

***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY
AND
*THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
+R.C.No.11 of 2003**

% Dated 14.10.2014

Pentakota Radhakrishna.

....Applicant

\$ C.I.T., Visakhapatnam.

....Respondent

! Counsel for applicant : Sri S.R.Ashok

^ Counsel for respondent : Sri Y.Ratnakar

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? Cases referred:

1. 122 ITR 21(S.C.)
2. 187 ITR 345(S.C.)
3. 195 ITR 17 (Bom.)
4. 195 ITR 844 (Karnataka)

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JUDGMENT: (Per LNR,J)

This reference, at the instance of the assessee-applicant, raises certain questions of considerable importance.

The applicant owned Ac.7.31 cents of land at Visakhapatnam. It was acquired by the Government, by invoking the provisions of the Land Acquisition Act (for short 'the Act'). The Land Acquisition Officer passed an award dated 25.09.1970 determining the market value at Rs.2.87 ps. per square yard. A sum of Rs.1,02,068/- was paid on the same day and possession was taken. At the instance of the applicant, a reference under Section 18 of the Act was made to the

Subordinate Court, Visakhapatnam and it was taken up as O.P.No.59 of 1971. The trial Court passed a decree dated 05.02.1974 enhancing the market value to Rs.20/- per square yard, which aggregated to Rs.6,93,187/-.

About two years thereafter i.e., on 26.04.1976, the applicant created a Trust for the members of his family and for charity. He endowed a sum of Rs.1,000/- initially and made provision for transfer of the amount receivable under the decree passed in O.P.No.59 of 1971 and the further appeal that may arise out of it.

The Government filed A.S.No.56 of 1978 feeling aggrieved by the enhancement of the compensation by the trial Court. It is important to note that the Trust got itself impleaded in A.S.No.56 of 1978. On the basis of the interim orders passed in the appeal, a sum of Rs.4,00,000/- was deposited by the Government. The appeal was ultimately allowed in part on 23.12.1982 by reducing the market value to Rs.10/- per square yard. Between 25.04.1976 and 25.04.1977, the applicant received Rs.4,00,000/- towards enhanced compensation and he is said to have passed on to the Trust, only on 04.04.1983.

In the return filed for the assessment year 1983-84, the applicant reflected the amount of compensation but pleaded that he is not liable to pay tax, since it has been passed on to the Trust. The Assessing Officer did not accept the contention. According to him, the very disposition made under the Trust is untenable in law, since it was in respect of an amount, which was very much in the hands of the applicant during the assessment year. However, accepting the plea of the applicant that it has passed on the amount on 04.04.1983 to the Trust, the Assessing Officer levied gift tax under the Gift Tax Act.

Feeling aggrieved by the two orders passed under the Income Tax Act and the Gift Tax Act respectively, the applicant carried the matter to the Commissioner (Appeals). The appeals were rejected through a common order dated 06.03.1992. Thereupon, the applicant filed I.T.A.Nos.956/Hyd/92 and GTA.No.8/H/92 before the Income Tax Appellate Tribunal, Hyderabad Bench. Through separate orders, dated 26.05.1998, the Tribunal dismissed both the appeals.

The applicant filed common reference application in both the appeals before the Tribunal with a request to refer certain questions to this Court covering both the appeals. After hearing both the parties and undertaking extensive discussion, the Tribunal referred the following question for answer to this Court:

“Whether on the facts and in the circumstances of the case, the entire amount of award received by the assessee, shown in his books of accounts as liability of the Trust does not amount to income of the assessee liable to be taxed in his hand under the Income Tax Act?”

“Whether on the facts and in the circumstances of the case the

assessee is not liable to pay gift-tax to the assessment year 1984-85 relevant to the financial year 1983-84 on the amount of award finally received and accounted for in his books of accounts in the name of Trust 'The P.Sreeramulu Naidu Trust' created under a Trust Deed dt. 26.4.1976 transferring the right to receive the compensation in favour of the said Trust?"

While the first one is referable to the provisions of the Income Tax Act, the second one is referable to the Gift Tax Act.

Learned senior counsel for the applicant submits that the view taken by the Assessing Officer, Commissioner and the Tribunal that the right to receive compensation could not have been gifted or made over in favour of the Trust is opposed to law. He contends that the right to receive compensation is an actionable claim and the same is capable of being transferred. He further submits that the Assessing Officer on the one hand levied gift tax by accepting the gift of the amount in favour of the Trust and on the other hand, refused to acknowledge it in the context of levying income tax. He submits that both the questions referred to this Court deserve to be answered in favour of the applicant. He places reliance upon the judgments of the Supreme Court in ***Mrs. Khorshed Shapoor Chenai vs. Assistant Controller of Estate Duty, A.P. Commissioner of Wealth Tax vs. Smt. Anjamli Khan***, that of the Bombay High Court in ***Akber A. Dehgamwalla vs. Commissioner of Wealth Tax*** and that of the Karnataka High Court in ***C.N.Nagakumar vs. Commissioner of Wealth Tax***

Learned Standing Counsel for the Department on the other hand submits that it is only an amount, which is definite and available at the relevant point of time, that can be gifted and not something, which is uncertain. He submits that what was gifted by the applicant to the Trust was not the amount of compensation but only the one which is the subject matter of an O.P. and further appeal and such parcels cannot be gifted at all. He submits that all the authorities under the Act have taken correct view of the matter and both the questions deserve to be answered against them. On merits also, learned counsel submits that though the gift is said to have been made in the year 1983, the amount was received by 1977 and the applicant enjoyed the same till the year 1983 and that the same runs contrary to the very facts pleaded by the applicant.

The basic facts relating to the case have been stated in brief in the preceding paragraphs. The land of the applicant was acquired and he received the compensation, that was awarded by the Land Acquisition Officer in the year 1970. He utilized the amount for himself. After receiving the compensation, he took the steps for enhancement of the same by seeking reference under Section 18 of the Act and accordingly O.P.No.59 of 1971 was registered. In the year 1972, the trial Court determined the compensation payable at

Rs.6,93,187/- in addition to what was paid by the Land Acquisition Officer. The applicant however did not receive the amount till the State filed A.S.No.56 of 1978 and interim order was passed therein. It is during this interregnum, he created a Trust on 26.04.1976. The relevant provision in the Trust deed reads as under:

1. In consideration of the premises and of the natural love and affection which the Settlor bears towards his relations whose names have been specifically mentioned in Schedule-I..... the Settlor DOTH hereby create a TRUST in respect of the entirety of the sum that may be finally receivable by the Settlor after the satisfaction of the two decreed herein above referred and also transfers UNTO the Trustees a sum of Rs.1,000/- (Rupees one thousand only) in cash, as initially corpus fund to the Trust and the right too the entire compensation which is the subject matter of A.S.56/76 on the file of the High Court or to any lesser sum that will be receivable on and after the decision of the High Court is rendered and for this purpose the Settlor is so advised will have the Trust impleaded as a party in the appeal proceedings in the High Court of A.P. being an assignee of the right under this Trust.

Between the date of Trust Deed and 25.04.1977, the applicant received a sum of Rs.4,00,000/- on the basis of the interim order passed by this Court in A.S.No.56 of 1978. However, he did not pass on the amount to the Trust and retained it till 04.04.1983, though the appeal itself was disposed of on 23.12.1982.

The applicant pleaded the transaction of gift in favour of the Trust in relation to the amount of compensation received in the form of enhancement. The Assessing Officer as well as the Commissioner and the Tribunal took the view that the gift of an amount, which is not determined could not have been made at all. In this regard, focusing of attention to certain basic of law becomes necessary.

The Transfer of Property Act deals with the 'gifts' pertaining not only to immovable properties but also movable properties. Section 122 takes in its fold both the categories of properties and it reads as under:

122. "Gift" defined:- "Gift" is the transfer of certain existing movable and immovable property made voluntarily and without consideration, by one person, called the donor, to another called the donee, and accepted by or on behalf of the donee.

Section 123 prescribes the procedure to be followed for making gift of immovable property on the one hand and immovable property on the other hand.

The movable property takes in its fold not only the tangible items but also the intangible ones. Section 130 of the Transfer of Property Act provides for transfer of actionable claims also. That expression is defined under Section 3 of that enactment as under:

"Actionable Claim" – 'actionable claim' means a claim to any debt, other than a debt not secured by mortgage of immovable

property or by hypothecation or pledge of movable property, or to beneficial interest in movable property not in the possession, either actual or constructive of the claimant, which the Civil Courts recognise as affording grounds for relief whether such debt or beneficial interest be existent, accruing, conditional or contingent.

From a perusal of this, it becomes clear that any amount representing debt other than the one secured by mortgage or hypothecation, need not be in actual or constructive possession of the claimant. In the ultimate analysis, it is a right to claim the amount. However, the right must be clear and a definite one. The remote possibility of receiving the amount such as the one in a suit for damages, cannot be treated as an actionable claim. Unlike the right to receive compensation under the relevant enactments, the Bombay High Court in **Akber A. Dehgamwalla's** case (3 sup4a) explained the distinction as under:

“It is only the amount of compensation that is to be determined later on after taking into account various relevant aspects. In the case of damages for breach of contract, there is no vested right as such. Breach of contract gives merely a right to sue which right is certainly not an “asset” within the meaning of section 2(e) of the Act.”

The amount involved in this case is the one referable to the Act. In a given case, if a mere right to receive the compensation that may be enhanced may tend to become the one, equivalent to damages. The reason is that one cannot take the enhancement of compensation for granted. Several factors surround it and it is only on a case being made out, that the Court can enhance the compensation. Had the applicant gifted the mere right to receive a probable enhanced compensation, things would have been different altogether. By the time he created the Trust Deed, the compensation stood already enhanced in the year 1974. What was gifted to the Trust was the compensation enhanced in the O.P. The only difference was that the amount so enhanced was subject to modification by the High Court. Therefore, being an actionable claim, it was capable of being gifted.

The judgment in **Mrs. Khorshed Shapoor Chenai's** case (1 supra) arose under the Estate Duty Act. The Supreme Court took the view that the compensation for the land, which is acquired under the Act cannot be treated as part of estate of an assessee, and his right to receive compensation at market value as on the date of notification that may accrue to him can certainly be treated as a property, that would pass on, on his death. In other words, the right to receive compensation was treated as an item of property.

Similar view was expressed in **Smt. Anjamli Khan's** case (2 supra). Therefore, the view taken by the Assessing officer, the Commissioner and the Tribunal in the instant case that the right to receive enhanced

compensation could not have been gifted, does not accord with law. We hold that the arrangement made under the Gift deed was legal and valid and there is nothing unnatural about it. However, the undisputed facts disable the applicant from getting any relief.

It has already been mentioned that the enhanced compensation of about Rs.4,00,000/- was received by the applicant between 26.04.1976 and 25.04.1977. Had he passed on that amount instantly to the Trust, the amount would have become the corpus of the Trust. Since the amount remained in the hands of the applicant, atleast till 04.04.1983 i.e., for a period of 6 years, it partakes the character of income and was rightly assessed to tax. It was only in the subsequent year i.e., 1984-85, that he was levied gift tax, accepting the contention of the transfer of the amount on 04.04.1983.

Therefore, we answer both the questions against the applicant and reject the reference.

L.NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

Date: 14.10.2014

Note: L.R.Copy to be marked.

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