

(1995) 12 MP CK 0017

Madhya Pradesh High Court

Case No: Miscellaneous Civil Case No. 204 of 1987

Commissioner of
Gift-tax

APPELLANT

Vs

Premlal Chirongilal
Mahawar

RESPONDENT

Date of Decision: Dec. 11, 1995

Citation: (1996) 136 CTR 336 : (1997) 226 ITR 392

Hon'ble Judges: A.K. Mathur, Acting C.J.; S.C. Pandey, J

Bench: Division Bench

Advocate: V.K. Tankha, for the Appellant; None, for the Respondent

Judgement

1. This is a reference u/s 26 of the Gift-tax Act, 1958, at the instance of the Revenue and the following question of law has been referred by the Tribunal for answer of this court, which reads as under :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to pay gift-tax ?"

2. The brief facts giving rise to this reference are thus : The assessee, a minor, was admitted to the benefits of partnership of the firm under the name and style as "Ramdayal Chironjilal", Dhamtari. The assessee had 20 per cent. share in the profits of the firm. He withdrew himself from the benefits of the partnership during the previous year relevant to the assessment year 1977-78. On these facts, the Gift-tax Officer concluded that the minor had forgone his 20 per cent. share in the profits of the firm without a corresponding benefit or adequate consideration and brought to gift-tax Rs. 27,290 under the Gift-tax Act.,

3. Against the order of the Gift-tax Officer, the assessee preferred an appeal before the Appellate Assistant Commissioner, who allowed the appeal of the assessee and set aside the order of the Gift-tax Officer. Then the Department/Revenue filed an appeal before the

Tribunal and the Tribunal confirmed the order of the Appellate Assistant Commissioner of Gift-tax in setting aside the order of the Gift-tax Officer, relying on the decisions of the Bombay High Court in the case of [Commissioner of Gift-tax \(Central\), Bombay Vs. J.N. Marshall](#), and that of the Karnataka High Court in [D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka](#), . The Tribunal accepted the view taken by the aforesaid two High Courts and upheld the order of the Appellate Assistant Commissioner. Hence, the aforesaid question of law has been referred by the Tribunal for answer of this court.

4. We have heard learned counsel for the Revenue and perused the records.

5. The view taken by the Tribunal appears to be justified for the reasons that the right of a partner to share the profits of the firm is a property, but the retiring partner has no right of a share in future profits as he became non-existent. In the present case, it is pointed out that the minor has a credit balance of Rs. 27,290 in his capital account in the firm and he withdrew Rs. 20,000 on November 3, 1975, and he was also paid the interest on the balance to his credit. The balance amount was also withdrawn subsequently. Therefore, there was no consideration whatsoever. The same view has been taken by the Tribunal also and it has been the view of the aforesaid two High Courts. We are in full agreement with the view taken by the Tribunal. We do not find any merit in this reference and hence the reference is answered in favour of the assessee and against the Revenue.