IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

GIFT TAX APPLICATION NO.9 OF 1994

The Commissioner of Gift Tax, Vidarbha, Nagpur
..vs..
Smt. Vimladevi Bajaj, Wardha

....

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

....

Shri Bhushan Mohta, counsel for the Applicant.
Shri C.J. Thakkar, counsel for the Assessee.

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
DATED : FEBRUARY 4, 2016.

By this application under Section 26(1) of the Gift-tax Act, 1958 (for short, "*the said Act*"), the department seeks a prayer directing the ITAT to state the case and refer to this Court the questions of law stated by it in paragraph No.5 of the application.

It is not in dispute that order of the ITAT rejecting the case of the applicant on merits is dated 11.5.1994. The ITAT found that there was no deemed gift under Section 4(1)(a) of the said Act. The department, thereafter, moved an application

before the Tribunal requesting it to refer three questions to this Court. The said prayer for reference was rejected by the Tribunal on 7.9.1994. Thereafter, the present application has been filed.

The questions, on which the reference is sought, are as under :

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that there cannot be any deemed gift under section 4(1)(a) of the Gift Tax Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that it could not be said that the transfer of the property (shares) by the assessee to the partnership firm can be for inadequate consideration?

.....3/-

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount shown in the books is only notional figure and it does not amount to consideration?

We have heard learned counsel for the applicant/department Shri Bhushan Mohta and learned counsel for the assessee Shri C.J. Thakkar.

The relevant part of the order of the ITAT, out of which the reference is claimed, to arise, reads as under :

> **"i) *there must be a transfer of property,***
>
> ***ii) the transfer must be for consideration other than adequate, and***
>
> ***iii) the market value of the property must exceed the value of***

consideration."

The ITAT does not find the consideration inadequate and, recorded a finding that ingredients of Section 4(1)(a) of the said Act are not satisfied. It has found that in case of such transfer, it cannot be said that consideration therefor is the amount shown in the books of firm. No question is formulated on this appreciation.

The ITAT has, therefore, not found that there cannot be any deemed gift under Section 4(1) (a) of the said Act. But, as a matter of fact, after noticing that consideration, could not have been labelled as inadequate, the Tribunal dismissed the appeal filed before it by the revenue. The ITAT has not held that there can be a transfer for inadequate consideration. Perusal of said order also reveals that the ITAT has found that even if there is a transfer when a partner brings his asset into partnership, it is not with the purpose of creating rights in that property for others but to do business with that property and to earn profits. This finding is not perverse.

In this situation, we find that above mentioned three questions cannot be said to arise out of the order of the ITAT. The application for reference was considered by the ITAT and it has rejected it on 25.7.1994. We do not find anything wrong even with that rejection.

Learned counsel for the assessee Shri C.J. Thakkar attempts to point out that the total value of deemed gift in present matter is only Rs.13,62,100/- and, hence, the gift tax, calculated upon it at 25%, may not exceed Rs.4,00,000/-. According to him, tax effect is, thus, less than the tax effect prescribed in instruction No.2 of 2005 i.e. instruction dated 24.10.2005.

Learned counsel for the applicant/department Shri Bhushan Mohta has, however, points out that total tax effect, without any interest or penalty, works out to Rs.4,01,340/-. This figure is mentioned in appellate order passed by the CIT (appeals) on 27.4.1987.

We accept the statement of learned counsel for the applicant/department Shri Bhushan Mohta.

However, taking overall view of the matter, we are not inclined to call for any interference in the present facts. The application is accordingly rejected. No costs. Rule is discharged.

JUDGE **JUDGE**

!! BRW !!