

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Muhammad Khurshid Alam Sarkar

And

Mr. Justice Sardar Md. Rashed Jahangir

Income Tax Reference Application No. 222 of 2003

In the matter of:

Nigar Sultana

... Applicant

-Versus-

The Commissioner of Taxes, Taxes Zone- 01, Dhaka..

... Respondent

Ms. Rezina Mahmud, Advocate

... For the applicant

Mr. Humayun Kabir, AAG

... For the respondent

Judgment on : 02.11.2023

Sardar Md. Rashed Jahangir, J:

This reference application has been filed by the assessee-applicant under section 160 of the Income-tax Ordinance, 1984, questioning the legality of the judgment and order dated 29.05.2002 passed by the Taxes Appellate Tribunal, Division Bench-4, Dhaka in Income Tax Appeal No. 2900 of 1999-2000 (assessment year, 1991-1992) upon formulating the following question of law :

Question of Law :

Whether, on the facts and in the circumstances of the case, the Taxes Appellate Tribunal was legally justified in directing the Deputy Commissioner of Taxes to add

Tk.3,30,000.00 (Taka three lac thirty thousand) as income under section 19(1) and 19(4) of Income Tax Ordinance, 1984, while the applicant had submitted details explanation regarding the capacity of the donors to make the gifts.”

In reply to a notice of section 93 of the Income-tax Ordinance, 1984 (hereinafter referred to as ‘the Ordinance’) the assessee submitted her return declaring total income of Tk. 4,588.00 (Taka four thousand five hundred eighty eight). Upon receipt of the said return the Deputy Commissioner of Taxes concerned (hereinafter referred to as ‘the DCT’) issued notice under section 83(1) of the Ordinance asking the assessee to appear in person or through her representative before him and notice under section 79 of the Ordinance was also issued. Neither the assessee nor her representative appeared before the DCT, who completed the assessment invoking sections 84/93 of the Ordinance, 1984, under his ‘Best Judgment Assessment’, in absence of assessee. In the assessment, DCT accepted the declared total receipt derived from rent of house property and allowed $\frac{1}{6}$ of the total receipt as yearly repairing cost. But rejected the claim of making payment Municipal and Government Tax of Tk.2,912.00 (Taka two thousand nine hundred twelve) and thereafter computing assessee’s total income at Tk.7,500.00 (Taka seven thousand five hundred). At the time of assessment, the DCT also rejected the claim of assessee as to receive of gift of Tk.3,00,000.00 (Taka three lac) from her husband, Tk.70,000.00 (Taka seventy thousand) from her father and Tk.50,000.00 (Taka fifty thousand) from her mother and thereafter

computed in total Tk. 4,20,000.00 (Taka four lac twenty thousand) as unexplained income under section 19(1) of the Ordinance, 1984 of the assessee to be added with her total income and also computed Tk.60,000.00 (Taka sixty thousand) as income under section 19(4) of the Ordinance, 1984.

Having aggrieved, the assessee preferred an appeal before the Additional Commissioner of Taxes (Appeal), Appellate Range, Taxes Appeal Zone, Dhaka [hereinafter referred to as ‘the ACT (Appeal)’], in আয়কর আপীল পত্র নং ৫১/সা-১/৯৮-৯৯। The ACT (Appeal) without assigning any reason by a non-speaking order affirmed the ex-parte assessment order of DCT. Thereafter, assessee took a second appeal before the Taxes Appellate Tribunal, Division Bench-4, Dhaka being Income Tax Appeal No. 2900 of 1999-2000 along with an explanation regarding the source of gift or capability of her donor-husband. The Tribunal in its judgment and order rejected the claim of gift of assessee in part on the ground that the gift made by assessee’s father at Tk.70,000.00 (Taka seventy thousand) and her mother at Tk.50,000.00 (Taka fifty thousand) having not been proved and also disbelieved the savings of assessee’s husband made over 20(twenty) years of his service life, which made him capable for making gift to his wife and thereafter rejected the claim of gift of Tk. 1,50,000.00 (Taka one lac fifty thousand) out of claimed gift of Tk.3,00,000.00 (Taka three lac).

Being aggrieved by and dissatisfied with the judgment and order of the Tribunal, particularly the rejection of claim of gifts made by

assessee's husband of Tk.1,50,000.00 (Taka one lac fifty thousand), her father of Tk.70,000.00 (Taka seventy thousand) and her mother of Tk.50,000.00 (Taka fifty thousand), assessee filed this reference application formulating the aforementioned questions of law.

Heard Ms. Rezina Mahmud, learned Advocate for the assessee-applicant and Mr. Humayun Kabir, learned Assistant Attorney General for the respondent-Commissioner and have gone through the reference application as well as the affidavit-in-reply filed by the respondent. On examination it appears that assessee produced before this Court an explanation by way of Annexure-‘C’ of the application, regarding source and capability of donor husband, detailing his total income throughout the 20(twenty) years of his service life including savings and her husband's other agricultural income from landed property of 3.2 acres, in reply to the rejection of claim of receiving gift from her husband, since the DCT rejected the claim on the ground of lack of explanation regarding the source of income and the capability of donor in making such gift. On examination, it appears to this Court that the source of income of assessee's husband and his capability having been adequately explained and the same was submitted before the Tribunal and which dealt with the explanation; but at the time of deciding the appeal the Tribunal failed to apply its judicial mind in arriving at just decision and thereby rejecting the claim of gift from the husband, her father and mother on a flimsy ground. We find no reasonable justification in rejecting the aforesaid explanation. In the premise above, we are of the view that the Tribunal was not legally

justified in directing the DCT to reject and thereby add Tk.2,70,000.00 (Taka two lac seventy thousands) as income under section 19(1) of the Ordinance, 1984.

Accordingly, our answer to the question is in negative in favour of assessee-applicant against the Commissioner-respondent.

In the result, the answer of the Court is in negative in favour of assessee-applicant.

The Registrar of the Supreme Court of Bangladesh is directed to take steps in view of the provisions under section 161(2) of the Income-tax Ordinance, 1984.

Muhammad Khurshid Alam Sarkar, J.

I agree.