

Cgt Vs. Smt. Chameli Devi

Cgt Vs. Smt. Chameli Devi

SooperKanoon Citation : sooperkanoon.com/710149

Court : Delhi

Decided On : Jul-10-2001

Reported in : [2001]119TAXMAN222(Delhi)

Appeal No. : IT Reference No. 3 of 1983 10 July 2001

Appellant : Cgt

Respondent : Smt. Chameli Devi

Advocate for Pet/Ap. : R.C. Pandey,; Ms. Prem Lata Bansal and; Ajay Jha,;for t

Judgement :

Arijit Pasayat, C.J.

At the instance of the revenue following question has been referred under section 26(1) of the Gift Tax Act, 1958 (the Act) by the Tribunal, Delhi Bench C, New Delhi for opinion of this court :

'Whether, on the facts and in the circumstances of the case, when the deceased-assessed transferred her right to get the lease of the plot from the DDA, was she entitled to get the deduction of 50 per cent unearned increase in terms and conditions of the auction?'

Dispute relates to the assessment year 1975-76.

2. Factual position in a nutshell is as follows :

A return of taxable gift was filed by the assessed. The assessing officer found that the assessed had taken part in the public auction held by Delhi Development Authority (DDA) in April 1974 and purchased a plot in Safdarjung area at a cost of Rs. 23,510. The plot was transferred in the name of the deceased's grandson Sh. Rajiv Jhalani in 1975. The assessee's case was that the plot was transferred to two grandsons, viz., Sh. Rajiv Jhalani and Sh. Kapil Jhalani. Valuation of the property was done by an approved valuer who while computing the value deducted 50 per cent of the unearned increase. The assessing officer was of the view that there being no question of payment in relation to unearned increase in the case of a relation, there was no scope for deducting 50 per cent of the unearned increase over the initial premium, as was done by the valuer. Valuation report, as prepared by the assessee's valuer, had determined the value of the property in question at Rs. 45,000. The gross value had been determined at Rs. 66,666 and as aforesaid 50 per cent of the increase in the value of the land was deducted. Matter was carried in appeal by the assessed before the Appellate Assistant Commissioner who held that in terms of para IV(2)(iv) of the terms of the auction, 50 per cent of the unearned increase in the value, i.e., the difference between the premium paid and the market value of the plot at the time of transfer shall be paid to the Government. Accordingly, relief was granted. An appeal was preferred by the revenue on the question of allowance of deduction of 50 per cent of the unearned increase. The Tribunal held that the expression transfer as used in sub-para (3) of para VI(2)(iv) of the terms of auction is applicable to the facts of the case and, therefore, the Appellate Assistant Commissioner's order did not warrant any interference. On being moved for reference question as set out above has been referred for opinion of this Court.

3. We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed.

4. We find that the approach of the Tribunal was somewhat different from that adopted by the assessing officer. While the assessing officer referred to the normal practice adopted of not charging unearned increase in respect of relation, that factual aspect has not been considered by the Tribunal. It is not clear from the orders as to whether in fact there was any payment of the difference in respect of

unearned increase. We, therefore, instead of answering the question referred, remit the matter back to the Tribunal for adjudication of that particular aspect. If in reality there has been no payment, the question of allowing a deduction would not arise. If, on the other hand, any amount has been paid in relation to the unearned increase, 50 per cent thereof has to be allowed as a deduction.

Reference is, accordingly, disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com