
(1996) 03 MP CK 0065

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 239 of 1990

Balchand Malaiya (HUF)

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)

Citation : (1996) 134 CTR 547 : (1997) 227 ITR 651 : (1997) 1 MPLJ 368

Hon'ble Judges : A.K. Mathur, C.J; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; Abhay Sapre, for the Respondent

Judgement

S.K. Kulshrestha, J.

The Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, has, at the instance of the applicant-assessee, referred the following question of law u/s 27(1) of the Wealth-tax Act, 1957, for the opinion of this court :

" Whether, on the facts-and in the circumstances of the case, the Tribunal was justified in holding that the gift of almost the entire assets of the Hindu undivided family by the karta in favour of his five sons was void ?"

The assessee is a Hindu undivided family. The case relates to the assessment years 1957-58 and 1958-59 for which the relevant dates are Diwali of 1956 and 1957, respectively. Shri Balchandra Malaiya, karta of the Hindu undivided family, made gifts of movable and immovable properties amongst his five sons, two of them were majors and other three were minors. He also made gifts of certain amounts to his daughters, one of whom had just attained majority and the other was minor. These gifts were evidenced by a gift deed dated December 5, 1955, and December 27, 1955. The stand of the assessee was that the recipients of the gifts had become the owners of the property and, therefore, income from the properties should not be included in the hands of the Hindu undivided family. The

assessee also took an alternative stand that the gifts could be treated as allotted to the respective members of the Hindu undivided family by partial partition. This stand was also rejected and the claim for exclusion of the gift from the total wealth of the Hindu undivided family was rejected by the Wealth-tax Officer. The appeal to the Appellate Assistant Commissioner and then to the Tribunal failed and hence, on the application of the assessee, the said question has been referred for the opinion of this court.

We have heard learned counsel for the parties and perused the record.

The power of making gift of the movable or immovable property of the Hindu undivided family came up for consideration of the Supreme Court in *Ammathayee Ammal and Another Vs. Kumaresan and Others*, and their Lordships observed that the Hindu law on the question of gifts of ancestral property is well settled. So far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. A gift, for example of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection. But, so far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A Hindu father or any other managing member has power to make a gift of ancestral immovable property within reasonable limits for "pious purposes". Now what is generally understood by "pious purposes" is gift for charitable and/or religious purposes. The meaning of "pious purposes" has been extended also to cases where a Hindu father makes a gift within reasonable limits of immovable ancestral property to his daughter in fulfilment of an ante-nuptial promise made on the occasion of the settlement of the terms of her marriage, and the same can also be done by the mother in case the father is dead.

Yet later, in *Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others*, , it was observed that (page 1778) :

" There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions. Instead, we may refer to the following statement of law in Mayne's Hindu Law, Eleventh Edition, Art. 582 :

"It is now equally well settled in all the provinces that a gift or device by a coparcener in a Mitakshara family of his undivided interest is wholly invalid ... A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts." "

From the observations as quoted above, it is clear that a gift by a coparcener of his undivided interest in the coparcenary property is void. The reason as to why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift is that an individual member of the joint Hindu family has

no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

Learned counsel appearing for the assessee has referred to the decision of this court in CIT v. V.C. Gupta [1994] 208 ITR 476 to contend that even in such a situation, the gift is merely voidable and not void. The said case was a case relating to the self-acquired property of the donor and not the property of a Hindu undivided family. Under the circumstances, the facts are clearly distinguishable. Likewise reference has been made by learned counsel to the decision of the Supreme Court in Commissioner of Income Tax, Gujarat, Ahmedabad Vs. Jayantilal Prem Chand Shah, , in which their Lordships held that once it was established that the minors were not benamidars of their Hindu undivided family, they represented themselves and were entitled to their respective shares in the firm as their own income and the income could not be added to the income of the Hindu undivided family. It is clear that the said case related to income derived from the partnership and the question was whether the sum could be assessed in a representative capacity.

From the decisions of their Lordships in the case of Ammathayee Ammal and Another Vs. Kumaresan and Others, and Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others, , it is manifest that it was not permissible for the karta of the Hindu undivided family to alienate share by gift and the gift not being for a pious or religious purpose was void. However, the following observation in Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others, , would also be relevant (page 1780) :

" Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons who were the remaining coparceners. The gift was, therefore, valid construing the same as renunciation or relinquishment by Rami Reddy of his interest in the coparcenary and, accordingly, the consent of other coparceners was immaterial."

It appears from the statement of fact that the alternative stand taken by the assessee was that the said gifts could be treated as allotted to the respective members of the Hindu undivided family by partial partition. We find that even if treating the same to be relinquishment or renunciation such renunciation would enure for the benefit of all other coparceners and not for the benefit of

individuals to whom the gift was made.

In this view of the matter, we are of the opinion that the Tribunal was justified in holding that the gift of almost the entire assets of the Hindu undivided family by the karta in favour of his five sons was void in the facts and the circumstances of the case. Accordingly, the question referred is answered against the applicant (assessee) and in favour of the Revenue.