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

Date of decision: 22.02.2018

\+ **GTA 4/2007**

MASTER RAJU SAIGAL TRUST ..... Appellant

Through : Mr. Y.K. Kapur, Adv.

versus

GIFT TAX OFFICER ..... Respondent

Through : Mr. Deepak Anand, Adv. for Mr. Ruchir Bhatia, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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1. The following questions of law arise for consideration :

(i) Whether the period of 12 months or 6 months, as the case may be, as prescribed in proviso to Section 15(2) of the Gift Tax Act, 1958, is applicable to re-assessment proceedings initiated under Section 16 of the said Act?

(ii) If the answer to the above question is in the affirmative, whether the assessment order dated 29.03.2001 would be bad in law as being beyond the time prescribed?

2. The brief facts are that the assessee filed gift tax return on 16.4.1987. This return was filed pursuant to a notice under Section 16(1)(a) of the Gift Tax Act. After the assessee filed the return, the Gift Tax Officer (GTO) did not take any further action and on

16.3.1989, issued notice under Section 15(2) of the Gift Tax Act, 1958 ('the Act'). He thereafter proceeded to complete the assessment and sought to bring to tax on the total gift, the value of which was determined at ₹19,90,840/-. The assessee appealed to the Commissioner, which was disposed of by confirming the order of the GTO. The assessee appealed further to ITAT, who set aside the orders of the Commissioner and directed the AO to proceed and complete the assessment in accordance with the provisions of law. The order of the ITAT was served upon revenue on 19.11.1998. The GTO proceeded to issue notice much later on 16.3.2000 under Section 15(2). By this time, an amendment had been brought about to the Gift Tax Act by way of proviso to Section 15(2), which imposed the time limit of six months, from the end of the financial year in which the gift tax return is filed or six months from the date of filing of return whichever was later. The assessee contended that the notice issued on 16.3.2000 was beyond the period of time. The AO, however, rejected the contention and proceeded to bring to tax the amounts. The further appeal to the Commissioner was likewise unsuccessful. The ITAT by its order dated 12.1.2007 affirmed the order of the CIT(A). The ITAT rejected the assessee's contention holding that there was no time period provided in respect of the transactions, which concerns the present assessment.

3. The assessee argues that the remand order made by the ITAT in the first instance was not absolute in the sense that when the ITAT on 13.8.1998 set aside the order of the GTO and the Commissioner of

Gift Tax, the direction given was to proceed as follows:

> "*the assessment officer can proceed with the proceedings in accordance with the provisions of law, if it is now possible to do so, from the stage at which the illegality has occurred i.e. from the stage of pendency of the valid return"*

4. It is contended that the observations of the ITAT were not meant to clothe the GTO with power which he did not possess under law. Elaborating its contention, it is urged firstly that with the intervening amendment to Section 15(2), the GTO was under a mandate of law to issue notice if at all, within the prescribed period failing which any adverse order was unenforceable and invalid. It was secondly contended that even otherwise the order of 13.8.1998 had expressly affirmed the findings that notice was never served upon the assessee. Such being the case even in the pre-existing position of law, it only meant that absence of notice issued within a reasonable time would have meant that the assessment order was void. In completely ignoring these two aspects, urged counsel, the ITAT fell into error.

5. It is quite evident that the assessee's return in respect of the transaction which occurred in 1983, became the subject matter of the notice by the Gift Tax officials in March, 1987, which resulted in the filing of a return on 16.4.1987. The first round of litigation resulted in finality of one aspect i.e. though, notice under Section 15(2) was issued in terms of the record, it was only served upon the assessee. Such being the case, when the ITAT rendered its findings, limitation prescribed by the amendment had come into force. Even otherwise, the ITAT order dated 13.8.98 meant, in the opinion of this Court, a

direction to the GTO to assume a jurisdiction, which he never possessed in the first instance, given that the amendment had come into force. Furthermore, absence of service of notice meant that, in fact, there was no notice and therefore, no valid assessment. However, proceeding to hold otherwise and sustain the findings of the GTO and the lower appellate authority, the ITAT clearly erred in law. The questions of law framed are therefore, answered in favour of the assessee and against the revenue. The appeal is therefore, allowed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

FEBRUARY 22, 2018
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