

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/175/2013
IA NO. GA/2/2015 (OLD No. GA/635/2015)
COMMISSIONER OF INCOME TAX, SILIGURI
VS.
SHRI INDRA CHAND AGARWAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 7, 2022.

Appearance:
Mr. Samarjit Roychowdhury, Adv.
Mr. Soumen Bhattacharjee, Adv.
... for appellant

Mr. J.P. Khaitan, Sr. Adv.
Mr. Saymya Kejriwal, Adv.
Mr. G.S. Gupta, Adv.
...for respondent

The Court:- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 14th May, 1993 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) ITA/1380/Kol/2010 for the assessment year 2006-07.

The Revenue has raised the following substantial questions of law for consideration:

- a) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law in deleting the addition of Rs.14,70,34,400/-

under Section 69B of the said Act made on account of bogus gifts, disregarding the fact that the alleged gift involves transfer of undivided share of joint property and the same cannot be treated as valid gift?

We have heard Mr. Samarjit Roychowdhury, learned Advocate and Mr. Prithu Dudhoria, learned Advocate appearing for the appellant and Mr. J.P. Khaitan, learned Senior Counsel duly assisted by Mr. Saumya Kejriwal, learned Advocate for the respondent.

The short question involved in this case was whether the property which is the subject matter of consideration was owned by the assessee, a co-owner along with seven of his family members or whether it was a joint Hindu Undivided Family property governed by the Mitakshara School of Hindu Law.

On perusal of the order passed by the Commissioner of Income Tax (Appeal) Siliguri, CIT(A) dated 16th March, 2010 and the order passed by the Tribunal we find that the CIT(A) as well as Tribunal rightly noted the factual position and pointed out that the assessing officer has quoted the term “coparcener” with co-owner of the property. The assessing officer placed reliance on the decision of the Hon’ble Supreme Court in *THAMMA VENKATA SUBBAMMA Versus THAMMA RATTAMA AND OTHERS*, (1987) 3 SCC 294 for the proposition that a coparcener can make a gift of his undivided interest in coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. It is an undisputed fact. In the said case the property in question was Joint Hindu Family Property governed by the Mitakshara School of Hindu Law, whereas in the case on hand there were eight co-owners of the property who were blood relatives and, therefore, the CIT(A) and the learned Tribunal rightly noted the said descriptions and held that the assessing officer has misdirected himself by taking

note of a decision which has no application in the facts and circumstances of the case. Thus we find that there is no question of law much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

Consequently, stay petition stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)