CASE NO.:
Appeal (civil) 1934 of 1998

PETITIONER:
REVA INVESTMENT PVT. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF GIFT TAX, GUJARAT II

DATE OF JUDGMENT: 02/05/2001

BENCH:
S.P. Bharucha & D.P. Mohapatra

JUDGMENT:

D.P. MOHAPATRA, J.
L...I...T.......T.......T.......T.......T.......T.......T..J

This appeal filed by the assessee is directed against the judgment of the Gujarat High Court on a reference made by the Appellate Tribunal under Section 26(1) of the Gift Tax Act, 1958 (hereinafter referred to as 'the Act'). The question which was referred for opinion reads as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the difference of Rs. 8,21,950/- on the sale of the jewellery by the assessee to its 12 wholly owned subsidiary companies was not liable to gift tax under the provisions of the Gift Tax Act, 1958."

The High Court disposed of the reference by answering the question in the negative, in favour of the Revenue and against the assessee. Hence this appeal.

The factual backdrop of the case relevant for the present proceeding may be stated thus:

The assessee is a private limited investment company and the assessment relates to the assessment year 1976-77. The assessee transferred jewellery to twelve private limited companies which were wholly owned subsidiary companies of the assessee and in return the twelve private limited companies transferred to the assessee fully paid equity shares of the face value of Rs.100/- each, the face value of all the shares being Rs. 5,69,400/-. The jewellery thus transferred became the only asset of the twelve companies and the shares transferred to the assessee were the entire share holding of the twelve private limited companies. Since the assessee did not file any gift tax return, a notice under Section 16(1) of the Act was served upon the assessee pursuant to which the assessee filed a 'nil' return. Thereafter a notice under Section 15(2) of the Act was issued and the proceeding for assessment was taken up.

In the assessment proceeding the assessee took the stand

that it had transferred jewellery to the twelve subsidiary companies of a book value of Rs. 5,69,400/- and received shares from those companies of the face value of Rs. 5,69,400/-; in the circumstances there was no gift involved in the transaction. The case of the Revenue, on the other hand, was that the market value of the jewellery acquired by the assessee amounted to Rs. 13,91,350/- on the date of transfer, therefore, there was a gift to the extent of the amount which exceeded the face value of the shares, i.e., Rs. 8,21,950/-.

The Gift Tax Officer by his order dated 12.9.1979 held that there was a 'deemed gift' to the tune of Rs. 8,21.950/- for which the assessee was liable to pay gift tax under the Act.

On appeal by the assessee, the Commissioner of Gift Tax (Appeals) held that inasmuch as the jewellery is the only asset of the subsidiary companies the value of the consideration was the value of the jewellery and no 'deemed gift' can be attributed. The Appellate Authority set aside the order of the Gift Tax Officer.

Both the assessee and the Revenue filed appeals before the Tribunal. The Tribunal upheld the conclusion of the Appellate Authority and held that when the only asset of the purchasing companies is jewellery purchased and their capital consists only of the shares issued to the assessee company, there is no question of any 'deemed gift' as whatever will be the value taken for the jewellery will become the value of fully paid up shares issued to the assessee on the break up method of valuing of shares of private limited companies. The Tribunal rejected the contention of the Revenue on this point.

In the Reference Application filed by the Revenue the question quoted earlier was referred to the High Court. The High Court came to the conclusion that the Tribunal had committed an error in law in coming to the conclusion that the difference of Rs. 8,21,950/- on the sale of the jewellery by the assessee to its twelve wholly owned subsidiary companies was not liable to gift tax under the provisions of the Act and accordingly answered the question in the negative in favour of the Revenue. The High Court did not accept the contention that in case of the transfer of the entire paid up share holding of the twelve subsidiary companies in lieu of the jewellery transferred by the assessee the value of the jewellery must be taken to be the value of the shares transferred by the subsidiary companies. The High Court was of the view that the shares which were to be passed on for the purchase of property were different and independent of such property and would have their valuation and to say that the value of such consideration, in the instant case the shares, should be read as whatever the value of property intended to be purchased would be to defeat the very purpose underlying the provision in Section 4(1)(a) of the Act.

The term 'gift' is defined in Section 2(xii) of the Act to mean 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. The expression 'taxable gifts' is defined under Section

2(xxiii) to mean gifts chargeable to gift tax under the Act. Section 3 which is the charging section lays down that subject to the other provisions contained in the Act, there shall be charged for every assessment year commencing on and from the Ist day of April, 1958, a tax referred to as gift tax in respect of gifts made by a person during the previous year at the rate or rates specified in Schedule I.

(Emphasis supplied).

Section 4 makes provisions for gifts to include some transfers. Sub-section (1) clause (a), which is relevant for the purpose of the case, reads as under:

" 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]"

Ordinarily, a gift is a transfer of property without consideration; but for the purpose of the Act a transfer for inadequate consideration is to be deemed to be a gift under section 4(1) (a). By the inclusive definition in section 2(xii) of the Act a 'deemed gift' is also a gift. The provision of deemed gift in section 4 (1) (a) is intended to bring within the purview of the tax such transactions which are entered between the parties to evade the tax.

The question which arises for determination in this case is whether the transaction made by the assessee can be said to be a 'deemed gift' under Section 4(1)(a) of the Act. For invoking the deeming provisions of section 4(1)(a) of the Act inquiries have to be made regarding - (i) the existence of a 'transfer of property' (ii) the extent of consideration given i.e. whether the consideration is adequate. It is necessary for the assessing officer to show that the property has been transferred otherwise than for adequate consideration. The finding as to inadequacy of the consideration is the essential sine-qua-non for application of the provisions of 'deemed gift'. The provision is to be construed in a broad commercial sense and not in a narrow sense. In order to hold that a particular transfer is not for adequate consideration the difference between a true value of the property transferred and the consideration that passed for the same must be appreciated in context of the facts of the particular case. If the transaction involves transfer of certain property in lieu of certain other property received then the process of evaluation of the two items of property should be similar and on such evaluation if it is found that there is appreciable difference between the value of the two properties then the transaction will be taken as a 'deemed gift' to the extent as provided in the Section. It is to be found that the transaction was on inadequate consideration and the parties deliberately showed the valuation of the two properties as the same to evade tax. Such a conclusion cannot be drawn merely because

according to the assessing officer there is some difference between the valuation of the property transferred and the consideration received.

In the present case, as noted earlier, the face value of the shares of the 12 fully paid subsidiary companies of the@@
JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ
assessee was Rs.5,69,400/- which was taken to be the value@@
JJJJJJJJJJJJ
of the jewellery that was transferred in exchange by the assessee to the subsidiary companies. The subsidiary companies had no other asset. The value of the jewellery as determined by the assessing officer being Rs.13,91,350/- the real value of the shares may be said to be Rs.13,91,350/-, but there was thus no gift involved in the transaction for whatever is the value of the jewellery is infact the value of the shares transferred in consideration. In the circumstances the assessing officer committed an error in treating the transaction between the parties as a deemed gift.

At this stage we may notice a few decisions of different High Courts to which our attention was drawn. In the case@@
JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ
of Bireswar Sarkar vs. Gift Tax Officer [(1997) 223 ITR 404@@
JJJJJJJJJJJ
(Cal)] the High Court allowed the writ petition and quashed the notice under section 16 of the Act, inter alia, on the ground that as far as the question of inadequacy of the consideration is concerned no answer could be given by the respondent authorities as to the adoption of different standards for the purpose of evaluating the value of the assets transferred and for evaluating the consideration received.

The Madras High Court in the case of C.G.T. vs. Indo Traders & Agencies (Madras) P. Ltd. [(1981) 131 ITR 313 (Mad)] observed that the provision is designed to check evasion of tax by persons transferring properties for inadequate consideration; If a person had effected a gift which would be without consideration, he would be liable to be taxed under the Act; the same person may, in order to avoid the tax, transfer properties for a paltry consideration so as to get out of the operation of the Act then he can be made liable under section 4(1)(a) . It is this attempt at evasion which was sought to be thwarted by enacting S. 4(1)(a).

A similar view was taken by the Kerala High Court in the case of Commissioner of Income-Tax vs. Jacobs (P) Ltd. (1999) 237 ITR 433.

The High Court of Madras in the case of Commissioner of Gift-Tax vs. D.Surendranath Reddy (1998) 233 ITR 21 observed that adequate consideration is not necessarily, what is ultimately determined by some-one else as market value; unless the price was such as to shock the conscience of the court, it would not be possible to hold that the transaction is otherwise than for adequate consideration.

In view of the discussions in the foregoing paragraphs, it is clear that the High Court was in error in holding that in the facts and circumstances of the case the transaction could be held to be a 'deemed gift' within the purview of Section 4(1)(a) of the Act and in holding the assessee

liable for the tax. Accordingly, the appeal is allowed; the judgment of the High Court under challenge is set aside and the order of the Tribunal is confirmed. There will, however, be no order as to costs.

JUDIS