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

Date of decision: 22.02.2018

+ **GTA 1/2007**

AND

GTA 2/2007

AMITA DUA

..... Appellant

Through : Mr. K. Sampath, Adv.

versus

GIFT TAX OFFICER

..... Respondent

Through : Mr. Deepak Anand, 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 question of law arises for consideration :

“Whether the Income Tax Appellate Tribunal was right in law in coming to the conclusion that for the Assessment Years in question M/s Dua Engineering Works Pvt. Ltd. of which the Assessee was the shareholder was an investment company within the meaning of Rule 2(6) of Schedule III of the Wealth Tax Act, 1957?”

2. The brief facts are that the assessee/appellant was allotted 1960 shares in *M/s Dua Engineering Pvt. Ltd.* She and her husband exclusively held all shares in the company (the assessee's share holding was to the tune of 12%). The assessee sold 1100 shares bearing face value of Rs.10/- per share to her husband on 31.07.1993.

She likewise sold balance 860 shares to her husband on 30.4.1994. Her husband apparently sold the shares to a third party for Rs.1400/-; that transaction was separately reported and assessed to capital gains in accordance with the provisions of the Income Tax Act. The Gift Tax Officer formed an opinion that the sale at Rs.10/- by the assessee of the shares was for inadequate consideration and proceeded to impose gift tax liability by reassessing the transaction valued at Rs.1400/- per share. The total deemed gift, therefore, determined was Rs.15,29,000/- The assessee appealed to the Commissioner of Gift Tax (A), who as well as the ITAT concurred with the GTO's decision and rejected the appeals. At the same time, the Commissioner of Gift Tax acknowledged that under Rule 2 (6) of Schedule III to the Wealth Tax Act, 1957 (which was made applicable by virtue of Rule 11 to the II Schedule to the Gift Tax Act) read with Section 6, an investment company is deemed to be one, which reports income from capital gains, house property or income from other sources yet went on to hold that subsequent sale of property at a much higher price is a relevant circumstance and on that basis, upheld the GTO's order. The ITAT concurred with that too.

3. It is argued on behalf of the assessee that revenue authorities were unduly influenced by the valuation of a property i.e. an industrial plot which had devolved upon the assessee's husband in 1991 and which became part of the assets of *M/s Dua Engineering Pvt. Ltd.* subsequently, after its incorporation. It was submitted that the shares were issued however at face value to all the shareholders i.e. the

assessee and her husband, after taking into consideration the value of the property, which was disclosed at around Rs.80,000/- in 1991 – as indeed subsequently, in 1993-1994. It was urged that the valuation adopted, by the revenue officials in these cases is premised upon *M/s Dua Engineering Pvt. Ltd.* being an investment company is plainly erroneous and contrary to the express provisions of law. Learned counsel relied upon the definition of “Investment Company” in Rule 2(6) of Schedule III to the Wealth Tax Act which are made applicable by reference to the provisions of the Gift Tax Act. Since *M/s Dua Engineering Pvt. Ltd.* did not report any income mainly on the basis of rents, capital gain or income from other sources, it could not be deemed to be an investment company. In such an event, even if it was assumed that the shares sold were for inadequate consideration, the book value of the company (a non-investment company) had to be considered. The book value at that stage was Rs.6.86 per share. The consideration disclosed at which the transaction was finalised was Rs.10/-. Therefore, the question of attracting ‘Deemed Gift’ provision under Section 4(1) did not arise.

4. The Revenue argues that the findings of the authorities below are based upon appreciation of facts and are concurrent throughout. It is urged that the value of the property was a necessary and relevant consideration. Though the property devolved on the husband, it became an asset of the company and therefore, it’s realistic or market value had to be reckoned for the purpose of valuing the share. Learned counsel also argued that the facts were glaring that the wife sold the

shares to her husband at Rs.10 and in the same year, the same shares were sold at a market value of Rs.1400/-. These facts could not and were not ignored by the Revenue authorities. Furthermore, *M/s Dua Engineering Pvt. Ltd.* did not undertake any activity – commercial or industrial and in these circumstances, the findings rendered by the lower authorities should not be interfered with.

5. Section 4 of the Gift Tax Act levies tax on “deemed gifts”. The relevant provision in this regard is as follows:-

“(1) For the purpose of this Act –

(a) Where property is transferred otherwise than for adequate consideration, the amount by which the value of the property as on the date of the transfer and determined in the manner laid down in Schedule II exceeds the value of the consideration shall be deemed to be a gift made by the transferor.”

6. Section 6 prescribes how the value of the gifts are to be determined. It reads as follows:-

“(1) Subject to the provisions of sub-section(2), the value of any property, other than cash, transferred by way of gift shall, for the purposes of this Act, be its value as on the date on which the gift was made and shall be determined in the manner laid down in Schedule II.

(2) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be capitalized value of the income from such property during the period for which the gift is not revocable.”

7. Rule 11 of the Second Schedule to the Gift Tax Act as applicable at that relevant time, refers to the rules embodied in the

Third Schedule to the Wealth Tax Act. The provisions of the Third Schedule pertinently read as follows:-

“2(6) “investment company” means a company whose gross total income consists mainly of income which is chargeable to income-tax under the heads “Income from house”, “Capital gains” and “Income from other sources.”

8. The discussion of the lower appellate authority reveals that *M/s Dua Engineering Pvt. Ltd.*, had hardly any commercial or industrial transaction. It did not even report much income. The CIT(A) was cognizant of the fact that under Rule 2(6), an investment company is one where the gross total income consists mainly of income chargeable to income tax under the heads income from house property, capital gains and income from other sources. However, the CIT went on to hold that the said provision applies only when the company has any “real gross total income at all”. Given that *M/s Dua Engineering Pvt. Ltd.* merely held investments in the industrial plot, at a value that was at the book value, the CIT (A) felt that it needed to be treated as an industrial investment company and proceeded to do so. This approach was affirmed by the ITAT.

9. In the opinion of this Court both the lower authorities and the AO fell into error in proceeding to apply III Schedule to the Wealth Tax Act (by reason of Rule 11), which is applicable to the investment company, when clearly the findings pointed out to the fact that the necessary pre-conditions of treating *M/s Dua Engineering Pvt. Ltd.*, as an investment company did not exist. If rule was inapplicable, the other mechanism of applying the value of a non-investment company,

was to apply. This meant that the book value of the share (Rs.6.86) had to be applied. Therefore, Rs.10/- value at which the assessee sold her shares to her husband in 1993 could not be treated as inadequate consideration. The findings of the lower authorities are, therefore, in error of law. The question of law is answered in favour of the assessee.

10. The appeals are allowed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

FEBRUARY 22, 2018

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