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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

R-38

+ **GTR 1/2002**

JAGAN NATH SYAL (DECEASED) Petitioner
Through: Mr. Shashwat Bajpai, Advocate.

versus

COMMISSIONER OF GIFT TAX Respondent
Through:

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.07.2015

1. This reference under Section 26 (1) of the Gift Tax Act, 1958 pertains to Assessment Year ('AY') 1992-93.

2. The questions framed by the Special Bench 'A' of the Income Tax Appellate Tribunal ('ITAT') by its order dated 2nd September 2002 for consideration before this Court read as under:

“(1) Whether on the facts and circumstances of the case and in law the Tribunal was justified in holding that a share in the DSE as also membership of DSE were property/assets and transfer thereof was exigible to tax under the Gift-tax Act, 1958?

(2) Whether on the facts and circumstances of the case and in law the Tribunal was justified in opining that composite value of share and ticket was to be adopted?”

3. The Assessee filed its income tax return declaring a gift of Rs. 2,85,504. This pertained to the gift of one share of the Delhi Stock Exchange Ltd. (‘DSE’) by the Assessee to his son, Mr. Vijay Kumar Syal, on 9th March 1992. The Assessing Officer (‘AO’) was of the view that the donee, as a result of the said gift, acquired the right to enter the trading ring on the floor of the stock exchange as a broker. According to the AO, the composite value of the gift of the share of DSE comprised both the share itself and the right to enter the trading ring as member of the DSE. Thus, he worked out the value of the gift at Rs. 40 lakhs.

4. The appeal of the Assessee was rejected by the Commissioner of Gift-Tax (Appeals) [‘CGT (A)’] and the further appeal filed before the Special Bench, ITAT was disposed of by its order dated 8th November 1999 upholding the order of the CGT (A). Thereafter, a reference was sought and the above questions framed by the Special Bench, ITAT.

5. On the first question, learned counsel for the Assessee first referred to the Memorandum and Articles of Association ('AoA') of the DSE to urge that membership of the DSE was independent and distinct from holding shares in it. He referred to the decision in *Stock Exchange, Ahmedabad v. ACIT (2001) 248 ITR 209 (SC)*, *Techno Shares and Stocks Limited v. ACIT (2010) 327 ITR 323 (SC)*, *Vinay Bubna v. Stock Exchange, Mumbai AIR 1999 SC 2517*, *DCIT v. Ashwin C. Shah (2002) 254 ITR 90 (Mum) (AT)* to urge that membership of the stock exchange is in the nature of personal permission and is not a tangible asset.

6. The Court has perused the memorandum and AoA of the DSE. It shows showed that the issue and transfer of shares has been dealt with separately and differently from the membership of the stock exchange. Article 18 of AOA states that the Board shall not register any transfer of any share(s) to any person other than a member of the stock exchange or a candidate for membership who has been duly elected as eligible for membership under the provisions of Article 25 and the Board may refuse to register any transfer or shares(s) to an existing member or may impose such condition in respect of any such last mentioned transfer as they may deem fit. Under Article 21 of the AoA any person who becomes entitled to a share in

consequence of the death of a share holder of the company shall have the right to be registered as a share-holder in respect of the said share or, instead of being registered himself, to make such transfer of the share as the deceased person himself could have done, provided he is otherwise qualified to be so registered under the AoA. Article 24 of the AoA pertains to membership of the stock exchange and describes further conditions to be satisfied before a share holder can become a member. These conditions are further enumerated in Article 25. The procedure with regard to enrolment, admission or election of new members of the stock exchange is set out in Article 26. Article 34 states that membership shall not be transferable except in accordance with the rules. Article 43 talks about the termination of the membership and sets out the instances resulting in the same.

7. In *Vinay Bubna v. Stock Exchange, Mumbai* (*supra*) the Supreme Court was considering the question whether under the Rules of the Bombay Stock Exchange the membership card could be said to be an asset of the shareholder. In answering that question, the Supreme Court observed that “the membership card of a share broker is not his personal property which, on default being committed by him and his ceasing to be a member, can be sold and the proceeds distributed amongst his creditors.” Subsequently, a

similar question was addressed by the Supreme Court in ***Stock Exchange Ahmedabad v. ACIT*** (*supra*). On analysis the bye-laws of the stock exchange, which is more or less similar to the rules of the DSE, the Supreme Court concluded that “it is clear that the right of membership is merely a personal privilege granted to a member, it is non-transferable and incapable of alienation by the member or his legal representatives and heirs except to the limited extent as provided in the rules on fulfilment of conditions provided therein. The nomination wherever provided for is also not automatic. It is hedged by rules.” The Court was categorical that “the membership right in question was not the property of the assessee and therefore, it could not be attached under Section 281B of the Income Tax Act.”

8. The above legal position has been reiterated in ***Techno Shares and Stocks Ltd. v. ACIT*** (*supra*) and followed by the Mumbai Bench of the ITAT in ***DCIT v. Ashwin C. Shah*** (*supra*).

9. In view of the above settled legal position, and in light of its analysis of the relevant provisions of the AoA of the DSE, the Court is of the view that the first question requires to be answered in favour of the Assessee. It is accordingly held that the ITAT was not justified in holding that membership

of the DSE was an asset of the Assessee and transfer thereof was exigible to gift tax under the taxation under the Gift Tax Act, 1958.

10. In view of the answer to the first question, the second question is answered in the negative. It is accordingly held that the ITAT was not justified in adopting the composite value of the share as well as the ticket for the purpose of gift tax.

11. The CGT (A) had in his order dated 31st August 1985 held that as per the decision of the Supreme Court in ***Bharat Hari Singhani v. CWT 207 ITR 1***, valuation of the share must mandatorily be as per Schedule III of the Wealth Tax Act. The CGT (A) proceeded on the basis that that “the same value has to be taken for both wealth tax and the gift tax purposes.” The CGT (A) further proceeded on that basis and the valuation of shares of DSE was undertaken as per Rule 11 of Schedule III to the Wealth Tax Act.

12. The Court finds that no such question as such has been raised by the Revenue as regards the value of the shares for the purpose of gift tax. Consequently, this Court is not called upon to examine the correctness valuation of the shares transferred by the assessee in favour of his son for the purposes of gift tax.

13. The reference is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JULY 20, 2015

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