
(1971) 01 OHC CK 0007
In the Orissa High Court
Case No : O. J. C. No. 1525 of 1968

BHAGIRATHI SAHA

APPELLANT

Vs

GIFT-TAX OFFICER AND ANOTHER.

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Citation : (1971) 81 ITR 709

Hon'ble Judges : G. K. Misra, C.J;A. Misra, J

Bench : Full Bench

Judgement

G. K. MISRA C.J. - The petitioner is a businessman and an assessee under the Income Tax Act, since long. The genealogy of the petitioners undivided joint family is given hereunder. Bhagirathi has two sons Surajmal and Rampal. Nanu Devi is the wife of Surajmal and Godavari Devi is the wife of Rampal. Surajmal has three sons, ?Lokanath, Biswanath and Chaturbhuj. Subash and Manu (Manmohan) are the sons of Rampal. Sheoduttrai, Bholanath and Bhagirathi (petitioner) were the sons of deceased Dhanraj. Bholanath died issueless on 14th of June, 1964. His entire assets were inherited by the petitioner as the next reversioner, Sheoduttrais family having been extinct before the death of Bholanath. The petitioner effected a partial partition of his assets between himself, his sons, grandsons and daughters-in-law on 24th of October, 1965. The assets which he inherited from Bholanath were thrown by him into the common hotchpot of the undivided joint family consisting of himself, his sons, grandsons and daughters-in-law. The separate property which the petitioner threw into the common hotchpot was construed as gift by the opposite parties and a notice (annexure "A") was issued to him on 30th of November, 1966, in pursuance of the provisions of section 13(2) of the Gift-tax Act, 1958 (hereinafter to be referred to as "the Act"), for the gift-tax assessment year 1966-67, calling upon him to furnish a return of the gifts made by him in favour of the undivided joint family. The petitioner filed an application on 24th of July, 1967, asserting that the blending of his separate property inherited by him from his late brother, Bholanath, with the joint family assets did not constitute a gift. This defence was

not acceptable to the revenue and a notice (annexure "D") was issued to him u/s 15 of the Act for further discussion and disclosure of documents on failure of which he was to be assessed with the best of judgment of the Wealth-tax Officer. In another notice (annexure "E") opposite party No. 1 stated as follows :

"On perusal of the capital account furnished by you in the case of M/s. Sheoduttrai Bholanath it shows that you inherited Rs. 2,32,662.95 from your late brother, Bholanath Saha, and this property became your individual property. On October 24, 1965, you have merged this inherited property in the property belonging to the Hindu undivided family of which you are the karta. It is after this merger that you have effected a partition. Please, therefore, let me know why the amount of Rs. 2,32,662.95 should not be treated as a gift by you to the Hindu undivided family of which you are the karta."

In a reply dated 28th of October, 1968 (annexure "F"), the petitioner denied his liability. By annexure "G" dated October 29, 1968, the revenue relied upon *Keshavlal Lallubhai Patel v. Commissioner of Income Tax and Commissioner of Gift-tax v. Satyanarayanamurthy*, in support of its conclusion that the separate property so thrown into the hotchpot was a gift. This writ application has been filed for quashing the impugned notices and orders by annexures, "A", "C", "D" and "F", and for issuing a writ of mandamus to the opposite parties not to proceed with the assessment of the petitioner under the Act.

The short question that arises for consideration is whether the separate property thrown by the petitioner into the hotchpot constitutes a "gift" as defined in section 2(xxiv) of the Act.

At one point of time, there was sharp cleavage of opinion amongst the various High Courts as to whether a separate or self-acquired property thrown into the common hotchpot would constitute a gift. The matter is now concluded by *Goli Eswariah v. Commissioner of Gift-tax*. In that case their Lordships observed that the separate property of a Hindu coparcener acquires the characteristic of a joint family property not by any physical mixing with his joint family or ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act is a unilateral act. The moment he declares his intention the property assumes the character of joint family property and this doctrine is peculiar to the Mitakshara school of Hindu law. When a coparcener throws his separate property into the common stock he makes no gift under the Transfer of Property Act. There is no donor or donee and no question of acceptance of property thrown into the common stock arises. The declaration by which the assessee impressed the separate property with the character of joint Hindu family property does not constitute a transfer so as to attract the provisions of the Act. The word disposition used in the main part of section 2(xxiv) refers to a bilateral or a multilateral act. It does not refer to a unilateral act of throwing self-acquired property into the common hotchpot.

This decision was followed by the Supreme Court in *H. H. Maharana Rajasaheb*

Shri Pratapsinhji Saheb of Wankaner v. Commissioner of Gift-tax.

On the aforesaid view, the separate property of the petitioner which was thrown into the common hotchpot of the undivided joint family before partition does not constitute a gift and is not assessable to gift-tax.

In the result, the writ application is allowed. The impugned notices be quashed by issue of a writ of certiorari and a writ of mandamus be issued prohibiting the opposite parties from proceeding with assessment. There will be no order as to costs.

A. MISRA J. - I agree.