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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM :

The Honourable Mr. Justice T.S.SIVAGNANAM
and

The Honourable Ms. Justice SATHI KUMAR SUKUMARA KURUP

T.C.A.Nos.982 & 1214 of 2009

Shri S.K.R.Viswanathan

...Appellant

Vs

The Gift-Tax Officer,
Ward I(1)
Pudukottai.

...Respondent

APPEALS under Section 260A of the Gift Tax Act against the order dated 20.06.2008 made in GTA.Nos.13 & 14/Mds/2002 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai for the assessment year 1991-92.

Against the orders of Commissioner of Gift Tax (Appeals), Tiruchirapalli in GTA.No.1/95-96, dated 30.10.2002, as against the order of Income Tax Officer in PAN.No.879-v order dated 31.03.95 for the Assessment Year 1991-1992.

For Appellant	
in both T.C.As	: Mr.R.Vijayaraghavan
For Respondent	
in both T.C.As	: Mr.M.Swaminathan Senior Standing Counsel and M/s.V.Pushpa

JUDGMENT

(Delivered by T.S.Sivagnanam, J)

These appeals have been filed by the assessee under Section 260A of the Gift Tax Act ["the Act" for brevity] against the orders passed by the Income Tax Appellate Tribunal [hereinafter referred to as "the Tribunal"], 'C' Bench, Chennai in G.T.A.Nos.13 & 14/Mds/2002 dated 20.06.2008 for the assessment year 1991-92.

2.T.C.A.No.1214 of 2009 is the lead case as it is an appeal which flows from the assessment order and T.C.A.No.982 of 2009 is as against the order of penalty.



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3.T.C.A.No.1214 of 2009 was admitted on 17.11.2009 on the following substantial question of law:

"Whether the guideline value for the purpose of the valuation of stamp duty and registration can be taken the basis for the purpose of determining the value of gift as against the value as per Schedule II of Gift Tax Act."

4.We have elaborately heard Mr.R.Vijayaraghavan, learned counsel appearing for the appellant/assessee and Mr.M.Swaminathan, learned senior standing counsel appearing for the respondent/revenue.

5.The assessee is an individual, the respondent framed an assessment under the Act for the assessment year 1991-92 on the ground that the taxable gift exceeding Rs.12 lakhs has escaped assessment and therefore, notice under Section 16 of the Act was issued on 15.07.1992. The assessee did not file a return in response to such notice and further, notices were issued but there was no response. However, on 27.03.1995 an authorized representative of the assessee appeared before the respondent and furnished a written submission stating that he was running a factory, by name, M/s.Heatex Equipments in Thiru.vi.ka Industrial Estate, Guindy with a land area of 5658 sq.ft. and the land and building was purchased by the assessee from the Tamil Nadu Small Scale Industries Development Corporation Limited [SIDCO] on 08.03.1990 for a sum of Rs.63,000/-. The said land and building have been sold to a partnership firm on 30.04.1990 for a sale consideration of Rs.3 lakhs. The Assessing Officer found that the registering authorities have collected stamp duty and registration charges under Section 41 of the Stamp Act taking the market value of the property at Rs.15,34,500/-. Therefore, it was held that the sale was effected for an inadequate consideration. When the Assessing Officer proposed to levy gift tax under section 4 of the Act, the assessee submitted that he could not sell the property to any other person without the approval of the SIDCO and could not find a prospective buyer except the partnership firm and under those circumstances, he had to sell the property for a price of Rs.3 lakhs. This explanation was found to be wholly unsubstantiated and rejected by the Assessing Officer. Further, the Assessing Officer noted that as to who are the partners of the purchasing firm. Thus, concluding that the price quoted in the sale deed was not true or in other words, property was disposed of for an inadequate consideration falling within the mischief of Section 4 of the Act. Accordingly, assessment was completed on 31.03.1995 demanding a total amount of Rs.6,92,220/- as a gift tax and thereafter, by order dated 13.08.1996 imposed a penalty of Rs.50,000/-.



6.As against the assessment order, the assessee preferred an appeal before the Commissioner of Gift Tax [Appeals][CGT(A)], Tiruchirapalli and also preferred a separate appeal as against the penalty order before the very same Appellate Authority. Both the appeals were dismissed by order dated 30.10.2002 and 30.09.2002 respectively and the penalty order was given effect to on 07.11.2002. The assessee carried the matter to the Tribunal against both the orders. By order dated 20.06.2008, the appeal filed against the order of assessment was dismissed and the appeal filed against the penalty order was partly allowed and the penalty was reduced from Rs.50,000/- to Rs.10,000/-. This is how the assessee is before us by way of these appeals.

7.Four issues were raised before us by the learned counsel for the appellant. Firstly, the sale consideration paid to the assessee was only Rs.3 lakhs and the Assessing Officer ought to have accepted the said stand and not disbelieved the stand of the assessee merely on the ground that the purchaser had paid stamp duty for a value of Rs.15,34,500/-. The second contention is that for the purpose of computing the gift tax, the valuation of the property ought not to have been done based on the guideline value fixed by the Government which is only for the purposes of computing the stamp duty payable for conveyance of properties. Thirdly, it is contended that the guideline value is not binding and does not indicate the correct value of the property as there are several factors which have to be recorded while arriving at the value of the property. Fourthly, it is submitted that the Gift Tax Act was amended only on 01.04.1989 and prior to the amendment, the value of the property ought to have been determined in terms of Schedule II of the said Act, whereas the Assessing Authority has proceeded to determine the value of the property based upon the guideline value.

8.So far as the first contention is concerned is that the assessee pleads ignorance and innocence, is not acceptable because all the three fact finding authorities did not agree with such a stand taken by the assessee and in fact, the Assessing Officer goes to the extent of stating that there is no evidence produced by the assessee to establish such a stand. Furthermore, the Assessing Officer noted that the sale consideration said to have been paid to the assessee was ridiculously low so as to shock the conscience of everybody. This factual finding was confirmed by the First Appellate Authority and the Tribunal. We are not here to interfere with such a factual finding. Therefore, we confirm such a finding concurrently rendered by the authorities and the Tribunal.



9. With regard to the second and third grounds are concerned, it may be true as a general proposition of law that the guideline value is not the sole basis to determine the value of a property. Undoubtedly, it is one of the factors which can be reckoned while determining the value of a property. To that extent, the legal position had been understood in a proper manner not only by the Assessing Officer and the First Appellate Authority but the assessee as well. We say so, because when the appeals were held by the CGT(A), the assessee filed a written submission along with the additional evidence. The additional evidence were to show that there is a downward trend in the industrial growth, as a result there were very few purchasers for the land in the Industrial Estate and the value of the land and factory building going down steadily. Apart from that, the assessee also produced the copies of five registered documents which are stated to be sale deeds in respect of other industrial sheds in the SIDCO Industrial Estate, Guindy. Therefore, the assessee consciously participated in the decision making process to arrive at the value of the property fully knowing well that the valuation is being done not solely based upon the value shown in the documents which are in respect of properties in the same Industrial Estate.

10. Furthermore, the assessee sought to rely on those documents to show that the guideline value was always been high and the market value of the property was low. In any event, we are not on the valuation but we are here on the conduct of the assessee as to how he understood the concept of valuation and we are clear that the assessee was clear in his mind as to how the valuation is required to be done. Therefore, to state at this juncture that the valuation has not been done in terms of Schedule II of the Gift Tax Act is an argument which is stated to be rejected. That apart, when we examine the submissions made by the assessee before the CGT(A), an alternate submission was made stating that on and after 01.04.1987 after sub-section (2) was inserted in Section 3 of the Act, the tax can be at the rate of 30% on the value of all taxable gifts and the Assessing Officer erroneously adopted the Schedule of rates given in Schedule I to the Act. Thus the valuation of the property was done in terms of the provisions of the Gift Tax Act and in the process of doing such evaluation, the Assessing Officer relied upon the registered sale deeds and the stamp duty which was paid on such instruments though the apparent sale consideration reflected in those documents were less. In any event, this being a question of fact, the burden was on the assessee to prove that what he receive was only Rs.3 lakhs from the purchaser/partnership firm and not Rs.15,34,500/-. This aspect of the matter having not been established by the assessee, we find that the Tribunal rightly affirmed the orders passed by the authorities below. So far as the appeal with regard to the



penalty is concerned, we find that adequate relief has been granted to the assessee by the Tribunal and we find that there is nothing to interfere with such order.

11. In the result, T.C.A.No.1214 of 2009 filed against G.T.A.No.14/Mds/2002 is dismissed and the substantial question of law is answered against the assessee.

12. T.C.A.No.982 of 2009 filed against G.T.A.No.13/Mds/2002 is dismissed holding that there is no substantial question of law arisen for consideration. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
'C' Bench, Chennai.
2. The Commissioner of Gift Tax (Appeals)
4, Williams Road, Contonment, Tiruchirapalli.
3. The Income Tax Officer,
Ward I(1), Pudukottai.

+1 CC to M/s.Subbaraya Aiyer, Advocate, Sr.No. 38940.

+1 CC to M/s.M.Swaminathan, Advocate, Sr.No. 38936.

T.C.A.Nos.982 & 1214 of 2009

RGN(CO)

LS(07/09/2021)