(2001) 05 DEL CK 0138

Delhi High Court

Case No: Gift-tax Reference No. 1 of 1983

Bawa Shiv Charan Singh		APPELLANT
	Vs	
Commissioner of Gift Tax		RESPONDENT

Date of Decision: May 15, 2001

Acts Referred:

- General Clauses Act, 1897 - Section 3(26)

Citation: (2001) 170 CTR 211 : (2001) 251 ITR 41 : (2001) 119 TAXMAN 14

Hon'ble Judges: Dr. Arijit Pasayat, C.J; D.K. Jain, J

Bench: Division Bench

Advocate: Anoop Sharma and R.K. Raghavan, for the Appellant; Sanjeev Khanna, Prem Lata Bansal and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.
At the instance of the assessed, the following questions have been referred for the opinion of this court u/s 26(1) of the Gift-tax Act, 1958 (in short "the Act"), by the Income Tax Appellate Tribunal, Delhi Bench "B", New Delhi :

"1. Whether, the Tribunal was right on facts and in law in determining the taxable gift at Rs. 1,70,286 against Rs. 1,20,286 returned by the assessed ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that as on December 1, 1972, when the sum was gifted there was a right of allotment in existence which also stood transferred along with the gift on December 1, 1972 ?"

2. The relevant assessment year is 1973-74 for which the previous year ended on March 31, 1973.

3. The factual position in a nutshell is as follows :

One Shri Satish Gujral had booked office accommodation, measuring 2,100 sq. ft. on the seventh floor of the multi-storeyed building known as "Kanchanjunga" at 18, Barakhamba Road, New Delhi. The building was being constructed by Kailash Nath and Associates (hereinafter referred to as "builders"). Satish Gujral had paid a sum of Rs. 60,000 to the builders. As he was unable to pay further Installment of Rs. 60,000, he entered into an agreement on October 1, 1971, with the assessed, whereby on payment of Rs. 39,284 (Rs. 34,284 representing the assessed''s share out of Rs. 60,000 plus an extra sum of Rs. 5,000), Satish Gujral agreed to transfer 1,200 sq. ft. out of the 2,100 sq. ft. area booked by him in the aforesaid building to the assesses. It was agreed that the full demand of the builders was to be paid by the assessed in respect of the portion of 1,200 sq. ft. agreed to be transferred to him. On the same day, i.e., October 1, 1971, Satish Gujral wrote a letter to the builders informing them that out of the area of 2,100 sq. ft. booked by him, an area of 1,200 sq. ft. may be transferred in the name of the assessed and he may be credited with the sum of Rs. 34,284 out of the sum of Rs. 60,000 paid by him earlier. He also stated that a separate agreement may be executed in the name of the assessed and himself. The arrangement between Satish Gujral and the assessed was accepted by the builders. Thereafter the assessed made payments to the builders as and when required. The total payment made by the assessed to the builders was Rs. 1,20,286, including the sum of Rs. 5,000 paid to Satish Gujral over and above the sum of Rs. 34,287 which was paid to him and in respect of which the assessed was given credit by the builders. On December 1, 1972, the assessed wrote to the builders that he had nominated his son, Sandeep Singh Bawa, and his daughter, Ms. Sunila Bawa, as joint nominees with respect to the office accommodation booked by him in the building under construction. He requested the necessary correction to be carried out in their records. The builders were also informed that all the amounts paid by the assessed may be credited to their joint account. The builders confirmed that they had accepted the nomination of the son and daughter of the assessed in his place in respect of the accommodation booked by the assessed and that all the amounts paid by him had been transferred to the joint account of his son and daughter. The assessed''s son and daughter accepted the gifts on January 20, 1973, and December 1, 1972, respectively. Thereafter Sandeep Singh Bawa and Ms. Sunila paid to the builders a further sum of Rs. 30,636. By letter dated January 29, 1973, Sandeep Singh Bawa informed the builders that he jointly with Sunila was the holder of a flat at the seventh floor in the building and he enquired about the problem being faced by the builders with the L & DO which was causing delay in delivery of possession of the flat. Sandeep Singh Bawa and Sunila gave a general power of attorney in favor of the assessed which was registered on January 30, 1973. Possession of the flat was taken by the donees on June 5, 1973, and it was immediately let out. The assessed filed a gift-tax return in respect of a sum of Rs. 1,20,286, inclusive of Rs. 5,000 paid to Satish Gujral, on November 22, 1978. The assessed''s submission before the Gift-tax Officer (in short the "GTO") was that the gift had been made only in respect of a sum of Rs. 1,20,286. His stand was that unless the

flat was ready the assessed could not be said to have made a gift of the whole amount and it can only be said that he had made only a gift of so much of the amount which had been paid to the builders. The Gift-tax Officer, however, held that in addition to the gift of Rs. 1,20,286 as disclosed, what the assessed had also transferred was an interest in the immovable property. The market value of the assessed''s right in the immovable property on the date of the gift was worked out and the quantum was fixed. Accordingly, tax was also levied. Aggrieved by the order of the assessment, the assessed filed an appeal before the Commissioner of Gift-tax (Appeals) (in short the "CGT(A)") and questioned the correctness of the computation. The first appellate authority held that the subject-matter of the gift was not only Rs. 1,20,286 but also certain valuable rights transferred which the assessed had acquired by making the aforesaid payments. He did not accept the assessed''s submission that only Rs. 1,20,286 were gifted by the assessed. He observed that the true intent of what the assessed did was to diminish the value of his own property by ensuring that the flat was not allotted to him but to his children by the builders. The value of the gift was worked out on the basis of rent which was taken to be Rs. 3,213 per month. The market value of the gifted property was fixed at Rs. 2,16,000. Both the assessed and the Revenue preferred appeals before the Tribunal. On considering the rival submissions, the Tribunal held that the assessed had in fact gifted a right and it was to be valued and included in the total value of the gift made. However, the value of the right transferred was fixed at Rs. 50,000. On being moved for a reference, the questions as set out above, have been referred for opinion.

4. We have heard learned counsel for the parties. Learned counsel for the assessed submitted that the approach of the authorities below is erroneous. If at all it is to be held that there was any transfer the same did not amount to a gift and it is impossible to value the right which the assessed could be said to have transferred to the donees on the date of the gift. Learned counsel for the Revenue, on the other hand, submitted that if somebody would acquire a property and pay a price for it, the right of access in this regard has to be included in the wealth of the assessed for the purpose of gift-tax.

5. A few factual aspects which throw considerable light on the controversy need to be noted. The assessed''s letter dated December 1, 1972, is of significance. It reads as follows :

"I have today made a gift of all the amounts lying to my credit with Kailash Nath and Sons with respect to the flat in Kanchanjunga House and the benefit of the agreement with them in favor of you both jointly, i.e., each one of you get 1/2 share of the amounts paid and lying to my credit with the builders. I am also informing the builders, by a separate formal letter, that I have appointed both of you as the nominee so that the benefit of the agreement shall also stand transferred to you. Now I will walk out of the picture just in the same way as Mr. Satish Gujral and you will have direct dealings with the builders and be entitled to all the benefits of the agreement in your own right. This will also entail an obligation on you to pay further amounts to the builders as and when those become due hereafter. Let me have your acceptance of the gift of the amounts and the transfer of

benefits under the agreement with the builders."

(underlined for emphasis)

6. The son and daughter of the assessed accepted the gift as aforenoted. They wrote to the assessed as under :

"I accept the gift of 50 per cent, of the share of the amount lying with the builders to the credit of my father, Bawa Shiv Charan Singh, Advocate, 29, Baber Lane, New Delhi, and I also accept the gift of the benefits under the agreement with the builders. I shall pay them my further 1/2 share of their demands if any."

(underlined for emphasis)

7. It is also to be noted that the assessed wrote to the builders and intimated them about his son and daughter being joint nominees with respect to the property booked by him.

8. The expression "gift" is defined in Section 2(xii) of the Act. It reads as follows :

"2. (xii) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money''s worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section."

9. The expression "immovable property" has been defined in Section 3(26) of the General Clauses Act. It reads as under :

"3. (26) "immovable property" shall include land, benefits to arise out . of land, and things attached to the earth, or permanently, fastened to anything attached to the earth."

10. The basic test for determination of the value is as to the amount which the property would have fetched if sold in the open market on the date on which the gift was made. It needs to be noted that the assessed''s stand was regarding the nature of the transaction and the value, if any, that can be put. As noted earlier, Satish Gujral was paid not only the amount proportionate to the area for which the arrangement was entered into with the assessed, but also the premium of Rs. 5,000. A recent decision of the apex court in Commissioner of Wealth Tax Vs. Prince Muffakham Jah Bahadur Chamlijan, deals with valuation of inalienable rights. It was held that when an assessed has a right to reside in the house for the duration of his life, the same was property which could have a market in an assumed market place. Even if the right was personal yet an assumed somebody would acquire this personal right in the property during his lifetime and pay the price for it. The above being the position, the Tribunal''s conclusions about the transfer of the right are in order. The first question is, Therefore, answered in the affirmative, in favor of the Revenue and against the asses- see. In view of the answer to the first question, the consequential answer to the second question is also in the affirmative, in favor of the

Revenue and against the assessed.

11. The reference stands disposed of.