

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.7.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL No.234 of 2018

(heard through video conferencing)

Principal Commissioner of Income
Tax-I, No.108, Nungambakkam
High Road, Chennai-34. ...Appellant/Appellant

Vs

Shri.S.Yogarathnam ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 15.3.2017 made in ITA.No.1037/Mds/2016 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2010-11 and against the order of the Commissioner of Income Tax, Appeals 18, Nungambakkam, Chennai-34, dated 27/01/2016 made in ITA No.99/14-15 and against the order of the Assistant Commissioner of Income Tax Central Circle IV(2), Chennai-34, dated 31/03/2014 made in PAN No.AAKPY9845P Assessment year 2010-11.

For Appellant: Mr.T.R.Senthikumar, SSC &
Ms.K.G.Usharani, JSC

For Responden: No appearance

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 15.3.2017 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench in ITA.No.1037/Mds/2016 for the assessment year 2010-11 by raising the following substantial questions of law :

"1. Whether the Tribunal is correct in law in holding that there is no legal difference between settlement and gift overlooking the basic nature of the settlement?

2. Whether the Tribunal is correct in law in giving relief to the assessee by placing reliance on the definition of 'gift' under Section 122 of the Transfer of Property Act, without considering the definition of Section 2(47)(i) of the Income Tax Act, which deals with sale, exchange or relinquishment of an asset ?and

3. Whether the Tribunal is correct in law in giving relief to the assessee by holding that the settlement entered into by the assessee with his brother Shri S.Rajaratnam is out of his own free will and love and affection and as such falls within the meaning of gift by overlooking the very nature of the transaction namely exchange of properties?"

2. We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel and Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue. Though the respondent has been served and the name of the respondent printed in the cause list, none appears for the respondent.

3. The assessee is an individual and a partner of group of concerns. A search and seizure operation was conducted in the business premises of the assessee on 18.8.2011, pursuant to which, assessments were made under Section 153C read with Section 153A and Section 143(3) of the Act for the years 2006-07 to 2009-10 and completed on 30.3.2014.

4. The assessee and his brother one Mr.S.Rajaratnam purchased certain properties and they were not inherited. During the assessment year in question, the assessee relinquished 50% of the share in certain of those properties vide settlement deed dated 05.3.2010 in favour of his brother the said Mr.S.Rajaratnam, who also relinquished his 50% of the share in certain other properties by way of another settlement deed dated 05.3.2010 in favour of the assessee. The Assessing Officer found that the transaction of settlement executed by the assessee amounted to 'transfer' within the meaning of Section 2(47) of the Act, that it attracted the provisions of Section 45 of the Act thereby the liability to tax on capital gains arose and that the exemptions provided under Section 47 of the Act were not applicable.

5. Aggrieved by such an order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-18, Chennai-34 [for short, the CIT(A)] in ITA.No.99/2014-15. The appeal was allowed by the CIT(A) vide order dated 27.1.2016. As against the same, the Revenue preferred an appeal before the Tribunal, which dismissed the appeal by a common order dated 15.3.2017 along with other appeals filed by the Revenue against the very same assessee, over which, we are not concerned in this appeal.

6. The question would be as to whether the arrangement between the respondent - assessee and his brother by way of gift settlement deed would amount to transfer within the meaning of Section 2(47) of the Act.

7. The Assessing Officer, while completing the assessment, vide order dated 31.3.2014, after noting the definition of the term 'transfer' as defined under Section 2(47) of the Act, made an elaborate factual exercise, which could be seen on a reading of paragraph 6.12 of the assessment order and for better appreciation, we quote the said paragraph as hereunder :

"It is seen that the deed of settlement was executed by the assessee on 05.3.2010 whereby the assessee had relinquished his 50% share in about 30 properties in favour of his brother Shri.Rajarathnam. Reciprocally, on the same day, i.e. 05.3.2010 the brother of the assessee Shri.Rajarathnam has, in turn, by way of another settlement deed given up his 50% share in another set of 55 properties in favour of the assessee. Out of the total 85 properties held jointly by the assessee with his brother, the assessee has relinquished his share of 50% in 30 properties and in return, he became absolute and 100% owner in respect of other 55 properties. Thus, the assessee acquired new rights in 55 properties, which were not there prior to the so called settlement, at the expense of his 50% share in 30 other properties, which share vanished after the settlement. Hence, by reading both the settlements together, since both of them between the same persons on the same day and with reference to joint properties belonging to the same persons, the clear picture which emerges that there is an exchange of properties between the assessee and his brother and such exchange was done by way of relinquishment of respective rights in the properties to suit their convenience. It can, therefore, be

safely said that the act of relinquishing the assessee's share in 30 properties is not an act of charity or benevolence, but it resulted in acquisition of new rights in 55 other properties. Hence, profit did arise to the assessee in the form of his new rights in 55 other properties (whose market value comes to Rs..../- as per the settlement deed.)."

8. The facts, as culled out by the Assessing Officer, show that totally, there were 85 properties owned by the assessee and his brother, that the assessee relinquished 50% of the share in 30 properties and that he became the absolute owner in respect of other 55 properties. The Assessing Officer concluded that the assessee acquired new rights in 55 properties, which were not there prior to the so called settlement by parting away 50% of his share in 30 other properties, which share got vanished after the gift settlement.

9. Thus, the Assessing Officer held that there had been an exchange of properties between the assessee and his brother and such exchange was done by way of relinquishment of respective rights in the properties to suit their convenience. The Assessing Officer further held that such relinquishment was not an act of benevolence or charity, but as a result of acquisition of new property rights in 55 other properties by the assessee. The Assessing Officer concluded that all the ingredients required for invoking the provisions of Section 45 of the Act were found to be existing in the case of the assessee and that the transaction squarely fell under the said provision.

10. The Assessing Officer also took note of the observations made by the Hon'ble Supreme Court in the case of CIT Vs. Rasiklal Maneklal [reported in 177 ITR 198] while deciding the issue as to why the transaction amounted to relinquishment thereby falling within the definition of the term 'transfer' under Section 2(47) of the Act. The Assessing Officer dealt with the submissions of the assessee with regard to the effect of the provisions of the Indian Stamp Act and it was observed that merely because, under the provisions of the Indian Stamp Act, which is intended for collection of appropriate stamp duty, the document has been treated as a settlement, that would not be an embargo for the Assessing Officer under the Income Tax Act to scrutinise and ascertain as to whether the document or transaction amounted to transfer as defined under Section 2(47) of the Act.

11. The Assessing Officer also commented upon one of the covenants in the document, which stated that the settlor, out of love and affection for the settlee and with a view to provide a comfortable living to the settlee, executed the document. The Assessing Officer held that already, the assessee and his brother were living comfortably and there were 85 properties worth above Rs.70 Crores and concluded that the covenants in the settlement deed were only for name sake and did not reflect the true intention of the properties.

12. Thereafter, the Assessing Officer, took up for discussion the effect of Section 45 of the Act and summed up his conclusion by holding that the transaction amounted to transfer within the meaning of Section 2(47) of the Act, that it attracted the provisions of Section 45 of the Act thereby liable to tax on capital gains and that the exemptions provided under Section 47 of the Act were not applicable to the assessee.

13. The assessee carried the matter on appeal to the CIT(A) stating that the Assessing Officer did not consider the valid objections filed by the assessee along with appropriate judgments. It was further contended that the settlement of jointly held properties would not fall within the term 'transfer' as defined under Section 2(47) of the Act and the settlement was made for peaceful living and out of love and affection.

14. Before the CIT(A), the assessee reiterated the contentions raised before the Assessing Officer stating that the document was registered by the Sub-Registrar of the Registration Department as a settlement deed and not as a release deed by charging Rs.10,000/- towards stamp duty instead of imposing registration fee at 9% of the guideline value of the properties. Hence, the assessee submitted that the two laws namely the Indian Stamp Act and the Income Tax Act treated the transaction as a settlement and not otherwise. It was further contended that there was no relinquishment of right as mentioned by the Assessing Officer and there was no exchange of property, but the assessee distributed certain jointly held properties to his brother, who, in turn, got certain jointly held properties for him because of the settlement deed and not by a release deed or by a sale deed. Hence, the assessee contended that the transaction is a gift by his brother out of love and affection for comfortable living.

15. In support of his contention, the assessee referred to the decision of the Punjab & Haryana High Court in the case of CIT-II, Jalandhar Vs. Ashwani Chopra [ITA.No.353 of 2011 dated 10.1.2013] and other decisions including the decision of the Karnataka High Court in the case of CIT Vs. R.Nagaraja Rao [ITA.No.3038 of 2005 dated 19.2.2012], the decision of the Hon'ble Supreme Court in the case of Kale Vs. Deputy Director of

Consolidation [reported in AIR 1976 SC 807]; the decision of the Hon'ble Supreme Court in the case of S.S.Pillai Vs. K.S.Pillai [reported in AIR 1972 SC 2069]; the decision of this Court in the case of CIT Vs. R.Ponnammal [reported in 164 ITR 706] and the decision of the Income Tax Appellate Tribunal, Chennai 'C' Bench in the case of R.Manogar, Coimbatore [ITA.No.138/Mds/2010].

16. The assessee, thus, contended that when the Courts generally lean in favour of family arrangements and reluctant to disturb the same, the Assessing Officer ought to have followed the said norms and that imposition of capital gains tax for the properties settled under the settlement deed by co-owners/brothers would clearly fall within the meaning of the term 'gift' and would not attract any tax.

17. Ultimately, the CIT(A), vide order dated 27.1.2016, allowed the appeal filed by the assessee.

18. On a reading of the order passed by the CIT(A), it is seen that the order of the Assessing Officer dated 31.3.2014 was not referred to in the preamble portion of the order dated 27.1.2016 except for the grounds raised by the assessee. Further, from the first page of the order passed by the CIT(A), which gives details in a tabular column, we find that none appeared for the Department. We are informed that invariably the Assessing Officer or the Departmental Representative would be present before the CIT(A) and more particularly during the hearing of the cases.

19. However, to our shock and surprise, it is not known as to why the Department was not represented by an Officer or Departmental Representative especially when the Revenue is contesting the matter. We wish to state that the Principal Chief Commissioner of Income Tax, Chennai shall take note of these facts and ensure that in all cases, the Department is represented before the First Appellate Authority and the Tribunal not only to defend the cases of the Department, but also to assist in the decision making process. The learned Senior Standing Counsel appearing for the appellant is directed to furnish a copy of this judgment to the Principal Chief Commissioner of Income Tax, Chennai.

20. Coming back to the order passed by the CIT(A), as noted earlier, there is no discussion as to the finding of rendered by the Assessing Officer after examining the nature of transaction. All that the CIT(A) did was to note down the facts, referred to the two decisions namely the decision of the Hon'ble Supreme Court in the case of CIT Vs. Narang Dairy Products [reported in (1996) 219 ITR 478] and the decision of the Hon'ble Supreme Court in the case of Rasiklal Maneklal.

21. The law laid down in various decisions cannot be applied in the abstract, but needs to be applied to the facts and circumstances of the case. Therefore, the cardinal principle is that law is applied to each and every case after considering the facts. Otherwise, it would tantamount to putting the 'cart before the horse'. Though the CIT(A) referred to the two decisions, no reasons were given as to how those two decisions would apply to the assessee's case. Thus, we hold the order of the CIT(A) to be an order devoid of reasons and a nullity.

22. The parties to the proceedings are entitled to know as to why the Authority or the Tribunal or the Court does not agree with their submissions. Thus, order without reasons is arbitrary and unreasonable and it would amount to violation of the principles of natural justice. Further, without assigning any reasons, without discussing about the transaction and without rendering any findings as to why, in the opinion of the CIT(A), the Assessing Officer was wrong, the CIT(A) allowed the appeal. To say the least, the manner, in which, the appeal was allowed by the CIT(A) is erroneous.

23. The Revenue, being aggrieved by such an order, filed the appeal before the Tribunal. The Tribunal also did not consider the matter in a proper perspective and the discussion is only in paragraphs 14 and 15 of the impugned order. The Tribunal concluded that the artificial definition made by Lower Authorities with reference to gift and settlement was not appropriate. The Tribunal was of the opinion that for the purpose of Section 49(1)(ii) of the Act, there was no difference between gift and settlement and that in the instant case, the settlement made with the assessee's brother could not attract capital gains on this count. There are no reasons as to how the Tribunal came to such a conclusion. We are unable to find any such reasoning in paragraph 15 of the impugned order. Therefore, the said finding is not supported by reasons and hence, not sustainable.

24. The Tribunal referred to the decision of the Coordinate Bench in the case of Mr. Abdul Hameed Khan Mohammed [ITA.No.1782/Mds/2015 dated 29.12.2015] for the assessment year 2011-12. The Tribunal did not assign any reason as to how the said decision of the Coordinate Bench would apply to the assessee's case. Paragraph 14 of the impugned order is also devoid of reasons.

25. Accordingly, the above tax case appeal is allowed, the impugned order is set aside and the matter is remitted back to the CIT(A) for a fresh consideration in accordance with law. Considering the fact that the year, in which, the search and seizure operations were conducted in the place of business of

the assessee namely 2011, we direct the CIT(A) to give priority to this case and dispose of the same as expeditiously as possible after hearing both the assessee and the Departmental Representative.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Chief Commissioner of Income Tax, Chennai.
2. The Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai
3. The Commissioner of Income Tax, Appeals-18,
Nungambakkam, Chennai.
4. The Assistant Commissioner of Income Tax,
Central Circle IV(2), Chennai-34

Copy To:

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WEB COPY

T.C.A.No.234 of 2018

BR(CO)
GMY(09/09/2020)