(2000) 05 DEL CK 0099

Delhi High Court

Case No: IT Reference No. 229 of 1979 22 May 2000 A.Y. 1970-71

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

MRS. V. CHANDRA — RESPONDENT

Date of Decision: May 22, 2000

Citation: (2001) 112 TAXMAN 287

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

Bench: Full Bench

Advocate: R.C. Pandey and Ms. Prem Lata Bansal, for the Revenue, for the Appellant;

Judgement

Pasayat, C.J.

Pursuant to the directions given by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), following question has been referred by the Tribunal, Delhi Bench-C, for opinion:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right to deleting the inclusion of Rs. 32,500 from the assessor's income ?"

2. Fact situation as set out in the statement of the case is as follows :

The assessed Smt. V. Chandra was assessed as an individual for the assessment year 1970-71. Her husband Shri C.N. Chandra had purchased 10 National Savings Certificates of Rs. 5,000 each in the names of the assessed and her son Shri Ramesh Chandra. In April 1960, the assessor's husband gifted the certificates to the assessee. He died on 13-7-1968. These certificates were encased in 1970. It was contended before the Income Tax Officer on behalf of the assessed that the maximum permissible limit holding such certificates was Rs. 70,000 by two adults jointly, and since in the present case, the two sets of certificates worth Rs. 50,000 each were held by two different adults, the interest due thereon was exempt. The Income Tax Officer rejected these contentions. He held that the moment letter was written by the assessor's husband to the Gift Tax Officer informing him about the

gift, it became a valid gift and the certificates became the exclusive property of the assessee. He observed that where the certificates were held by only one adult, the maximum limit up to which these could be exempt u/s 10(15)(ii) of the Act, was Rs. 35,000. In that view of the matter, he taxed the interest on the balance which came to Rs. 42,250. In appeal, the Assistant Commissioner held that 10 National Savings Certificates, which are in the joint names of the assessed and her son Shri Ramesh Chandra, were exempt from tax. As regards the remaining 10 Certificates, which stood in the name of the assessor's husband Shri C.N. Chandra and his son Shri Satish Chandra, it was held that, by virtue of the gift by her husband to the assessee, they were beyond the maximum permissible limit. In that view of the matter, the Appellate Assistant Commissioner restricted the inclusion of interest to Rs. 32,500 in the assessor's income. The assessed challenged the order before the Tribunal. It was contended that section 3 of the Government Savings Certificates Act, 1959 (hereinafter referred to as ''the Savings Act'') prescribed restrictions on transfer of Savings Certificates. Reference was also made to rule 16 of the Post Office Savings Certificates Rules, 1960 (hereinafter referred to as ''the Rules''). The assessor's stand before the authorities was reiterated, while the revenue supported the order of the Appellate Assistant Commissioner.

3. Noticing the restrictions imposed by provisions to section 3 of the Savings Act, the Tribunal was of the view that there was no valid gift and, Therefore, inclusion of Rs. 32,500 was not sustainable.

4. An application was filed seeking reference of the question which has been quoted above, prayer being turned down, this court was moved u/s 256(2). Direction was given for reference of question quoted above. In support of the application, the learned counsel for the revenue submitted that the Tribunal has not considered the true nature of the transaction. Once the assessor's husband intimated the Gift Tax Officer about the gift and obtained a benefit on that ground, it was not open to the assessed to take shelter u/s 3. There is no appearance on behalf of the assessed in spite of notice.

5. The only question which, according to us, needs adjudication is whether section 3 made the gift invalid and whether in view of the restriction, the benefit claimed by the assessed was available to be granted.

Section 3 of the Savings Act reads as follows :

"Restrictions on transfer of savings certificates-Notwithstanding anything contained in any law for the time being in force, no transfer of a savings certificate, whether made before or after the commencement of this Act, shall be valid unless it has been made with the previous consign in writing of the prescribed authority."

6. Undisputedly factual position is that no previous consent in writing was obtained of the authority prescribed by rule 16 of the rules. In the absence of such a consent the gift made by the assessor's husband in 1960 in respect of the National Savings

Certificates was not valid. As there can be no estoppel against the statute, even if intimation was given to the Gift Tax Officer about the transfer, it would not make any difference in law. The expression ''estoppel'' is derived from a French word ''estoupe''. It is so-called because a man''s own act or acceptance stops or closes his mouth to allege or plead the truth. Estoppel is a complex legal notion, involving a combination of several essential elements - statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it may be so described. But the whole concept is more correctly viewed as a rule of law. An estoppel is not a cause of action - it is a rule of evidence which precludes a person from denying the truth of some statement previously made by himself. (Per Lindley, L.J. in Law v. Baiveria (1831) 3 Ch. 82). It being the duty of a court to give effect to a statute, in spite of the conduct of the parties, there can be no estoppel against a statute. When a particular act is declared to be void and unlawful by statute, a party cannot by, representation, any more than by other means, raise against him an estoppel sa as to create a state of things, which he is under a legal disability from creating. No court can enforce as valid that which a competent enactment has declared shall not be valid, nor its obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties. If the terms of a statute are absolute and do not admit of any relaxation of exemption, then anything done contrary to the terms of the statute will be ultra vires and will be void and no person can be estopped from putting forward the contention that what he did was void. The sanctity of law and the sanctity of mandatory requirement of law cannot be allowed to be defeated by resort to the rules of estoppel. The inevitable conclusion, Therefore, is that the mandatory provisions of section 3 of the Savings Act stand in the way of the revenue, in denying the benefit claimed by the assessed for exemption. The Tribunal was justified in its view that the gifts had no validity as the requirements of section 3 were not met.

7. The question referred for opinion is, Therefore, answered in the affirmative, in favor of the assessed and against the revenue.