Azad Rahim Vs. Gto

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Court : Kerala

Decided On : Jan-21-2004

Reported in : [2004]137TAXMAN508(Ker)

Appeal No. : GT Appeal Nos. 2 To 4 of 2002 21 January 2004

Appellant : Azad Rahim

Respondent : Gto

Advocate for Pet/Ap. : S. Ananthakrishnan and N.K. Subramanian, *for the Appellant* George K. George and P.K.R. Menon, *for the Respondent.*

Judgement :

K.S. Radhakrishnan, J.

G.T.A. No. 2 of 2002 arises out of the order in G.T.A. 3/Coch/2000 relating to the assessment year 1996-97. Appellant therein is one Azad Rahim daughter of Mrs. Fathima Rahim. G.T.A. No. 3/02 and 4/02 arise out of G.T.A. 1/Coch/2000 and 2/Coch/2000 respectively. G.T.A. No 1/2000 was preferred by Mrs. Fathima Rahim, as thelegal heirof late Sri. A.A. Rahim and G.T.A. 2/Coch/2000was preferred by Mrs. Fathima Beevi. Common order was passed in G.T.A No. 1/Coch/2000 and 2/Coch/2000 and separate order has been passed for the year 1996-97. Azad Rahim is the appellant in G.T.A No. 3/Coch/2000. Common questions arise for consideration in all these appeals and hence we are disposing

of these appeals by a common judgment.

2. Late Sri A.A. Rahim and his wife Smt. Fathinia Beevi jointly executed a settlement Deed No. 1606/95 on 20-4-1995 settling their immovable properties described in the schedules in favour of their sons, daughters and grandson. Assessing officer held that the properties settled in favour of the donees who are signatories to the Bhagapathram, are liable to gift tax. Since they had not filed any returns under the Gift Tax Act, 1958, the assessing officer issued notice under section 15(4) of the Act requiring the assessee to file the gift tax return for the assessment year 1996-97. The assessee Mrs. Fathima Rahim being the legal heir of late Sri A.A. Rahim filed return under the Gift Tax Act 1958 on 27-1-1997 declaring taxable gift as Nil. Subsequent to the filing of the return, a letter dated 15-3-1999 was filed by the assessee stating that there is no gift involved in the transaction. Over and above it was stated that there is no gift of properties as per the Mohammedan Law. Further it was stated that there is a clause in the partition deed that during the life time of the assessee and his wife Fathima Rahim the allottees shall not assign the properties without their consent and if they do so, the alienation would be void. It was stated that the transaction did not satisfy the conditions laid down for Muslim gifts and there is no declaration of gift which is necessary to constitute Muslim gift. There should also be complete relinquishment by the donor of ownership. There is a clause prohibiting complete alienations without consent and treating such alienations as void. Since the ingredients of valid gift are absent, there is no element of gift involved in the transaction by the assessee.

3. We have already indicated in G.T.A No. 3/Coch/2000 assessee is the son of Fathima Rahim. Assessees mother, Smt Fathima Rahim. filed a return on 25-2-1997 declaring taxable gift as Nil. Since there was no response hearing was posted on 28-1-1998, for determining the fair market value of the gifted property and the matter was referred to the Valuation Cell on 2-9-1998. After further hearing, the assessment was completed under section 15(3) of the Gift Tax Act, 1958 on 22-3-1999 determining the taxable gift at Rs. 74,80,750 for the assessment year 1996-97. It was noticed that as per document No. 1606 dated 20-4-1995, properties belonged to the assessees mother and father were gifted to

their children and a minor grandchild. The assessing officer issued notice dated 19-11-1999 to the assessee under section 32(2) of the Act directing him to pay a sum of Rs. 26,23,721 together with interest thereon. Notice was issued to the assessee since the donees were jointly and severally liable to pay gift tax due from the donors by virtue of the provisions of section 29 of the Act. On receipt of the notice from the assessing officer the assessee filed O.P. No. 2007 of 2000 before this court. Learned Single Judge of this court directed the assessee to file appeal before the Appellate Tribunal. Tribunal considered the appeal filed by the assessee elaborately and found that all the conditions to constitute valid gift are satisfied in this case. Therefore the assessing authority has rightly imposed the tax. Valuation made by the department was also found to be in order.

4. Counsel appearing for the appellant submitted that the Tribunal has committed an error in holding that the gift was valid. According to the counsel, as per document styled as settlement deed no title has passed on to the alleged donces. Further it is also stated that the donors have not transferred the right in the building situated in the property belonged to the trust. It is also submitted that there is no transfer of possession of building or properties. Counsel also submitted that valuation was not properly conducted with notice to the assessee. Counsel for the revenue on the other hand contended that the provisions of the Transfer of Property Act are not applicable to Muslim gifts. Counsel appearing for the appellant placed reliance on the decisions in Chellappan Nadar v. Krishnan Nair (1963) KLT 750 and Pocker v. Kathiya (2000) (1) KLT 430. Counsel appearing for the revenue placed reliance on the decisions in W O. Holdsworth v. State of Uttar Pradesh : [1958]33ITR472(SC) , CWT v. Kripashankar Dayashanker Worh : [1971]81ITR763(SC) and Ismail v. Idrish : AIR1974 Pat54 . The only question to be considered is whether settlement Deed No. 1606 of 1995 dated 20-4-1995 settling the immovable properties in favour of the children and grandson is gift under the provisions of the Gift Tax Act.

5. The term 'gift' is defined in section 2(xii) as follows :

'(xii) gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or

moneys worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section.'

Section 3 is the charging section and section 4 includes certain transfers within the term 'gift'. We are in this case concerned only with the question whether document referred to herein before would satisfy the ingredients of a 'gift' under the Gift Tax Act. If the transaction satisfies the ingredients of 'gift' under the Act, the question as to whether 'gift' is valid under Mohammedan Law or not is of no consequence. The Gift Tax Act was enacted in 1958 and the Transfer of Property Act was enacted in 1882. In the decision in Vadulla Venkata Rao v. CGT : [1972]85ITR249(AP) it has been held that the scope and ambit of the Gift Tax Act is of wider import than that of the Transfer of Property Act. In that case it was held that a differed interest grapited to the assessees son in a property after the death of his wife is taxable under the Gift Tax Act. We have perused the document in question. Preamble of the deed indicates that gift has been made by the donor voluntarily without any consideration. It is true that in page 3 of the document, the document is described as Bhagapathram that is, partition deed. A partition deed is valid only if a pre-existing legal right at least a portion of the property being partitioned. Properties involved in the document exclusively belong to the assessee, late Rahim and his wife and it has been settled on his children and grandchild. At pages 12 and 13 of the document it has been clearly stated that the properties belonged to the assessee and his wife and the intention is to clearly set apart those properties to others who are their successors with the intention of the future well being and unity of each of the successors and it is being done as per the desire of the assessee and his wife. At pages 14 and 15 it has been clearly stated that possession and enjoyment has been released by all in favour of the owners of each schedule of property permanently and from that date onwards, each of those scheduled properties are to be held and enjoyed in an absolute manner. The deed further assigns each institution like Malikdinnar Industrial Training College and Fathima College of Pharmacy etc. located in the gifted premises to the specified donees from that day giving them ownership rights. The document also indicates that by the execution of the gift donors have no right at all to sell the properties. On a perusal of the terms of the document in its entirety, we are in agreement with the authorities below and the Tribunal that a valid gift within

the meaning of the Gift Tax Act has been effected and attracts gift tax.

6. We are now concerned with the question of valuation made by the valuation officer under section 15(6) of the Act is correct or not. So far. as Fathima Rahim is concerned, gift tax was assessed for the year 1993-94 at Rs. 37,000 and for the year 1996-97 at Rs. 74,80,750. Demand made was Rs. 20,424 and Rs. 26,03,297 respectively for the years 1993-94 and 1996-97. As far as Azad Rahim is concerned the department assessed tax at Rs. 26,23,721 together with interest. Counsel appearing for the appellant submitted that the valuation was made without notice to the appellant though it is stated by the representative that notice was issued to them and that they were not present. Considering the facts and circumstances of the case, we feel it only just and proper that an opportunity be given to the parties to file objection to the valuation made for the year 1996-97. Counsel submitted that the appellant had in fact filed objection to the valuation report and there was no application of mind. Appellants are however given opportunity to file objections, if any within a period of two months from today and the same will be considered by the valuation officer after giving opportunity of being heard to the assessee or their representative. Final orders will be passed by the valuation officer, within a period of three months thereafter on the basis of the valuation report appropriate orders would be passed by the assessing authority. In all other respects the order of the Tribunal will stand.