

IN THE HIGH COURT OF BOMBAY

Gift Tax Appeal No. 2929 OF 2009

THE COMMISSIONER OF GIFT TAX, MUMBAI

Vs

SHRI AJAY BAJAJ

J P Devadhar and K K Tated, JJ

Dated: August 18, 2011

Appellant Rep by: Ms. P S Cardozo

Respondent Rep by: Mr. Atul K Jasani

JUDGEMENT

1. Whether the Income Tax Appellate Tribunal was justified in deleting the addition of Rs.54 lakhs made in the hands of the assessee is the question raised in this appeal.
2. The assessee Smt.Thakurdevi S. Bajaj (since deceased—represented by her son) was owner of a property at Khetwadi, Mumbai. The said property consisted of several tenants including a firm known as Khemraj Shrikrishnandas consisting of two partners, namely the assessee and her son Shri Murlidhar S. Bajaj since 13th March 1946, pursuant to an order passed by this Court in a civil proceedings.
3. The Khetwadi property was sold by the assessee on 29th July 1988 for Rs.2 crores out of which Rs.1.08 crores as per the sale agreement were paid to the two partners of M/s.Khemraj Shrikrishandass that is Rs.54 lakhs to the assessee and Rs.54 lakhs to her son for vacating their tenanted premises.
4. The assessing officer was of the opinion that the transaction was a colourable device to evade capital gains tax and also to gift Rs.54 lakhs to her son Shri Murlidhar S. Bajaj without attracting the provisions of the Gift Tax Act.
5. On appeal filed by the assessee, the Commissioner of Income Tax (Appeals) upheld the order of the assessing officer. On further appeal filed by the assessee, the Income Tax Appellate Tribunal held that it was not a case of deemed gift and accordingly decided the issue in favour of the assessee. Being aggrieved by the aforesaid order, the Revenue has filed the present appeal.
6. According to the Revenue, Rs.54 lakhs paid to the son by the assessee under a colourable device constituted deemed gift and, therefore, the provisions of Gift Tax Act were attracted in the present case.
7. The Tribunal in para 4 of its judgment relating to income tax proceedings has held that in the absence of any material evidence brought on record to suggest that the partnership between the assessee and her son relating to as back as to the year

1946, the addition in the hands of the assessee on mere suspicion that there was deemed gift cannot be sustained. The Tribunal has held that the sale transaction was at arm's length. There is nothing on record to suggest that the above findings recorded in the incometax proceedings have been reversed or varied.

8. Once in the income-tax proceedings, it is accepted that the transactions are genuine and bona fide, the additions made in the proceedings under the Gift Tax Act on the footing that the transaction was a colourable device cannot be accepted. Therefore, the payments made to the son being in his capacity as a partner of the firm, the said amount could not be treated as deemed gift given by the assessee to her son.

9. In the result, we see no merit in the appeal and the same is dismissed with no order as to costs.