(2) inserted by the Finance Act, 1988, with effect from June 1,

1988 ?

2. The proceedings appeared before us on board with no appearance on behalf of the assessee on whose instance the proceedings are brought

before us. We felt that in such a situation, we must have the other point of view in the adversary system of justice. By our earlier order, we

requested Shri Ramachandran Nair, himself an experienced advocate of this Bar, to assist us as amicus curiae. He readily agreed and we heard the

matter yesterday (September 23, 1996). We are benefited by his assistance in getting the other point of view. We do not hesitate to record our

appreciation and acknowledgment in regard thereto. We were much assisted in the process. We thank him.

3. In fact question No. 2 relating to the doctrine of merger can be answered straightaway with reference to the statutory language of Section 24(2)

of the Gift-tax Act, 1958. The said power is a revisional power of calling for and examining the record for passing appropriate orders under the

said statutory provision. The said power is not an appellate power and it is more than elementary that the doctrine of merger cannot apply to

proceedings of such a nature as the jurisdiction does not contemplate continuance of the original proceedings. Such being the situation, the order

dated March 22, 1988, passed by the Commissioner of Gift-tax under the said statutory provision of Section 24(2) of the Gift-tax Act, 1958, can

never be hit by the doctrine of merger as sought to be contended.

4. The position also would not change as a result of insertion of Clause (c) of the Explanation to Section 24(2) with effect from June 1, 1988, as a

result of the Finance Act, 1988. This is in view of the factual peculiarities that the order of assessment allowing the deduction of liabilities was

passed on June 10, 1985, whereas the order of the Commissioner of Gift-tax u/s 24(2) of the Gift-tax Act, 1958, was passed on March 22,

1988. The said Clause (c) has come into effect from June 1, 1988, obviously much thereafter. The said question No. 2 thus gets answered

accordingly.

5. The assessee, Shri G. Ramesan, executed a gift deed on July 14, 1980, and thereby agricultural lands admeasuring 11 cents situated at Jagathy

and certain buildings, both old and new, standing on a plot of land admeasuring 37 cents, in favour of his second daughter, Manju Ramesan.

6. Thereafter the assessee filed a gift-tax return on October 23, 1981, for the assessment year 1981-82. The return disclosed a taxable gift of Rs.

1,93,060. However, a revised return was also filed by him thereafter and therein the amount of taxable gift was shown as Rs. 1,71,294.

7. In proceedings before the Gift-tax Officer, the assessee claimed legitimate deduction with regard to the sum of Rs. 1,15,000. The assessee

stated that this amount of Rs. 1,15,000 was a liability running with the properties. The said amount was an aggregate of the amount of deposits

received by the assessee from the tenants in occupation of the property gifted. The following particulars were placed on record with regard to this

amount of Rs. 1,15,000 and they are as follows :

Name of the tenant Amount

Rs.

Manjog 25,000

Travancore Travels 30,000

Yes-de Syndicate 30,000

Electric Palace 30,000

1,15,000

8. In support thereof the assessee contended before the Gift-tax Officer that the factum of gift was made known to the tenants and also as regards

the fact that the donee--the second daughter, Manju, had undertaken to pay the deposits to the tenants, a fact which was also made known to the

said tenants.

9. The Gift-tax Officer, particularly in paragraph 6 of his order dated June 6, 1985 (annexure ""A""), found that this amount of Rs. 1,15,000 consists

of deposits received from the tenants occupying the shops and the said amount was used by the donor--the assessee--for the construction of

Aiswarya Complex. The officer also recorded that the tenants have been duly informed of the gift by the donor and the donee in turn has agreed

for repayment of these amounts of deposits. The Gift-tax Officer recorded that the gift is an onerous gift.

10. To be precise, the Gift-tax Officer passed an order accepting the liability as stated above.

11. Further travel of the proceedings before the Commissioner of Gift-tax, Karnataka (Central), Bangalore, is u/s 24(2) of the Act. The discussion

in regard thereto is in paragraph 4 onwards of the said order. The said authority held that the liability of Rs. 1,15,000 as held to be charged on the

gift is factually incorrect. It is observed in this connection that the gift deed does not mention about this amount. The said authority also expressed

doubt that there is material to show that the transaction is of an onerous gift. In this connection, it is observed that while the assessee desires to

depress the value of the property by this liability, the assessee has also claimed a deduction of an amount of Rs. 80,000 for further education of the

daughter on account of love and affection. The said authority acting u/s 24(2) of the Act has particularly referred to the necessary and relevant

observations from paragraph 5 of the assessment order of the Gift-tax Officer. Additionally the aspect of inconsistency in the assessee''s stand

while claiming deduction of Rs. 1,15,000 has been focussed. It is observed that when the gift is given to further and advance the prospects of the

second daughter, Manju Ramesh, with an intention to give her professional education abroad, in the same breath and at the other end the assessee

had sought to saddle her with a further liability of Rs. 1,15,000. This inconsistency is found to be improbable and of a mutually exclusive character.

It is further observed that the claim with regard to Rs. 1,15,000 and support in regard thereto from the necessary papers could only be

appreciated as an afterthought. It is observed that it is inherently improbable to understand the claim for liability as it basically runs counter to the

avowed purpose for which the gift was made.

12. It is observed that admittedly the gift deed does not make any reference to any kind of liability much less Rs. 1,15,000.

13. It was attempted to be urged before the Commissioner of Gift-tax that there was an appeal on the merits and in the said proceedings, it is held

that the question of deduction of this liability of Rs. 1,15,000 could not be taken up as it was in favour of the assessee. The Commissioner held that

it was in view of this position with regard to the question of the deduction not being the subject-matter of the appeal, that there is no merger as far

as the order of the Commissioner of Income Tax (Appeals) is concerned and therefore can be the subject-matter of revision u/s 24(2) of the Act.

14. The assessee took up the matter before the Income Tax Appellate Tribunal, Cochin Bench. The Tribunal has also considered the question with

regard to the claim of Rs. 1,15,000 as to whether it could be in the nature of a liability as a condition of the gift.

15. The Tribunal has considered the material on record, namely, (i) the letter dated October 23, 1981, from the donor to the Gift-tax Officer ; (ii)

letter dated July 16, 1984, from the donee to the Gift-tax Officer ; and (iii) the joint affirmation by the four tenants to support the assessee''s

contention with regard to the liability relating to the amount of Rs. 1,15,000.

16. We have gone through the said reasoning. The admitted and proved position is that the document is totally silent and there is no whisper in the

document as regards this liability sought to be trotted out thereafter. When the document is conspicuous by its silence, it is not possible to consider

permissible, any material contrary to the contents of the document. This is an established position in law, because the contents of the document

speak for themselves and it would not be permissible to place material on record which is wholly contrary to the contents thereof.

17. Learned counsel for the assessee strenuously submitted that the tenants had voluntarily a tendered joint affirmation in support of the contention.

He further submitted that each of the four tenants had given sizable amounts as could be seen from the particulars in regard thereto.

18. Learned counsel submitted that it is rare that the tenants would voluntarily present their joint affirmation in the context of the situation.

19. It is not possible to consider this submission with regard to the several aspects of the merits of the situation.

20. In the first instance it is abundantly established that the document is silent. For the purpose of the gift-tax assessment one has to ascertain what

exactly had been gifted and in regard thereto the document is the only source. The Tribunal (in paragraph 21 of its order) has already recorded that

when one looks at the deed one finds that certain buildings and certain pieces of agricultural lands had been gifted and one does not find in the

deed any reference either to the liability or to a charge having been created on the property in that regard.

21. The Tribunal has also independently considered the joint affirmation by the four tenants. It is observed that the liability to pay back the security

deposits got itself attached to the property in question. It is further observed that except the said joint affirmation there is no other material with

regard thereto. The Tribunal has also been more than particular to note the passage of time and its importance on the probabilities of the situation.

The donor''s letter is dated October 23, 1981, the donee''s letter is dated July 16, 1984, and in this context the joint affirmation of the four tenants

is dated October 5, 1984. All these are nearly four years after the gift deed as far as the donee and the tenants are concerned and one year as far

as the donor is concerned. The Tribunal has not left out to note the aspect of improbabilities of the situation on these counts and has aptly observed

that the material is in the nature of self-serving documents.

22. Therefore, although the situation in regard to which the authorities have approached is purely factual in character, reading the two orders, one

passed u/s 24(2) of the Act and the other of the Income Tax Appellate Tribunal, Cochin, in our judgment even if we were left to ourselves to

consider the factual situation we would not have come to any conclusion other than the one arrived at by them.

23. For the above reasons question No. 1 is answered in the affirmative, in favour of the Revenue and against the assessee, and question No. 2 is

also answered in the affirmative, in favour of the Revenue and against the assessee.

24. A copy of the judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal,

Cochin Bench, as required by law.