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

Date of decision: 16.01.2018

+ **GTA 3/2006**

COMMISSIONER OF GIFT TAX Appellant
Through : Mr. Zoheb Hossain, Sr. Standing
Counsel

versus

RAMESH SURI Respondent
Through : Mr. Prakash Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R. K. GAUBA

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

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1. In this appeal, the following questions of law arise for consideration:-

(i) Whether a transaction involving transfer of shares can constitute a gift under section 2(xii) read with section 4 of the Gift Tax Act in cases where the price paid for such transfer is proved to be in excess of the actual market price of the shares so transferred?

(ii) Whether the transfer in the above circumstances will not constitute a gift if the same is in pursuance of a family settlement?

2. Brief facts are that the assessee purchased 17,90,700 shares of M/s Bharat Hotels Limited at ₹25.70 per share. Purchase was from different companies controlled by family members as well as individuals, who formed part of the family. Apparently, a family dispute with respect to the control of the company M/s Bharat Hotels Limited and other properties was pending on the file of this Court in (Suit No. 516/1998). The share transfers were made pursuant to a family settlement arrived at by the disputing parties. The purchase was made by Sh. Ramesh Suri from the companies controlled by his brother G. Sagar Suri. Some shares were purchased from immediate family members of G. Sagar Suri. The entire transaction resulted in transfer of shareholding and controlling rights in respect of M/s Bharat Hotels Limited to Shri Ramesh Suri, including his family and his younger brother Shri Lalit Suri. These transactions were subject to income tax and gift tax proceedings. The Assessing Officer on the basis of the definition of the expression 'transfer' under Section 2(24) of the Gift Tax Act, and upon an interpretation of Section 4 of the said Act, was of the opinion that the amounts paid in excess of the face value, were taxable under both the Income Tax Act and the Gift Tax Act. This was on the basis that these excess amounts were *per se* taxable under Section 4 and that the transfers fell within the definition of "transfer of property" under Section 2(24).

3. The CIT (A), however, reversed the order of the Assessing Officer holding that the transactions could not be characterized as a transfer that would attract the provisions of Section 4 of the Gift Tax

Act. The ITAT endorsed this opinion, and also relied upon the judgment of the Gauhati High Court in *Ziauddin Ahmed vs. Commissioner of Gift Tax*, (1976) 102 ITR 253.

4. Learned counsel for the revenue urges that the excess amounts paid over and above the face value, as consideration for the transaction is, in fact, a gift and constitutes a taxable gift under Section 4(1)(a) of the Gift Tax Act. It was submitted that the Act makes no exception in the case of a family settlement or any other such arrangement and that being a fiscal statute it should be construed on its terms strictly.

5. Learned counsel for the assessee, on the other hand, submitted that *Ziauddin Ahmed (supra)* squarely applies to this case since in similar circumstances in that case, certain shares were transferred pursuant to a family settlement, and it was held that the provisions of the Gift Tax Act would not be attracted because such transfer or execution is in the interest of family peace and harmony, which is ensured through the settlement, and the value or consideration of that cannot be set down in exact terms.

6. Section 2(24) of the Gift Tax Act defines transfer of property as follows:-

“(xxiv) “transfer of property” means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

- (a) the creation of a trust in property;
- (b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;
- (c) the exercise of a power of appointment (whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made) of property vested in any person not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person”

The expression ‘gift’ is defined in Section 2(xii) and reads as follows:-

“(xii) “gift” means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money’s worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section;

Explanation.—A transfer of any building or part thereof referred to in clause (iii), clause (iiia) or clause (iiib) of section 27 of the Income-tax Act, by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money’s worth, shall be deemed to be a gift made by such person;”

Section 3 of the Gift Tax Act, 1958 is the charging provision. It brings to tax all gifts made, during any assessable period. Section 4

extends the provisions of the Act to transactions that ordinarily would not be covered, by the expression 'gift'. This extended application of the Act as it were, to the extent it is relevant, reads as follows:-

“Gifts to include certain transfers.

4.(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:

Provided that nothing contained in this clause shall apply in any case where the property is transferred to the Government or where the value of the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India;”

7. In *Ziauddin Ahmed (supra)*, the shares were transferred for a consideration of over ₹3 lacs. It was found that these were not in accord with the market value of the shares on the date of transfer. The difference between the market value of the shares and the value of the transfer was held to constitute deemed gift under Section 4 and that amount was brought to tax. The Gauhati High Court found that the transfer was pursuant to a family settlement and stated that the provisions of the Gift Tax Act would not be applicable. In doing so, the High Court cited with approval the recitals of the concerned deed and also the judgments of the Supreme Court relevant to the issue.

The Court went on to hold as follows:-

“From the findings of the Tribunal in the instant case as quoted herein-above, it is found that the allocation of 425 shares belonging to the deceased assessee was made by way of family arrangement to settle existing and future disputes regarding the shares in the two tea estates amongst the members of the family of the deceased assessee and it has also been found by the Tribunal that there was some arbitration and the shares were transferred at an agreed consideration and such agreed consideration for 425 shares belonging to the deceased-assessee was Rs. 3,00,050. Applying the observations of the Supreme Court in Ram Charan Das's case (supra), we find that the allocation of 425 shares in the tea estate concerned has been by way of family settlement and the transaction has been made bona fide to put an end to the dispute amongst the members of the family of the deceased-assessee and, therefore, this transaction is not a transfer. In order to bring a case within the scope of section 4(1)(a) of the Gift-tax Act, 1958, first there must be a transfer for consideration and such consideration must be found to have been inadequate consideration. That being the case, in our opinion, the provisions of Section 4(1)(a) (Section 4(a) unamended) of the Gift-tax Act are not attracted to the facts and circumstances of the present case and there was no deemed gift taxable in the hands of the assessee.”

8. The above dicta of the Gauhati High Court has been approved and the principle enunciated in it applied by the Gujarat High Court in *Keshub Mahindra and Others vs. Commissioner of Gift Tax*: (1968) 70 ITR 1; *Panna Lal Silk Mills Private Limited vs. Commissioner of Gift*

Tax: (2011) 338 ITR 1 and again by the Gauhati High Court in Commissioner of Gift Tax vs. S. N. Zaman: (1996) 221 ITR 842 (Gauhati).

9. In the light of the consistent judicial opinion expressed that the provisions of gift tax would ordinarily not apply to share transfers or transfer of property, as part of it is to effectuate a settlement, the questions of law framed in this appeal are answered against the revenue and in favour of the assessee. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R. K. GAUBA, J

JANUARY 16, 2018

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