

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 17 of 2004

COMMISSIONOR OF GIFT TAX-1 JODHPUR
V/S
H H SHRI GAJ SINGH

Mr. KK BISSA, for the appellant / petitioner

Date of Order : 17.12.2007

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI, J.

ORDER

Nobody appears for the assessee, nor any appearance has been put on behalf of the assessee, despite service.

This appeal has been filed by the Revenue, against the judgment of the learned Tribunal, upholding the order of the learned Commissioner Gift Tax (Appeals).

The brief facts are, that the Assessing Officer vide order Annex.4, dated 28.2.97, held that the assessee had transferred the properties for consideration lesser than the adequate and full consideration, and accordingly, held, that there is a taxable gift to the tune of Rs.11,38,334/-, accordingly demand notice and challan were ordered to be issued, and penalty proceedings were ordered

to be separately initiated.

This order was challenged by the assessee, by filing appeal before the Commissioner of Gift Tax under Section 15(3)/22 of the Gift Tax Act, contending inter-alia, that the Assessing Officer was not justified in invoking the provisions of Section 4(1)(a) of the Gift Tax Act, as the assessee had not sold any property for inadequate consideration, rather the proceedings had been initiated, taking it to be a case of deemed gift, on the basis of the proceedings, concluded by him under Section 52(2) of the Income Tax Act, which he was not justified, as the provisions of Section 52(2) of the Income Tax Act could not be invoked, merely on the basis of valuation-cell of the Income Tax Department, and that the department has not proved by facts and figure, that the appellant has sold various properties for inadequate consideration. Learned Commissioner found in para 4.2 of Annex.5, that the Assessing Officer was not justified in invoking the provisions of Section 4(1)(a) of the Gift Tax Act, because it is not established that the appellant has sold the property for inadequate consideration. It was found, that the Assessing Officer has concluded the sale to be for inadequate consideration, only on the basis of Income Tax Inspector's report, who was not technical person, for ascertaining the value. It was also found that the assessee had sold property during the accounting years relating to

the assessment year 1971-72 and 1972-73, and almost on the same reasonings, the Assessing Officer also invoked the provisions of Section 4(1)(a), for those years, and the Tribunal, in those matters, by giving detailed reasons found, that the sale cannot be said to be deemed gifts, because the department was of the opinion, that the fair market value of the property is higher on the date of sale, than the consideration shown therein. It was found, that this clearly could not be the intention of the legislature in enacting Section 4(1)(a). Consequently, the appeal of the assessee was allowed.

Against that order, the department filed appeal before the learned Tribunal, and the learned Tribunal also, by relying upon four judgments in cases of different assessees, referred to in para 7, found that the burden was on the Revenue to show that the assessee had attempted to evade the tax, and had undervalued the property, and that, since there was no evidence to prove such allegation against the assessee, the computation by department at higher value, at a subsequent point of time, by itself, does not establish, that the consideration for which the transfer has been effected, was not adequate consideration, nor that the assessee had done anything with a view to evade the tax properly payable. Thus, it was also found, that in the case in hand, the Revenue has not been able to substantiate the report by any independent evidence, and

then relying upon the judgment in 217 ITR 59, and some other judgments, it was held, that the department's appeal has no force, and the same was dismissed.

This appeal was admitted vide order dated 12.7.2004, by framing following substantial question of law:-

“(i) Whether on the facts and in the circumstances of the case, the learned I.T.A.T. was right in law in dismissing the appeal of the department by holding that the Assessing Officer was totally unjustified in invoking the provisions of Section 4(1)(a) of the Act?”

After hearing learned counsel for the appellant, and after going through the impugned judgments, we find, that for attracting the applicability of Section 4(1)(a), it has to be shown, that the property was undervalued, with intention to evade payment of tax, legitimately payable. Obviously, there has to be positive evidence on the side of the Revenue, to show the market value of the property at the time of sale, and to show that the market price was so high at the relevant time, that it can be concluded, that the property was sold at a deflated figure, in order to evade the tax, so as to be described as deemed gift, under Section 4(1)(a). In the present case, we find that apart from the Inspector's report, there is no other material, and the two learned authorities below have found, as a fact, that the Inspector's report was not sufficient, apart

from the fact, that for arriving at this conclusion, the authorities below have relied upon catena of judgments, as cataloged in the order. Learned counsel for the Revenue has not been able to cite any contrary judgment, nor has he been able to bring to our notice, any material, about the valuation of the property, at the relevant time.

That being the position, obviously the question framed is required to be answered against the Revenue, and is accordingly answered.

The appeal thus, has no force and is dismissed.

(MUNISHWAR NATH BHANDARI), J.

(N P GUPTA), J.

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