

(2004) 01 KL CK 0033
In the High Court Of Kerala
Case No : GT Appeal No's. 2 to 4 of 2002

Azad Rahim

APPELLANT

Vs

Gift Tax Officer

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Gift Tax Act, 1958 — Section 2, 3

Citation : (2004) 190 CTR 410 : (2004) 271 ITR 468

Hon'ble Judges : K.S. Radhakrishnan, J;C. Kuriakose, J

Bench : Division Bench

Advocate : S. Ananthakrishnan and N.K. Subramanian, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

K.S. Radhakrishnan, J.—GTA No. 2 of 2002 arises out of the order in GTA 3/Coch/2000 relating to the asst. yr. 1996-97. Appellant therein is one Azad Rahim, daughter of Mrs. Fathima Rahim, GTA Nos. 3 of 2002 and 4 of 2002 arise out of GTA 1/Coch/2000 and 2/Coch/2000, respectively. GTA No. 1/2000 was preferred by Mr., Fathima Rahim as the legal heir of late Sri. A.A. Rahim and GTA 2/Coch/2000 was preferred by Mrs. Fathima Beevi. Common order was passed in GTA Nos. 1/Coch/2000 and 2/Coch/2000 and separate order has been passed for the year 1996-97. Azad Rahim is the appellant in GTA No. 3/Coch/2000. Common questions arise for consideration in all these appeals and hence, we are disposing of these appeals by a common judgment.

2. Late Sri A.A. Rahim and his wife Smt. Fathima Beevi jointly executed a settlement deed No. 1606 of 1995 on 20th April, 1995 settling their immovable properties described in the schedules in favour of their sons, daughters and grandson. AO held that the properties settled in favour of the donees who are signatories to the Bhagapathram are liable to gift-tax. Since they had not filed any returns under the GT Act, 1958, the AO issued notice u/s 15(4) of the Act requiring the assessee to file the gift-tax return for the asst. yr. 1996-97. The assessee Mrs. Fathima Rahim being the legal heir of late Sri A.A. Rahim filed

return under the GT Act, 1958 on 27th Jan., 1997 declaring taxable gift as nil. Subsequent to the filing of the return, a letter dt. 15th March, 1999 was filed by the assessee stating that there is no gift involved in the transaction. Over and above, it was stated that there is no gift of properties as per the Mohammedan Law. Further it was stated that there is a clause in the partition deed that during the life time of the assessee and his wife Fathima Rahim, the allottees shall not assign the properties without their consent and if they do so, the alienation would be void. It was stated that the transaction did not satisfy the conditions laid down for Muslim gifts and there is no declaration of gift which is necessary to constitute Muslim gift. There should also be complete relinquishment by the donor of ownership. There is a clause prohibiting complete alienations without consent and treating such alienations as void. Since the ingredients of valid gift are absent, there is no element of gift involved in the transaction by the assessee.

3. We have already indicated in GTA No. 3/Coch/2000, assessee is the son of Fathima Rahim. Assessee's mother, Smt. Fathima Rahim filed a return on 25th Feb., 1997 declaring taxable gift as nil. Since there was no response, hearing was posted on 28th Jan., 1998, for determining the fair market value of the gifted property and the matter was referred to the valuation cell on 2nd Sept., 1998. After further hearing, the assessment was completed u/s 15(3) of the GT Act, 1958 on 22nd March, 1999 determining the taxable gift at Rs. 74,80,750 for the asst. yr. 1996-97. It was noticed that as per document No. 1606 dt. 20th April, 1995, properties belonged to the assessee's mother and father were gifted to their children and a minor grandchild. The AO issued notice dt. 19th Nov., 1999 to the assessee u/s 32(2) of the Act directing him to pay a sum of Rs. 26,23,721 together with interest thereon. Notice was issued to the assessee since the donees were jointly and severally liable to pay gift-tax due from the donors by virtue of the provisions of Section 29 of the Act. On receipt of the notice from the AO, the assessee filed OP No. 2007 of 2000 before this Court. Learned Single Judge of this Court directed the assessee to file appeal before the Tribunal. Tribunal considered the appeal filed by the assessee elaborately and found that all the conditions to constitute valid gift are satisfied in this case. Therefore, the assessing authority has rightly imposed the tax, Valuation made by the Department was also found to be in order.

4. Counsel appearing for the appellant submitted that the Tribunal has committed an error in holding that the gift was valid. According to the counsel, as per document styled as settlement deed no title has passed on to the alleged donees. Further, it is also stated that the donors have not transferred the right in the building situated in the property belonged to the trust. It is also submitted that there is no transfer of possession of building or properties. Counsel also submitted that valuation was not properly conducted with notice to the assessee. Counsel for the Revenue on the other hand contended that the provisions of the Transfer of Property Act are not applicable to Muslim gifts. Counsel appearing for the appellant placed reliance on the decisions in Chellappan Nadar v. Krishnan Nair (1963) KLT 750 and Pocker v. Kathiya (2000) (1) KLT 430. Counsel

appearing for the Revenue placed reliance on the decisions in W.O. Holdsworth and Others Vs. The State of Uttar Pradesh, , Commissioner of Wealth-tax, Bihar and Orissa Vs. Kripashankar Dayashanker Worah, and Ismail and Others Vs. Idrish and Others, . The only question to be considered is whether settlement deed No. 1606 of 1995 dt. 20th April, 1995 settling the immovable properties in favour of the children and grandson is gift under the provisions of the GT Act.

5. The term "gift" is defined in Section 2(xii) as follows :

"(xii) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section."

Section 3 is the charging section and Section 4 includes certain transfers within the term "gift". We are in this case concerned only with the question whether document referred to hereinbefore would satisfy the ingredients of a "gift" under the GT Act. If the transaction satisfies the ingredients of "gift" under the Act, the question as to whether "gift" is valid under Mohammedan Law or not is of no consequence. The GT Act was enacted in 1958 and the Transfer of Property Act was enacted in 1882. In the decision in Vadulla Venkata Rao Vs. Commissioner of Gift Tax, , it has been held that the scope and ambit of the GT Act is of wider import than that of the Transfer of Property Act. In that case, it was held that a differed interest granted to the assessee's son in a property after the death of his wife is taxable under the GT Act. We have perused the document in question. Preamble of the deed indicates that gift has been made by the donor voluntarily without any consideration. It is true that in p. 3 of the document, the document is described as Bhagapathram that is, partition deed. A partition deed is valid only if a pre-existing legal right to at least a portion of the property being partitioned. Properties involved in the document exclusively belong to the assessee, late Rahim and his wife and it has been settled on his children and grandchild. At pp. 12 and 13 of the document, it has been clearly stated that the properties belonged to the assessee and his wife and the intention is to clearly set apart those properties to others who are their successors with the intention of the future wellbeing and unity of each of the successors and it is being done as per the desire of the assessee and" his wife. At pp. 14 and 15, it has been clearly stated that possession and enjoyment has been released by all in favour of the owners of each schedule of property permanently and from that date onwards, each of those scheduled properties are to be held and enjoyed in an absolute manner. The deed further assigns each institution like Malikdinnar Industrial Training College and Fathima College of Pharmacy, etc. located in the gifted premises to the specified donees from that day giving them ownership rights. The document also indicates that by the execution of the gift donors have no right at all to sell the properties. On a perusal of the terms of the document in its entirety, we are in agreement with the authorities below and the Tribunal that a valid gift within the meaning of the GT Act has been effected and attracts gift-

tax.

6. We are now concerned with the question of valuation made by the Valuation Officer u/s 15(6) of the Act is correct or not. So far as Fathima Rahim is concerned, gift-tax was assessed for the year 1993-94 at Rs. 37,000 and for the year 1996-97 at Rs. 74,80,750. Demand made was Rs. 20,424 and Rs. 26,03,297, respectively for the years 1993-94 and 1996-97. As far as Azad Rahim is concerned, the Department assessed tax at Rs. 26,23,721 together with interest. Counsel appearing for the appellant submitted that the valuation was made without notice to the appellant though it is stated by the representative that notice was issued to them and that they were not present. Considering the facts and circumstances of the case, we feel it only just and proper that an opportunity be given to the parties to file objection to the valuation made for the year 1996-97. Counsel submitted that the appellant had in fact filed objection to the valuation report and there was no application of mind. Appellants are, however, given opportunity to file objections, if any, within a period of two months from today and the same will be considered by the Valuation Officer after giving opportunity of being heard to the assessee or their representative. Final orders will be passed by the Valuation Officer, within a period of three months thereafter on the basis of the valuation report and appropriate orders would be passed by the assessing authority. In all other respects the order of the Tribunal will stand.