REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3914 OF 2010

Satya Nand Munjal …..Appellant

Versus

Commissioner of Gift Tax …..Respondent

WITH

CIVIL APPEAL NO. 3915 OF 2010

J U D G M E N T

Madan B. Lokur, J.

1. Civil Appeal No. 3914/2010 (Assessee: Satya Nand Munjal) and Civil Appeal No. 3915/2010 (Assessee: Om Prakash Munjal) arise out of G.T.A. No. 3/2001 and G.T.A. No. 2/2001 respectively both decided by the High Court of Punjab & Haryana on 17th December, 2008. The relevant Assessment Year is 1989-90.

2. At the instance of the Revenue, the High Court was called upon to decide the following common substantial question of law:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in quashing the gift-tax assessment in the assessee's case."

3. The High Court set aside the order of the Income Tax Appellate Tribunal (the Tribunal) and held in favour of the Commissioner of

Gift Tax by upholding the assessment order. It is in these circumstances that the assessee is now before us.

4. For convenience, we refer to the facts in the case of Satya Nand Munjal.

The facts:

5. On 20th February 1982 the assessee, being the absolute owner of 6000 fully paid up equity shares of the face value of Rs. 25 each of M/s Hero Cycles (P) Ltd. executed a deed of revocable transfer in favour of M/s Yogesh Chandra and Brothers Associates (the transferee). Under the deed, the assessee could, on completion of 74 months from the date of transfer but before the expiry of 82 months from the said date, exercise the power of revoking the gift. In other words, the assessee left a window of 8 months within which the gift could be revoked.

6. The deed of revocable transfer specifically stated that the gift shall not include any bonus shares or right shares received and/or accruing or coming to the transferee from M/s Hero Cycles (P) Ltd. (the company) by virtue of ownership or by virtue of the shares gifted by the assessee and standing in the name of the transferee. Effectively, therefore, only a gift of 6000 equity shares was made by the assessee to the transferee.

7. On 29th September 1982 the company issued bonus shares and since the transferee was a holder of the gifted equity shares, 4000 bonus shares of the said company were allotted to the transferee.

Similarly, on 31st May 1986 another 10,000 bonus shares were allotted to the transferee by the company.

8. Thereafter, during the window of eight months, the assessee revoked the gift on 15th June 1988 with the result that the 6000 shares gifted to the transferee came back to the assessee. However, the 14,000 bonus shares allotted to the transferee while it was the holder of the equity shares of the company continued with the transferee.

Assessment proceedings for AY 1982-83:

9. For the Assessment Year 1982-83, the Gift Tax Officer passed an assessment order on 17th February 1987 in respect of the assessee. He held that the revocable transaction entered into by the assessee was only for the purpose of reducing the tax liability. As such, it could not be accepted as a valid gift. For arriving at this conclusion, the assessing officer relied upon ***McDowell & Co. v. Commercial Tax Officer, [1985] 154 ITR 148***. Accordingly, the assessing officer, while holding the gift to be void, made the assessment on a protective basis.

10. Feeling aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Gift Tax (Appeals) but found no success. The Commissioner of Gift Tax (Appeals), however, held that since the gift was void, a protective assessment could not be made.

11. The assessee then preferred a further appeal to the Tribunal and by its order dated 23rd August 1991 allowing the

appeal; the Tribunal held the revocable gift to be valid. It was noted that the concept of a revocable transfer by way of gift is recognized by Section 6(2) of the Gift Tax Act, 1958 (the Act). The value of the gift in such a case was to be calculated in terms of Rule 11 of the Gift Tax Rules, 1958.

12. Although the decision was rendered by the Tribunal after the gift had been revoked by the assessee, it was held that if the assessee "does not exercise an option to revoke the gift within the provided for period of 82 months, then at that point of time also, there will be a further valuation of the residuary interest….".

13. Feeling aggrieved by the decision of Tribunal, the Revenue took up the matter in appeal before the Punjab & Haryana High Court. By its judgment and order in ***Commissioner of Gift-tax v. Satya Nand Munjal, [2002] 256 ITR 516*** the High Court dismissed the appeal and held:

> "It is a legitimate attempt on the part of the assessee to save money by following a legal method. If on account of a lacuna in the law or otherwise the assessee is able to avoid payment of tax within the letter of law, it cannot be said that the action is void because it is intended to save payment of tax. So long as the law exists in its present form, the taxpayer is entitled to take its advantage. We find no ground to accept the contention that merely because the gift was made with the purpose of saving on payment of wealth-tax, it needs to be ignored."

14. The position as it stood, therefore, was that the revocable gift made by the assessee was held to be a valid gift

and the assessee was liable to pay gift tax on the value of the gift as determined under Rule 11 of the Gift Tax Rules, 1958.

Assessment proceedings for AY 1989-90:

15. All of a sudden, on 30th January 1996 the Gift Tax Officer issued a notice to the assessee under Section 16(1) of the Act to the effect that for the Assessment Year 1989-90 the gift made by the assessee was chargeable to gift tax and that it had escaped assessment for that Assessment Year. The assessee responded to the notice by simply stating that there is no gift that had escaped assessment.

16. On 24th March 1998 the assessing officer passed a reassessment order for the Assessment Year 1989-90. While doing so, he framed two issues for consideration: firstly, whether the transferee becomes the owner of the bonus shares particularly because the shares have been received by it as a result of a revocable transfer; secondly, whether the bonus shares received by the transferee could be described as a benefit derived by the transferee from the transferred shares.

17. The assessing officer held that the transferee does not become the owner of the gifted shares until the transfer is an irrevocable transfer. Proceeding on this basis, it was held that the 14,000 bonus shares allotted to the transferee were a part and parcel of the gifted shares and the assessee only took back 6000 shares from the transferee pursuant to the revocable gift. Consequently, it was held that the assessee had surrendered his

right to get back 14,000 bonus shares which were treated as a gift by the assessee to the transferee in view of the provisions of Section 4(1)(c) of the Act. The assessee was taxed accordingly.

18. Feeling aggrieved by the reassessment order, the assessee preferred an appeal to the Commissioner of Gift Tax (Appeals). By his order dated 8th September 1998 the Commissioner held that since there was no regular transfer of the bonus shares, the transferee could not claim any ownership of the shares. In fact he was only a trustee of the assessee in respect of the bonus shares. The Commissioner also referred to ***McDowell & Co.*** and held that the assessee had carefully planned his affairs in such a manner as to deprive the Revenue of a substantial amount of gift tax. The reassessment order was accordingly upheld.

19. The assessee then took up the matter with the Tribunal which held in its order dated 23rd May 2000 that in view of the assessment to gift tax made in respect of the assessee for the Assessment Year 1982-83, the notice issued under Section 16(1) of the Act was merely a change of opinion and, as such the reassessment proceedings could not have been taken up. On the merits of the case, it was noted that neither the dividend income on the bonus shares nor their value had been taxed in the hands of the assessee. Consequently, the assessee was liable to succeed on the merits of the case also. The gift tax reassessment was accordingly quashed by the Tribunal.

20. The Revenue then came up in appeal before the High Court with the substantial question of law mentioned above.

21. In the impugned order, the High Court held that the assessee was liable to gift tax on the value of the bonus shares which were a gift made by the assessee to the transferee. It was held that the bonus shares were income from the original shares by relying upon ***Escorts Farms (Ramgarh) Ltd. v. Commissioner of Income Tax, [1996] 222 ITR 509***. Accordingly, the order of the Tribunal was set aside and the reassessment order upheld.

Discussion and conclusions:

22. Although learned counsel for the assessee seriously doubted the correctness of the impugned judgment and order on several grounds, we find that it is not necessary for us to go into all the issues raised by him.

23. The fundamental question before the High Court was whether there was in fact a gift of 14,000 bonus shares made by the assess to the transferee. The answer to this question lies in the interpretation of Section 4(1)(c) of the Act which reads as follows :-

> **"Gifts to include certain transfers.**
> **4.** (1) For the purposes of this Act,-
> (a) xxx
> (b) xxx
> (c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the Assessing

Officer to have been *bona fide,* shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(d) to (e) xxx"

24. A perusal of the impugned judgment and order facially indicates that there has been no consideration of the provisions of Section 4(1)(c) of the Act. From the rather elaborate narration of facts, it is quite clear that the assessee had made a valid revocable gift of 6000 equity shares in the company on 20th February 1982 to the transferee. This is a finding of fact conclusively determined by the High Court in the assessee's own case.

25. The only event that took place in the previous year relevant to the Assessment Year 1989-90 was the revocation of the gift by the assessee on 15th June 1988. Was this event enough for the Gift Tax Officer, in 1996, to re-open the assessment for the year 1989-90, while keeping in mind the fact that bonus shares were allotted to the transferee on 29th September 1982 and 31st May 1986? It is possible, on an interpretation of Section 4(1)(c) of the Act to answer this question either way, but unfortunately the High Court did not even notice this provision of the Act. Of course, the submission of learned counsel for the assessee is that on an interpretation of Section 4(1)(c) of the Act, it cannot be said by any stretch of imagination, that the assessee had made a gift of 14,000 bonus shares to the transferee in the previous year relevant to the Assessment Year 1989-90.

26. However, we are not inclined to decide this issue finally since we do not have the view of the High Court on the interpretation of Section 4(1)(c) of the Act. Nor do we have the view of the High Court on the applicability or otherwise of the principle laid down in ***McDowell & Co.***

27. As far as the applicability of ***Escorts Farms*** is concerned, the question that arose for consideration in that case was the determination of the cost of acquisition of the original shares when bonus shares are subsequently issued. That is the second part of Section 4(1)(c) of the Act and that question would arise (if at all) only after a finding is given by the High Court on the first part of Section 4(1)(c) of the Act. But, as we have noted above, the High Court has not considered the interpretation of Section 4(1)(c) of the Act.

28. Under the circumstances we have no option but remand the matter for *de novo* consideration by the High Court keeping in mind the provisions of Section 4(1)(c) of the Act as well as the orders passed in the case of the assessee for the Assessment Year 1982-83. We do so accordingly.

29. In view of the above, both the Civil Appeals are allowed and the impugned judgment and order of the High Court is set aside but without any order as to costs.

30. We make it clear that the parties are entitled to raise all contentions before the High Court and are at liberty to file additional documents, if necessary.

….……..……..J.
(D.K. Jain)

….……..……..J.
(Madan B. Lokur)

New Delhi;
January 22, 2013