

S. Shankarappa Vs. Inspecting Asst. Commr. of Income-tax, Acquisition Range, Bangalore and anr.

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Court : Karnataka

Decided On : Mar-22-1983

Reported in : [1984]145ITR414(KAR); [1984]145ITR414(Karn)

Judge : K.S. Puttaswamy, J.

Acts : [Income Tax Act, 1961](#) - Sections 269A and 269D(1)

Appeal No. : Writ Petition No. 4288 of 1978

Appellant : S. Shankarappa

Respondent : inspecting Asst. Commr. of Income-tax, Acquisition Range, Bangalore and anr.

Advocate for Def. : K. Srinivasan, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Puttaswamy, J.

1. In this petition under art. 226 of the Constitution, the petitioners has challenged notice No. CR 62/8231/76-77 Acq./B, dated 18-7-1977 (Ex. E) issued by the

Inspecting Assistant Commissioner of Income-tax, Acquisition Range, Bangalore (hereinafter referred to as 'the IAC'), respondent No. 1, purporting to be under s. 269D(1) of the I.T. Act, 1961(Central Act 43 of 1961)(hereinafter referred to as 'the Act').

2. One Smt. Parvathamma and her daughter, Smt. Siddamma of Bangalore, were the owners of certain immovable properties situated in New Tharagupet, Bangalore, which are fully described in the schedule to the gift deed dated January 26, 1976 (Ex. A.). Smt. Parvathamma and Smt. Siddamma gifted the said property to the petitioner under the gift deed dated November 26, 1976 (Ex. A), and the GTO has also levied gift-tax on that gift under the G.T. Act. But, before completing the proceedings under the G.T. Act, the IAC has issued the impugned notice proposing to acquire the property under Chap. XX-A of the Act.

3. The petitioner has alleged that the show-cause notice issued by the IAC, though there was no sale or exchange of the property was wholly without jurisdiction and is liable to be interfered with even before the proceedings are completed by him.

4. Sri. G. Sarangan, learned counsel for the petitioner, contends that the property acquired by his client was by way of gift and it was not a transfer within the meaning of that term occurring in s. 269A(h) of the Act justifying the initiation of proceedings under Chap. XX-A of the Act and the impugned show-cause notice issued by the IAC is wholly without jurisdiction.

5. Sri. K. Srinivasan, learned senior standing counsel appearing for the respondents, sought to justify the impugned notice.

6. The assertion of the petitioner that he was acquire by the property under a gift deed excrete by the donors, Smt. Paravanthamma and Smt. Siddamma (Ex. A), and the proceedings under the G.T. Act have been completed and gift-tax has been levied on the property was not denied by the respondent. In this view, I hold that the petitioner has acquired the property by gift land not by sale or exchange.

7. Chapter XX-A, which makes special provisions for acquisition of immovable properties in certain cases of transfer to counteract evasion of tax, defines the

term 'transfer' for purposes of that chapter and indicated the limited circumstances under which such property can be acquired. The provisions of Chap. XX-A of the Act that seriously interfere with the rights of an owner to enjoy his property and provided for compulsory acquisition., have to be strictly construed.

8. Section 269A(h) of the Act defines 'transfer' for purposes of Chap. XX-A of the Act as a transfer by way of sale or exchange. A transfer by way of sale or exchange only is considered as a transfer for purposes of Chap. XX-A of the Act. All other modes of transfer that are recognised as transfers for purposes of the Transfer of Property Act or other laws do not fall within the meaning of the term 'transfer' occurring in s. 269A(h) and Chap. XX-A of the Act. In any event, the property that has passed to the petitioner by way of gift and not by sale or exchange, does not attract Chap. XX-A of the Act. From this it follows that the impugned notice issued by the IAC, which is without jurisdiction, is liable to be quashed.

9. In the light of my above discussion, I quash the impugned notice. Rule issued is made absolute. But, in the circumstances of the case, I direct the parties to bear their own costs.