ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Tax Appeal No.147-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Hameeda Begum

Tax Appeal No.123-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Umer Shehzad

Tax Appeal No.124-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Ms. Misbah

Tax Appeal No.238-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Mrs. Saima Amir

Tax Appeal No.290-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Miss Umaira Maryam

Tax Appeal No.291-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Farhan Aamir

Tax Appeal No.292-2000

Commissioner of Income Tax/Wealth Tax, Islamabad

Vs.

Fayyaz Begum

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.02.2023	Mr. Mustasim Malik Toor, Advocate for the appellant. Sardar Taimoor Aslam Khan and Mr. Mudassar Abbas, Advocates for respondents.

AAMER FAROOQ C.J. This order shall dispose of instant Tax Appeal as well as Tax Appeals No.123-2000, 124-2000, 238-2000, 290-2000, 291-2000 & 292-2000.

2. The instant Tax Appeals have been filed by Commissioner of Income Tax under section 136 of the Income Tax Ordinance, 1979 against the order dated 12.05.1999 by Income Tax Appellate Tribunal proposing following questions of law:-

i) Whether in the facts and circumstances of the case the Honourable Tribunal was justified to hold that the assessment was made without jurisdiction specially when the assessee filed return of income from a property over which title was not transferred in CDA records?

ii) Whether in the facts and circumstances of the case the Honourable Tribunal was justified to accept the gift specially when the said gift was not given any effect in the CDA record and titled in the immovable property was not transferred in the names of the donees?"

3. The background, leading to filing of instant appeals, is that respondents, in all the tax appeals, are taxpayers within the

jurisdiction of income tax/wealth tax Islamabad. The matter pertains to the Tax Years 1995 & 1996. In this regard, respondents and/or their predecessor-in-interests, filed tax returns for the said tax years claiming share in property (details of which are mentioned below) to be owned by them and declared income received from them in their tax returns. In this regard, DCIT, Circle-21, Islamabad finalized the assessment but IAC found the same to be without jurisdiction, as the share in property was declared by another assessee, who was original allottee of the same. The property in question being the portion of Plaza bearing No.94-W, Blue Area, Islamabad; according to the original allottee/donor, a portion of it was gifted to the taxpayers and the income from rentals out of the same was then claimed by donees. The assessment was reopened and set aside on the basis that gift deeds are not registered. The matter eventually came up before Income Tax Appellate Tribunal, which vide order dated 12.05.1999, held that gift deed does not require to be compulsorily registered. Feeling aggrieved, the Department has filed the instant appeals.

4. Learned counsel for the appellant *inter alia* contended that gifts have been

effected through unregistered document, which is being classified as 'declaration of gift' and was required to be compulsorily registered and the same is not hence there is no valid gift in favour of the donees hence they cannot claim to be the owners of the portion of the property and declare the income under the same as part of their income.

5. Learned counsel for the respondents, on the other hand, submitted that instrument, in question, is 'declaration of gift' which only evidences oral gift and not the gift deed. It was submitted that in light of the judgments [1], the memorandum of gift does not require to be registered and as per the Islamic law, the gift is valid where there is offer, acceptance and transfer of ownership.

6. Submissions made by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. The brief background of the controversy, giving rise to the instant tax appeals, is mentioned hereinabove, however, by way of addition, it is mentioned that one Ch. Mukhtar Hussain, who was owner of 1/3rd share in the

[1] Muhammad Zaman Khan Vs. The Additional Chief Land Commissioner and another (1986 SCMR 1121) & Mst. Saadia Vs. Mst. Gul Bibi (2016 SCMR 662)

property namely Aamir Shakeel Plaza situated in Jinnah Avenue (Blue Area), Islamabad, gifted 2/3rd shares in his 1/3rd share to his wife and daughter equally i.e. Hamida Begum (wife) and Ms. Misbah (daughter). According to the said document, that 1/3rd share, in the referred Plaza, devolved upon three persons namely Ch. Mukhtar Hussain, Mst. Hamida Begum and Ms. Misbah. The referred document also acknowledges that gift has been made under Mohammaden Law, meaning thereby that it was verbal/oral gift and the effect of it was recorded through declaration/memorandum.

8. The requirements of Mohammaden Law were discussed in detail by the august Apex Court in case reported as [2] by holding that a document, in the form of memorandum of gift, has to be executed between the parties (donor and the donee) as an acknowledgement of past transaction of oral gift; its non-registration would not have much bearing as regards its authenticity or validity but the important thing is that fulfillment of three conditions for valid gift i.e. offer, acceptance and delivery of possession had to be proved. Similarly, in case reported as [3], the august

[2] Mst. Saadia Vs. Mst. Gul Bibi (2016 SCMR 662)
[3] Muhammad Zaman Khan Vs. The Additional Chief Land Commissioner and Another (1986 SCMR 1121)

Apex Court observed that gift to a minor is valid and the fact that property has not been transferred in the revenue records is inconsequential for the gift to be valid. It was added that where the gift was put up for mutation and before the same donor wishes to repudiate the same the repudiation would not be valid, as the three ingredients of the gift under Mohammaden Law were fulfilled and the same had taken effect.

9. In the instant case, observation by Appellate Tribunal is not entirely correct. The gift deed executed under the Transfer of Property Act requires to be registered compulsorily in light of section 17 of the Registration Act, 1908, which provides that transfer of immovable property by way of deed is to be registered, however, oral gift is exception to that and the same is duly acknowledged by the courts of the country; oral confers valid title upon the donee provided three elements recognized for the same in light of above noted judgments of the Hon'ble Supreme Court of Pakistan are present viz offer of the gift, acceptance of the same and delivery of possession of the property in question. The fact that in the relevant records, gift has not been transferred (in the instant case CDA) is immaterial and the same cannot be

regarded as an 'invalid gift'. The above legal position, with respect of valid gift, stands confirmed and has remained subject matter of ample consideration without any ambiguity, however, for the purposes of income tax laws, it would be only appropriate that the transaction of the property, whether it is sale, gift or through any other means, be recorded in the revenue record to avoid chances of tax avoidance but it is emphasized that gift would not be invalid only because of the fact that it is not recorded in the relevant record of the regulator or custodian of the property record.

10. In view of above discussion of law and fact, the answer to the above questions is in '**affirmative**'.

11. Since the questions raised stand answered, instant tax appeals/references are accordingly disposed of.

12. A copy of instant order be remitted to the Appellate Tribunal Inland Revenue as required under the law.

(SAMAN RAFAT IMTIAZ) **(CHIEF JUSTICE)**
JUDGE

Approved for Reporting

Zawar