Cgt Vs. Nabe Shah

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Court : Allahabad

Decided On : Sep-15-2004

Reported in : [2005]146TAXMAN75(All)

Appeal No. : GT Reference No. 103 of 1985 15 September 2004

Appellant : Cgt

Respondent : Nabe Shah

Advocate for Pet/Ap. : A.N. Mahajan, *for the Revenue*.

Judgement :
ORDER

1. The Income Tax Appellate Tribunal, Delhi has referred the following two questions of law under section 26(1) of the Gift-tax Act, 1958, (hereinafter referred to as 'the Act'), for opinion to this Court.

'1. Whether on the facts and circumstances of the case, the Gift Tax Officer was legally correct in initiating proceedings under section 16(1) of the Gift Tax Act, 1958 against the deceased assessee Nabe Shah for assessment year 1976-77 on the basis of the report of the internal audit party?

2. Whether, on the facts and in the circumstances of the case, there was a deemed gift leading its taxability in the hands of the deceased assessee in view of

his retirement from the firm of M/s. Amjad Ali & Co. on 30-9-1974?'

2. Briefly stated the facts giving rise to the present reference are as follows:-

The present reference relates to assessment year 1976-77. The deceased late Nabe Shah was partner in the firm M/s. Amjad Ali & Co. During the assessment year 1976-77, he retired from the said firm. He did not charge anything for his share of goodwill. The Gift Tax Officer, Rampur on the basis of the report of the Internal Audit Party to the effect that on his retirement from the firm M/s. Amjad Ali & Co., as the deceased assessee did not charge anything for his share of goodwill, there was deemed gift on the part of the assessee to the remaining partners of the firm who remained in the partnership after 30-9-1974. On the basis of the said audit report the Gift Tax Officer issued a notice to the assessee under section 16(1) of the Act. Pursuant to the notice the assessee filed a return of gift-tax declaring the taxable gift at nil. The Gift Tax Officer, however, worked out the taxable gift at Rs. 69,870 and subjected the same to tax. The legal heirs of the deceased preferred an appeal before the Appellate Assistant Commissioner of Gift-tax, Moradabad, who allowed the appeal and cancelled the assessment. The revenue's appeal before the Tribunal has failed.

3. We have heard Shri A.N. Mahajan for the revenue. Nobody has put in appearance on behalf of the respondent-assessee.

4. It is not in dispute that the assessment proceedings under section 16(1) of the Act had been initiated by the Gift Tax Officer on the basis of the Internal Audit report that there has been a deemed gift, as the retiring person did not charge anything for his share of goodwill of the firm. This report is based on a question of law and, therefore, could not have formed the basis for taking proceedings under section 16(1) of the Act. The Apex Court in the case of Indian & Eastern Newspapers Society v. CIT (1979) 119 ITR. 996 has laid down that the report of the Internal Audit Party on a question of law does not constitute information so as to enable the Income Tax Officer to initiate proceedings under section 147(b) of the Income Tax Act. As in the present case, the report of the Internal Audit Party on a question of law was the basis the same did not constitute information so as to clothe the Gift Tax Officer any jurisdiction to initiate proceedings under section

16(1) of the Act.

5. In this view of the matter, we answer the first question referred to us in the negative i.e., in favour of the assessee and against the revenue. In view of answer to the first question the answer to the second question does not arise. However, there shall be no order as to costs.