

A

S. VIJI

v.

COMMISSIONER OF GIFT TAX

DECEMBER 2, 1997

B

[SUHAS C. SEN AND V.N. KHARE, JJ.]

*Gift Tax Act, 1958 : Section 6(3).*

C

*Unquoted shares—Transfer of—Valuation—Balance Sheet—Preceding or following the date of transfer—Relevancy of - AY 1973-74—Unquoted shares transferred on 28-3-1973—Held : Though the balance sheet of 31.3.1973 was the latest one available on the date of transfer it being more proximate, was more realistic to ascertain the break-up value of the shares as on 28-3- 1973—However, the assessee is entitled to point out any variation of assets of company between 28.3.1973 and 31.3.1973.*

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**Unquoted shares of a company were transferred on 28- 3.1973 to the appellant-assessee during the assessment year 1973-74. The dispute was in relation to the valuation of these unquoted shares. Both the revenue and the assessee agreed that the valuation should be made following the break-up method as provided in Section 6(3) of the Gift Tax Act, 1958.**

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**The assessee contended that these shares must be valued by referring to the balance sheet figures of the company as on 31.3.1972 which was the latest available balance sheet as on the date of transfer of the shares. The revenue contended that the valuation must be made with reference to the balance sheet figures as on 31.3.1973 which was the closest proximate date from the date of making of the gift. The High Court rejected the contention of the assessee. Hence this appeal.**

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**Dismissing the appeal, this Court**

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**HELD : 1. The balance sheet figures as on 31.3.1972 give the picture of the value of the various assets of the company up to that date. The company may have flourished thereafter and the value of the assets may have increased. It is also possible that during that period the fortune of the company languished and the value of its assets had decreased. In either event, when a valuation of shares is to be made as on 28.3.1973, it will be**

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unrealistic to ignore the balance sheet for the year ended on 31.3.1973. The figures of the balance sheet of the year ended on 31.3.1973 will give a more realistic picture of the value of the assets of the company than the figures as on 31.3.1973. The assessee, of course, is entitled to point out that between 28.3.1973 and 31.3.1973, the value of the assets of the company has increased. If so, such variation in the value of the assets will have to be ignored. But the basis of the valuation will have to be the balance sheet as on 31.3.1973. [65-D-F]

*CGT v. K. Ramesh*, 141 ITR 462 (Mad.), approved.

*CWT v. S. Ram*, 147 ITR 278 (Mad.), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6239 of 1990.

From the Judgment and Order dated 18.12.81 of the Madras High Court in T.C. No. 1182 of 1977.

A.T.M. Sampath and S. Balaji for the Appellant.

Ranbir Chandra, Hemant Sharma and B.K. Prasad for the Respondent.

The Judgment of the Court was delivered by

SEN, J. The following question of law was referred by the Tribunal to the High Court under Section 26(1) of the Gift Tax Act, 1958 :

"Whether, on the facts and in the circumstances of the case, the Balance Sheet figures as on 31.3.1972 should be taken for ascertaining the break-up value of the shares gifted and not the balance sheet figures as on 31.3.1973?"

The assessment year involved is 1973-74. The dispute relates to valuation of unquoted shares of a Company which were transferred on 28.3.1973. Section 6 of the Gift Tax Act lays down the method of valuation of gifts. Sub-section (3) provides that where the value of the property cannot be estimated because it is not saleable in the open market, the value shall be determined in the prescribed manner. There is no dispute that the shares are unquoted and are not saleable in the market. There was a

A restriction on the sale of shares in the market by the Articles of Association of the Company. Both the department and the assessee agree that the valuation should be made by following the break-up method. The dispute, however, is as to the balance sheet on the basis of which the break-up value will have to be calculated.

B The case of the assessee is that these shares must be valued by referring to the balance sheet figures of the Company as on 31.3.1972 which was the latest available balance sheet on the date of the transfer of shares. There is no question of referring to a balance sheet which was not even in existence on the date of making of the gift. The department has taken the  
 C stand that the valuation must be made with reference to the balance sheet figures as on 31.3.1973 which was the closest proximate date from the date of making of the gift. There is no dispute that break-up method of valuation must be followed. If that be so, the only available balance sheet figure as on 28.3.1973 was the latest published balance sheet for the year ended on  
 D 31.3.1972.

We are unable to uphold the assessee's contention. The Gift Tax Officer has to find out the correct value of the shares as on the date of the gift. The gift was made only three days before the financial year ending on 31.3.1973. The balance sheet as on 31.3.1973 will give a more realistic  
 E picture of the value of the assets of the Company than the balance sheet as on 31.3.1972. Therefore, for calculating the break-up value of the shares, the balance sheet figures as on 31.3.1973 would be more relevant. The contention made on behalf of the assessee, if upheld, would lead to absurd result. If the gift was made on 28.3.1973 the value will have to be computed in accordance with the balance sheet figures as on 31.3.72. But if the gift  
 F was made three days later on 31.3.73 the valuation made on the basis of balance sheet as on 31.3.73 may be much higher even though there is no change in the value of the assets of the Company between 28.3.73 and 31.3.73. There is no justification for coming to this conclusion. The break-up value method is adopted to find out the correct value of the shares on the date of the gift. The figures of the balance sheet of the year ended on  
 G 31.3.1973 will give a more realistic picture of the value of the assets of the Company than the figures as on 31.3.1972.

Our attention was drawn to a decision of the Madras High Court in the case of *Commissioner of Gift Tax v. K. Ramesh*, 141 ITR 462. In that  
 H case, a gift was made on 28.3.1972. The Tribunal held that as the gift had

taken place before the balance sheet as on 31.3.1972, the break-up value should be calculated with reference to the last balance sheet of the Company before the date of the gift which was of the year ending on 31.3.1971. The High Court held that though the balance sheet as on 31.3.1972 was subsequent to the date of the gift, it could not be disregarded because it was not so far removed from the date of the gift and there may have been several developments affecting the net worth of the Company and thereby affecting the value of the individual shares between the two balance sheets as on 31.3.1971 and 31.3.1972. The Tribunal was, not therefore, justified in ignoring or disregarding the balance sheet as on 31.3.1972. The High Court held that if anything has happened to the assets and liabilities of the Company between 28.3.1972 and 31.3.1972, that could also be taken into consideration by the Tribunal. The Tribunal was directed to re-examine the question in that light again.

We are in agreement with this approach of the Madras High Court. In the instant case, the balance sheet figures as on 31.3.1972 give the picture of the value of the various assets of the Company upto that date. The Company may have flourished thereafter and the value of the assets may have increased. It is also possible that during that period the fortune of the Company languished and the value of its assets had decreased. In either event, when a valuation of shares is to be made as on 28.3.1973, it will be unrealistic to ignore the balance sheet for the year ended on 31.3.1973. The assessee, of course, is entitled to point out that between 28.3.1973 and 31.3.1973, the value of the assets of the Company has increased. If so, such variation in the value of the assets will have to be ignored. But the basis of the valuation will have to be the balance sheet as on 31.3.1973.

We were also referred to another judgment of the Madras High Court in the case of *Commissioner of Wealth Tax and Others v. S. Ram and Others*, 147 ITR 278 where it was held :

"In cases where gift of unquoted shares has been made during the accounting year of the company, the true principle of valuation of such unquoted shares is that if it were possible to draw a precise balance-sheet as on the date of the gift, that would afford quite an accurate basis and an ideal solution. But in the absence of the facility of drawing up a balance sheet precisely on the date of the gift, the next best thing would be to take two of the balance sheets

A falling both before and after the date of the gift and arrive, as near as may be, at the break-up value of the assets and liabilities of the company as on the date of the gift, either on a time basis or on some other basis."

B But in this case, the balance sheet as on 31.3.1973 was available to the Gift Tax Officer when he made the valuation of unquoted shares. It was not difficult to get a precise picture of the value of the shares as on 28.3.1973 from this balance sheet.

C We were referred to a large number of decisions, but it is not necessary to specifically deal with all of them.

D We are of the view having regard to the fact that the gift was made on the verge of the close of the accounting year ending on 31.3.73 the balance sheet as on 31.3.1973 should be taken as the basis for ascertaining the break-up value of the shares as on 28.3.1973. However, suitable adjustments will have to be made if there has been any variation in the value of the assets of the Company between 28.3.1973 and 31.3.1973. That, however, is not the case of the assessee. Under these circumstances, the judgment under appeal is upheld. The appeal is dismissed. There will be no order as to costs.

E V.S.S.

Appeal dismissed.