(1983) 02 MP CK 0002

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 67 of 1980

Manaklal Motilal Agrawal	APPELLANT
Vs	
Commissioner of Gift-tax	RESPONDENT

Date of Decision: Feb. 4, 1983

Citation: (1984) 147 ITR 670 : (1983) 14 TAXMAN 372

Hon'ble Judges: K.N. Shukla, J; G.G. Sohani, J

Bench: Division Bench

Advocate: Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Shukla, J.
This is a reference by the Income Tax Appellate Tribunal, Indore, u/s 26(1) of the G.T. Act, stating the case and referring the following questions for our opinion :

(1) Whether, on the facts and in the circumstances of the case, the order of the GTO should not only have been set aside, but annulled altogether and no assessment could be made upon the assessee ?

(2) Whether any element of gift or deemed gift chargeable under the G.T. Act was involved in the transaction ?

(3) Whether separate additions in respect of revaluing of assets and goodwill could be made under the G.T. Act in case of retirement of a part-ner from the firm ?"

2. Assessee, Maneklal Motilal Agrawal, used to carry on business of plying buses. On August 21, 1968, he converted the proprietary business into a partnership firm in which he had 50% share. The other partner was Jawaharlal Agrawal with 25% share. Two minors, namely, Subhash Agrawal and Arvind Agrawal, had shares of 12''5% each in the profits of the partnership business. On January 15, 1971, the said firm was reconstituted as a result of which the assessee, Maneklal, retired from the firm and his wife, Smt. Sajanbai, became a partner in the said firm. The profit sharing ratio was revised as under:

Smt. Sajanbai Agrawal	25%
Jawaharlal Agrawal	25%
Master Subhash Agrawal	25%
Master Arvind Agrawal	25%

3. The GTO held that retirement of Shri Maneklal from the firm amounted to relinquishment of his 50% share in the said firm in favour of his wife and two minor children without any consideration and thus constituted a taxable gift which escaped assessment. He, therefore, issued a notice to the assessee to show cause why the value of the relinquishment of his share should not be charged to gift-tax. After hearing the assessee the GTO revalued the assets of the firm and adding the value of the goodwill determined tax (the gift) at 50% of such valuation.

4. The matter was taken in appeal. The Commissioner (Appeals) held that a retiring partner was entitled to receive his share in the capital assets and also in the accrued profits of the firm. This, according to the Commissioner (Appeals), did not in terms constitute a gift. But on facts he found that the book value of the assets was much less than their market value. Thus, according to the learned Commissioner (Appeals), the difference between the book and the market value of the assets constituted a gift within the meaning of the G.T. Act. To this extent the order of the GTO was confirmed. However, observing that the GTO did not make proper enquiries into several aspects of the case, the Commissioner (Appeals) set aside the assessment and remanded the case for fresh computation.

5. In second appeal, the Income Tax Appellate Tribunal agreed with the reasoning of the Commissioner (Appeals) and affirmed his order. At the instance of the assessee, therefore, the aforestated questions have been referred for our opinion.

6. When the reference came up earlier before us for hearing, we called for a supplementary statement of case because we noted that more facts were necessary for answering the reference. The supplementary statement has since been received but this statement also does not contain the necessary facts for answering the reference. It appears that those facts which we considered essential for answering the reference were not available to the Tribunal and the same could not be obtained without further enquiry at the level of the GTO himself. We are, therefore, constrained to answer the reference on the insufficient material before us in the statement of facts made by the Tribunal.

7. As regards question No. (1), in the case of this very assessee, an identical question was referred to this court and it was held that the Appellate Tribunal was right in holding that the Commissioner (Appeals) had the power as well as the justification to set aside GTO''s order and remand the case to him instead of annulling the assessment altogether. [see Manaklal Motilal Agrawal Vs. Commissioner of Gift Tax,]. Following that decision we answer question No. (1) against the assessee and in favour of the Revenue holding that the Appellate Tribunal was right in affirming the order of the Commissioner (Appeals) remanding the case to the GTO for further enquiry.

8. Questions Nos. (2) and (3) represent two different aspects of the same issue. The central question which needs answer is :

"Whether, on the facts and in the circumstances of the case, there was a gift chargeable under the G.T. Act on the retirement of the assessee from the partnership firm and reconstitution of the firm ?"

9. Learned counsel for the assessee contended that the newly added partners, i.e., Smt. Sajanbai and the minors, had contributed capital for the business of the firm. He further contended that the assessee at the time of his retirement was given his share in the profits and the assets of the firm. There was nothing to show that there was any abandonment of interest by the assessee. The existing assets and liabilities were taken over by the new partners for consideration and, therefore, there was no gift within the meaning of the G.T. Act. Learned standing counsel for the Revenue in reply submitted that distribution of profits and assets at the time of assessee''s retirement was made on the book value thereof and not on the market value and, therefore, the difference between the book value and the market value should be treated as deemed gift.

10. It was not disputed that while computing gift-tax, the GTO did not take into consideration either the account books of the firm or its balance-sheet. Thus, there was no material to show whether the firm''s liabilities were also taken into consideration while making computation of gift-tax. Unless it was found that the alleged abandonment of interest by the assessee in the assets of the firm was higher in value than the liabilities of the firm, there could not be any gift or deemed gift within the meaning of the G.T. Act.

11. In Ramniklal Chhotalal v. CGT [1977] 106 ITR 799, the Gujarat High Court held that when a partner having 25% share in profit and loss retired from the firm and his minor son was admitted to the benefits of partnership and given the share of his father, there was no gift of the partner''s share to his minor son within the meaning of the G.T. Act. According to the High Court, this was only a reconstitution of the firm with the consent of the continuing partners and did not amount to gift by the retiring partner in favour of his minor son.

12. Ramniklal''s case [1977] 106 ITR 799 was considered in Commissioner of Gift-tax, Bombay City-II Vs. Premji Trikamji Jobanputra, , by the Bombay High Court. The Bombay High Court was of the view that the statement of law in Ramniklal''s case was rather wide in its sweep. The court observed that to ascertain whether there is a gift by the assessee of the goodwill and the assets of the firm or not will depend upon the determination of two questions, viz., (i) whether the value of the assets of the earlier firm including the goodwill exceeds the total liability of the earlier firm, and (ii) whether the incoming partner or a minor who has been admitted to the benefits of the firm has brought any capital. The court observed that unless such questions are determined, it would not be possible to lay down as a general rule that there has been a gift in respect of the goodwill whenever a firm is reconstituted as a result of which minors are admitted to the benefits of the partnership and the share in goodwill of one of the partners is reduced and the same is pro rata given to the minors who are so admitted to the benefits of the partnership. In Premji''s case, there was no retirement of any partner but there was a change in the constitution of the firm as a result of which there was reduction in the share of one of the partners whose share was given to the minor. Since those facts were not inquired into by the authoriries below, the court in Premji''s case answered the question in the negative but added a rider that the question, whether there is a gift or not will depend upon the determinatidn of the facts indicated earlier.

13. In Addl. Commissioner of Gift-tax Vs. P. Krishnamoorthy and Others, , on facts more or less similar to those in the reference before us, the Madras High Court held that the moment a partner retires from the firm he will have no right to receive future profits in the firm and hence there is no question of his giving up any such right. It was held that the Tribunal was right in its conclusion that the assessees were not liable to pay any gift-tax. In the cited case, four partners of a firm retired from partnership and they took whatever they were entitled to, i.e., capital invested along with profits and shares at their credit. The firm was reconstituted thereafter. The GTO levied gift-tax on the ground that as a result of the retirement from the partnership firm the assessees had relinquished their respective interests in the partnership firm and since the right of a partner to share in the profits of the firm was property capable of transfer and by retirement of the assessees there was a relinquishment of this right the transaction constituted "gift" within the meaning of the G.T. Act. This view was not accepted by the Tribunal and the question referred at the instance of the Revenue was answered in favour of the assessees.

14. In D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, , the Karnataka High Court held that when there was contribution of capital by the new partners and the new partners had to participate in the business of the firm, it constituted adequate consideration and there was no taxable gift as a result of re-allocation of shares by which shares of the erstwhile partners were reduced and new partners were allocated shares.

15. Learned counsel for the Revenue relied on the decision of the Madras High Court in Commissioner of Gift-tax Vs. M.K. Krishna Chettiar, , in order to support his contention that retirement of the assessee from the business without obtaining any consideration for the value of the goodwill of the business amounted to gift of the goodwill to his sons and this was taxable under the G.T. Act. The Madras High Court, in the above cited case, without referring to the earlier decision of the same High Court in Commissioner of Gift-tax Vs. V.A.M. Ayya Nadar, , followed the statement of law made in the earlier case. Ayya Nadar''s case was dissented from by the Karnataka High Court in D.C. Shah and Others Vs. Commissioner of Gift Tax, Karnataka, , and was not followed by the Madras High Court itself in Addl. Commissioner of Gift-tax Vs. P. Krishnamoorthy and Others, . The GujaratHigh Court also in Ramniklal''s case [1977] 106 ITR 799, after referring to Commissioner of Gift-tax Vs. V.A.M. Ayya Nadar, , took a contrary view.

16. As noted earlier the facts which have been stated by the Tribunal per se do not attract the provisions of the G.T. Act unless further material is brought on record as indicated by their Lordships of the Bombay High Court in Commissioner of Gift-tax, Bombay City-II Vs. Premji Trikamji Jobanputra, . The matter has, therefore, to be investigated further before the question can be answered either way. Mere retirement of a partner and reconstitution of the firm by other partners will not amount to a gift chargeable to gift-tax unless further facts as observed earlier are enquired into.

17. Following the course adopted by the Bombay High Court in Commissioner of Gift-tax, Bombay City-II Vs. Premji Trikamji Jobanputra, , we will answer questions Nos. (2) and (3) in the negative but will add a rider that the question whether there is a gift or not will depend upon the determination of the facts as indicated earlier.

18. There will be no order as to costs.