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Court : Rajasthan

Decided On : Apr-28-2003

Reported in : [2003]130TAXMAN781(Raj)

Appeal No. : D.B. IT Reference No. 3 of 1995 28 April 2003

Appellant : Nizamuddin

Respondent : Cit

Advocate for Pet/Ap. : Mahendra Gargia and N. Jain, *for the Assessee* Parinitu Jain, *for the Revenue*

Judgement :

On an application under section 256(1) of the Income Tax Act the Tribunal has referred the following question for the opinion of this court :

'Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the gift made by the assessee in favour of his three minor sons in the form of Hiba under the Mohammedan Law attracts the provisions of section 64(1)(v) read with section 27(1) of the Income Tax Act, 1961 and, therefore, the rental income of the three minors from the properties gifted to them by the assessee was includible in the total income of the assessee for the three years under consideration ?'

2. Assessment years, in all, are 1983-84 to 1985-86. That assessee-respondent has made oral declarations on 1-1-1982 in favour of his minor sons Zahiruddin and Mohd. Zafar and similar declarations have been made on 1-12-1982 in favour of his minor son Moinuddin. The assessee, by these oral declarations, claimed that he has gifted the properties to his minor sons. Such gifted properties were accepted and those properties are fetching rental income Rs. 11,400 in the assessment year 1983-84 and Rs. 13,500 in each of the two subsequent assessment years. Assessee claimed that after gift, rental income from gifted property should not be taxed in hands of assessee. The assessing officer has charged that income and assessed that income in the hands of assessee, invoking the provision of section 64(1)(v) of the Income Tax Act, 1961.

3. In appeal, the Deputy Commissioner (Appeals) has given the reason that the transfer was made under the Mohammedan Law, therefore, no interference is called for to tax the income under the Income Tax Act. In appeal before the Tribunal, the Tribunal found that it is a transfer by way of gift in favour of the minor sons and any income in the hands of the child should be taxed as income in the hands of their parents under section 64(1)(v) of the Income Tax Act.

4. Heard learned counsel for the parties. Learned counsel for the applicant assessee submits that when the transfer was made by the assessee in favour of his sons to ensure their education, it is an adequate consideration and, therefore, any rental income arising out of that property which has been transferred, should not be taxed in the hands of the assessee. Learned counsel further submits that the transfer is not in dispute and transfer or no transfer, it is the obligatory on the parents to educate their children and once the transfer of property is made by the parents in favour of their children, any income arising out of the consequence of transfer of that property, income from that should not be taxed in the hands of the assessee transferor.

5. The Tribunal has considered this aspect in detail in its order. The relevant paras 9 to 13 of the order of the Tribunal read as under :

'9. A 'Hiba' or gift under Mohammedan Law is a 'transfer of property, made immediately, and without any exchange' by one person to another and accepted

by or on behalf of the latter. For the purpose of taxability of the income from the gifted property the meaning of the term 'Transfer' shall have to be known from the definition of the term as given in section 2(47) of the Act. Once a transaction amounting to gift under Mohammedan Law falls within the definition of the term 'transfer', as given in section 2(47) of the Act, the charging section under the Act would come into pay exemption from charge of income tax could be claimed with reference to the provisions of the Act only.

10. In the instant case, gifts of certain properties made by the assessee in favour of his three minor sons is an admitted position. It cannot be disputed that the gifts so made involved transfer of capital asset by the assessee to his sons within the meaning of the term defined in section 2(47). There is no dispute on the point that during the years under consideration, the minors had derived income from the gifted properties. On these facts the express provisions of section 64(1)(v), reproduced below, obviously come into operation and the incomes, as mentioned above, was rightly subjected to tax by the Income Tax Officer :

'64. (1) In computing the total income of any individual, there shall be included as all such income as arises directly or indirectly

(v) subject to the provisions of clause (i) of section 27, in a case not falling under clause (iii) of this sub-section, to a minor, child (not being a married daughter) of such individual, from a sweets transferred, directly or indirectly to the minor child by such individual otherwise than for adequate consideration.'

11. The argument that the provisions of section 64(1)(v) being in pari materia with the provisions of section 4(1)(vi) of Wealth Tax Act, 1957 read with the proviso thereunder, no income from the gifted property should be considered as chargeable to tax in the hands of the assessee as these were not found by the Tribunal as chargeable to gift-tax on the ground of the purpose of the gift being ensuring education to the minors and as such not includible in the computation of the net wealth of the assessee, is not convincing.

12. It is not in dispute that the Tribunal in its order dated 30-5-1989 passed in the gift-tax case of the assessee for assessment year 1983-84 (GTA No. 4/JP/88) had

declared the gifts in question as exempt under section 5(1)(xii) of the Gift Tax Act, 1958. Benefit of such exemption may or may not be available to the assessee in his wealth-tax case, if any, but certainly not in the instant case for the obvious reason that in the Act there is no proviso below section 64(1)(v) like proviso below section 4(1)(vi) of the Wealth Tax Act, 1957 which runs as follows :

'4. (1) In computing the net wealth of an individual, there shall be included as belonging to that individual

(a) the value of assets which on the valuation date are held-(vi) (by a person or association of persons to whom such assets have been transferred by the individual, directly or indirectly, on or after the 1-6-1973, otherwise then for adequate consideration for the immediate or deferred benefit of the son's wife, or the son's minor child, of such individual or both)

whether the assets referred to in any of the sub-clauses aforesaid are held in the form in which they were transferred or otherwise :

Provided that where the transfer of such assets or any part thereof' is either chargeable to gift-tax under the Gift Tax Act, 1958 (18 of 1958), or is not. chargeable under section 5 of that Act, for any assessment year commencing after the 31-3-1964, (but before the 1-4-1972) the value of such assets or part thereof, as the case may be, shall not be included in computing the net wealth of the individual.

13. It may further be observed that in the instant case, gifts were made on 1-1-1982 and 1-12-1982 held much after 1-4-1972 and the proviso to section 4(1)(vi) even if be held to be applicable, would provide no help to the assessee.'

6. Considering the admitted facts that there was a transfer by the assessee to his sons, without any consideration of money, that property fetches the rental income, the Tribunal was absolutely justified in holding that rental income from the property in question should be taxed in the hands of the assessee under section 64(1)(v) of the Act. If we accept the type of consideration with which assessee has come before assessing officer, the object of the provision of section 64 of the Act, 1961

will be frustrated. No interference is called for.

7. In the result, we answer the question in affirmative, i.e., in favour of the revenue and against the assessee.

8. The reference stands disposed of.

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