
(1982) 01 MAD CK 0018
In the Madras High Court

C.M.S. Abdus Salam

APPELLANT

Vs

Commissioner of Wealth-tax, Madras

RESPONDENT

Date of Decision : 06-01-1982

Acts Referred:

Income Tax Act, 1922 — Section 10(2), 66(2)

Citation : (1983) 144 ITR 649

Hon'ble Judges : S. Padmanabhan, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Padmanabhan, J.—The assessee carried on business at Salem. The question referred by the Tribunal for our decision under the W. T. Act.

The assessment years involved are 1969-70, 1970-71, 1971-72 and 1972-73, the respective valuation date being 31st March, 1969, 1970,

1971 and 1972. On March 29, 1969, the assessee credited a sum of Rs. 25,000 to the account of his minor son, Mohammed Abdul Khadar. The

corresponding debit entry was made in the capital account. The opening cash balance in the assessee's books of account as on the date of gift was

only Rs. 1,097.19. The assessee duly filed a gift-tax return treating the sum of Rs. 25,000 as having been gifted by him to this minor son. The

GTO was of the opinion that since the cash balance with the assessee as on March 28, 1969, was only Rs. 1,097.19, the assessee could not have

made valid gift of Rs. 25,000 and that a mere book entry would not be sufficient to amount to a gift. Nevertheless in view of the fact that the

assessee has filed a voluntary return of gift, the GTO passed an order of assessment of gift-tax based on valuation on March 31, 1973. On the

basis that he has made a gift of Rs. 25,000 to his minor son as on March 29, 1969, the assessee excluded the said sum of Rs. 25,000 from his

wealth-tax returns for the year 1969-70. The WTO came to the conclusion that mere book entry in the capital account of the assessee as well as

the account of the minor son would not constitute a valid gift. There was no valid gift, as on the date of the gift the books of the assessee only

disclosed a cash balance of Rs. 1,097.19. Consequently, he included the said sum of Rs. 25,000 in the total wealth of the assessee and completed

the assessment accordingly. For the years 1970-71, 1971-72 and 1972-73 also the WTO included the sum of Rs. 25,000 in the total wealth of

the assessee. Further, the WTO also included the interest accrued on the said sum of Rs. 25,000 in the total wealth of the assessee for the

respective years which were Rs. 4,500 Rs. 9,000 and Rs. 13,500 respectively. The assessee filed Wealth-tax Appeals NOs. 79 to 82 of 1972-

73, before the AAC, Salem, for the years 1969-70 to 1972-73. The AAC dismissed the appeals for the assessment years 1969-70, etc., holding

that the gift has not been preceded by any formal declaration before respectable persons but was evidenced only by transfer entry in the

assessee's account books which were in his own possession, dominion and control and that consequently the bona fides of the gift was open to

question, and was not valid. However, he upheld the assessee's claim in respect of the interest for the respective years in view of the fact that the

interest amount has already been drawn and spent by the minor. The assessee then preferred four appeals to the Income Tax Appellate Tribunal,

Madras in W. T. As. Nos. 39 to 42 1973-74. The Tribunal after referring to certain decisions of their court as well as other courts, held that there

was a distinction between a partnership firm and a preoperatively business. It further held that in the instant case part of the sum making entry in his

books of account which were in his possession, dominion and control, the assessee has not done anything more to effectuate the gift by delivery of

possession of the sum of 25,000 to his minor son. It also took the view that on the date of the gift, viz., March 29, 1969, the assessee could not

have delivered possession of the sum of Rs. 25,000 to his minor son as there was only a cash balance of Rs. 1,097.19. In these circumstances the

Tribunal came to the conclusion that there was no valid gift of Rs. 25,000 and that consequently the sum of Rs. 25,000 was properly

included in the net wealth of the assessee for all the four years. In this view, the Tribunal dismissed the appeals. On the same set of facts the

Tribunal has referred for the assessment year 1973-74, the following consolidated questions of law for our decision :

Whether on the facts and circumstances of the case, the inclusion of Rs. 25,000 in the net wealth of the assessee in the assessment year in

question is valid in law?

2. Mr. K. Srinivasan, the learned counsel for the assessee, contended that the Tribunal and the I. T. authorities committed a grievous error in not

excluding the sum of Rs. 25,000 from the net wealth of the assessee for all the four years on the ground that mere entry in the books of account

did not constitute a valid gift. The learned counsel laid stress upon the fact that in terms of the credit entry to the extent of Rs. 25,000 in the name of

the minor son, there was a debit entry in the capital account of the Assessee. The fact that on the date of gift only a sum of Rs. 1,097.19 was

available as cash balance in the accounts of the assessee would not in any manner render the gift invalid. For the purpose of a valid gift it was not

necessary that actual cash of Rs. 25,000 should have been handed over to the minor son by the assessee. The learned counsel further emphasised

the fact that every year the interest had been credited to the account of the minor son and that the minor son has withdrawn the same for his own

expenses. In these circumstances, the learned counsel argued that the gift of these circumstances, the learned counsel argued that the gift of these

circumstances, the learned counsel argued that the gift of these circumstances, the learned council argued that the gift of Rs. 25,000 was perfectly

valid and that the assessee was entitled to have the same excluded from the computation of his net wealth for the relevant assessment years.

3. Mr. Jayaraman, the learned standing counsel for the Revenue contended that so long as the books of the assessee did not disclose that there was

sufficient cash balance as on March 29, 1969, the assessee could not have made a valid gift of Rs. 25,000 at all. Consequently, the entire and the

theory of valid gift could not be accepted at all. Mr. Jayaraman also contended that there was no evidence to show that as a matter of fact any cash

was handed over to the assessee and re-deposited to the credit of his account.

4. We shall now consider how far the contention urged on behalf of the Revenue

can be sustained. The assessee is a Muslim. According to the Muslim law, it is essential for the validity of a gift that there should be, (1) a declaration of gift by the donor, (2) on acceptance of the gift, an express or implied, by or on behalf of the donee, and (3) delivery of possession of the subject of the gift by the donor to the donee. If these conditions are complied with, the gift is complete. There cannot be any dispute in this case that there was a clear intention on the part of the assessee to make a gift of Rs. 25,000 to his minor son. The very fact that he filed a gift-tax return before the G. T. authorities is positive proof that the assessee has declared that he has made a gift of Rs. 25,000 and to the extent of Rs. 25,000 that he relinquished his control over those moneys to the extent of Rs. 25,000 that he relinquished his control over those moneys and divested himself of his beneficial interest therein. Thereafter, he could not have operated upon the said sum of Rs. 25,000 even if he wanted to. This is not a case where there is only a mere book entry. The entire circumstances, both existing and surrounding, clearly go to show that there was a clear intention on the part of the assessee to make a gift of Rs. 25,000 to his minor son.

5. No doubt, as already stated, delivery of possession of the subject of the gift by the donor to the donee is one of the essential conditions to be satisfied to validate a gift. It has been respectively laid down that what is essential to validate a gift under the Muslim law is that there should be delivery of such possession as the subject of the gift is susceptible to delivery of such possession as the subject of the gift is susceptible of. Delivery of possession of the subject-matter of the gift may be actual or constructive. When physical delivery of possession is not possible, such possession as the property admits of may be delivered. The only requisites are that the donor must divest himself of his dominion over the property. In the case of immovable property where both the donor and the donee are both residing at the time of the gift, no physical departure by the donor or formal entry by the donee is necessary. In such a case the gift may be completed by some overt act by the donor indicating a clear intention on his part to transfer possession and to divest himself of all control over the subject of the gift. As observed by West J. in *Shaik Ibrahim v. Shaik Suleman* ILR

[1984] 9 Bom 146 :

..... When a person is present on the premises proposed to be delivered to him a declaration of the person previously possessed puts him into possession..... without any physical departure or formal entry.

6. In Abdul Razak Saib Vs. Zainab Bi, , a Mohamendan lady executed a deed of gift, in favour of her son, of a house in which she and her sons

we both living. The son continued to live with her in the house after the execution of the deed. The deed recited that possession wa given to the

sons and the sons paid municipal taxes after the exaction of th deed. It wa held that the gift was complete although there wa no physical departure

or formal entry. In Ibrahim Bivi and Others Vs. K.M.M. Pakkir Mohideen Rowther, , a paternal grandmother gifted property to the defendant by

a deed of settlement but the property wa not delivered to the donee. The settler and the settled lived together in the house. there was clear intention

to give the property and hold it on behalf of the settled. In such circumstances the court observed as follows (p. 23) :

In the case of a gift of a house, it is not necessary that a donor should depart from the house in order to make the gift effective. If the donor and

the donee live in a the same house that would be sufficient to show that possession has been given, The reservation by the donor of the right to

reside in the house along with the donee during his lifetime doe not detract from the validity of a fist. it the donee happens to be minor and if he has

attained age of discretion..... he is competent to accept the gift. It is not necessary that in all cases the donor should hand over possession to the

natural guardian of the minor donee. In proper circumstance, the donor can either constitute himself s the guardian or ijhnclidcat some person other

than the natural garudain of the minor, m as the guardian of th minors property and hand over possession to such guardian if circumstance are such

as to justify such a course of action. All these of course apply only where there is a clear intention to make a gift and to deliver possession.

7. When the subject of the gift is incorporeal properly or an actionable claim the gift my be completed by any act on the part of h donee sawing a

clear intention on his part of divest himself in present of the properly, and to confer it upon th donee. In E. S. Hajee Abdul Kareem and Son Vs.

Commissioner of Income Tax, Madras, , the assessee wa a partnership firm consisting of a father and his on. The father desiring to make a gift to

his wife and children made a solemn declaration to this effect before the Masjid / Committee. In the books of the assess, transfer entire were made

on the same date, debiting the account of the donor with these amounts and crediting the accounts of th donors under the gift. The constitution of

the firm was changed thereafter. In the assessment year following these gifts, the accounts of the various parties to whom the gifts has been made

figured as depositors in the accounts of th firm and interest was credits to their accounts year after year. this interest was claimed s diction under s.

10(2) (iii) of the Indian Income Tax Act, 1922, on the ground that these deposits amounted to capital borrowed for the purpose of the business

and that the interest payments were therefore, allowable. The claim was disallowed by the Tribunal which held that the gifts were invalid as there

wa no delivery of possession. The matter came up before this court on a reference at the instance of the assessee. Srinivasan J., speaking for the

Bench, observed as follows (pp. 399, 400) :

The short question then is whether in the circumstances of the present case, the gifts can be regarded as valid. it seems to us that there can be hard

and fast rule and that the nature of the subject-matter of the gift must govern the decision. Whether actual possession can or can not be must

govern the decision. Whether actual possession can or cannot given to the donee must in any instant case depend upon the nature of the subject-

matter of the gift. I is true that the principle of the Mohammadan law requires that in order to make a good gift, there should be delivery of

possession. But the question is possession of what? In Mulla's Mohammadan Law, at p. 137, the learned author observes :

"If a donor doe not transfer to the donee, so far as he can, all the possession which he can transfer the gift is not a good one..... The donor must so

far s it is possible for him, trader to the donee that which he gives, namely, such rights as he himself has"; but this does not imply that where a right

to property forms the subject of a gift, the gift will be invalid unless the donor transfers what he himself doe not posses, namely, the corpus of the

property. he must evidence the reality of the gift by divesting himself so far as he can of the whole of what he gives."

The portion extracted above appears to be from Anwari Begum v. Nizam-ud-din shah ILR [1989] All 165.

There is thus clear authority that the question as to how far the possession of the thing gifted can be given physically to the donee must depend upon the nature of the subject-matter of the gift. In the instant case, we hence noticed that what the donor purported to give were certain amounts representing the assets of the firm which were taken to the credit of the donee in the accounts of the firm. If the donee should be required to pay cash and effect physical delivery of the cash to another donee, the only thing that he could have done was to dispose of a flourishing business, convert it into cash and divide the cash among the donees. We do not think that the law can possibly require any such impractical approach to the question. The donor was entitled to a considerable part of the firm's assets. If he desired to make any gifts of cash consistently with the surrounding circumstance, we believe that a valid gift could have been made if the transfer to the donee, in so far as the subject-matter of the gift was capable of possession of that subject-matter. In this case, the ideal was undoubtedly that immediately after the making of the gifts, those amounts were to be taken to the credit of the donee in the firm's business and the firm treated itself as the debtor of the donee. This was effectuated by making entries in the account following the formal declaration which the assessee made in the presence of a respectable person. In addition year after year, the donee were credited with the interest upon the amounts, and these entries did operate as an acknowledgment of the ability of the firm as a debtor of these donees and the creation of a corresponding right in the donee to recover these amounts from the firm. To all intents and purposes what the assessee did was to create a right in the donee to a share in the assets of the firm. In the nature of things, therefore, it was impossible for the assessee to deliver physically any part of the subject matter of the gift. As we have pointed out, if he has set out to do so, the only solution would have been to have liquidated the firm, converted its assets into cash and thereafter to distribute the assets. We are exceedingly loath to believe that the validity of his gifts having regard to the nature of the subject matter of the gift should be made to depend upon such an impractical course.

8. The learned judges follow an earlier decision in *P.A.C. Ratnaswamy Nadar and Sons Vs. Commissioner of Income Tax, Madras*, wherein it

was stated thus (p. 1153) :

It is implicit in a credit entry in favour of the donee in the account books of the donor that the amount standing to such credit has been gifted to the

donee and has been invested with the donor. Though the entry as such may not conclusively establish real and effective gift it is evidence in support of

the gift, and that evidence taken along, with the other evidence that may be available can establish a gift if the requirements of law are fully satisfied.

9. A similar situation arose for consideration before Srinivasan and Venkatadri JJ, in *A.M. Abdul Rahman Rowther and Co. Vs. The*

Commissioner of Income Tax, Madras, . In that case, a Muslim, assessee to Income Tax who was the sole proprietor of a business purported to

make certain gifts to his two married daughters by incorporation certain entries in his accounts. He debited himself to the extent of Rs. 50,000 and

credited his two daughters with Rs. 25,000 each. Subsequently, a partnership deed was executed, with the assessee and his two daughters as

partners. There was evidence of distribution of the profits in the partnership in accordance with the terms of the partnership. The I. T. authorities

held that the gifts were not valid. On appeal to the Tribunal, it also held that the gifts were not valid. On a reference to this court, under s. 66(2) of

the Indian Income Tax Act, 1922, Srinivasan J., on behalf of the Bench, observed as follows (p. 559) :

It is no doubt true that in making gifts of movable property, the law requires the handing over of the subject-matter of the gift to the donee. It must

however necessarily depend upon the circumstances of the case whether the actual subject-matter of the gift should be so handed over or anything

equivalent thereto, or whether an acknowledgment by the donee that the gift has been received would not suffice to meet the requirements of the law.

We are not very much impressed by the argument that there were only book entries. It is not in all cases that the actual cash is required to be

handed over. For instance, if a share in a firm of a specified value is gifted over to another person and that person enters into a partnership, it is not

the law that the proportionate share of the assets of the firm should be realised and that liquid assets should be handed over in specie to the donee.

10. The learned judge then referred to the decision in *P.A.C. Ratnaswamy Nadar and Sons Vs. Commissioner of Income Tax, Madras*, and *E. S.*

Hajee Abdul Kareem and Son Vs. Commissioner of Income Tax, Madras, , and after extracting a passage from Mulla's Mohammadan Law, at p.

399, observed as follows (p. 560) :

Relying upon this passage it was pointed out that the principle that the possession of the thing gifted must be given physically to the donee must

deepened on the nature of the subject-matter if th gift, and in such circumstances, were the subject-matter of the gift consisted of the assets of th

firm, the entire in the accounts, followed by such acts as would effectuate a divestment on the part of the donor, would be sufficient. In the present

case also, we have notices that after making the necessary entire, a partnership document was executed., In that document, the assessee expressly

admitted that of the capital of the partnership, the two daughters were entailed to Rs. 25,000 each. Here wa accordingly a statement made by the

assessee against this won interest, which is entitled, in our opinion, to more weight than what the Department has chosen to give to it,. It is further

stated that following the formation of this partnership, the partnership was registered with the Register of Firms, m and the formation of th firm was

also notified to the banks. form these incidents we cannot but reach the conclusion that the gifts were validly made, and that the partnership unless

anything can be shown to the contrary, wa a genuine one.

11. In Qhamarunnissa Begum Vs. Fathima Begum and Others, , in a suit for partition of the estate of one Haji Mohamed Azamatulallah Badsha

SAhib the question arose whether certain amounts standing in the name of the 6th defendant and minor defendants Nos. 9 to 11 really belonged to

the estate of the deceased or belonged to defendants Nos. 6, 9 to 11. On behalf of the plaintiff it was contended that the amount invested in Gulzar

and Co., in the name if the 6th defendant and minor defendants Nos. 9 to 11, really belonged to the estate of the deceases and that the entire are

merely benami and, therefore, the amounts were available for divisions among the legal heirs of the cases. On behalf of the 6th defendant and

defeats Nos. 9 to 11 it was contended that the entries represented completed gifts duly accepted on behalf of the minors and that the said amounts

belonged to the respective parties and could not be brought into the general pool for division amongst the heirs of the deceased. It may be

mentioned that the entire in the books of accounts has been made by the

deceased Azamutullah himself, the deceased debiting himself a sum of Rs.

11,000 in all and crediting his Interest was also being credited from time to time to the account of the minors. Thereafter the credits in the names of

the minors were transferred to Gulzar and Co. It is in these circumstances, the question arose before this court whether, on the facts and in the

circumstances of the case, the gifts of the amounts disclosed by the entries in the books of accounts were valid. Reliance was placed on behalf of the

donees upon a plaint filed by the deceased, Azamutullah in C. S. No. 237 of 1954 on the original side of this court for a dissolution of the

partnership of Gulzar and Co. It was filed by him as the father and next friend of his minor daughter, Gulzar. The plaint contained at list which

showed that a sum of RS. 2,350 was due to defendants Nos. 9 to 11. It also showed that RS. 15,000 had been invested by Gulzar as capital. The

deceased Azamutullah had verified the said averments in the plaint as true to his knowledge. This was taken by this court to amount to a declaration

on the part of the deceased, Azamutullah, that he has completely divested himself of his moneys and the funds and has given them to his minor

daughter and minor grand-daughters. Natesan J. stated the principles of Muslim law as regards gift thus (p. 269) :

The three essential requisites that have to be complied with for a valid gift under Mohamedan law are : (1) a declaration of gift by the donee, (2)

acceptance of the gift, express or implied, by or on behalf of the donee, and (3) delivery of such possession of the subject of the gift by the donor

to the donees as the subject of the gift is susceptible of. Learned counsel for the appellant draws out attention to a decision in Mohamed Hussein v.

Aishoabi, AIR 1935 BOM 84, and submits on the authority of the design that mere book entries in respect of money which is the subject-matter of

gift is not sufficient to support the gift. It is contended that there must be evidence to show that the donee relinquished his control over the money

and divested himself completely of his beneficial interest therein so that he could not have operated on the sum if he wanted to do so. Learned

counsel points out that for a valid gift under Mohamedan law there must not only be a declaration by the donor of his intention to make the gift, but

the subject of the gift must be accepted on behalf of the donee. From the resume of facts stated above, it is clear that this is not a case of gift by

mere book entire only. There are clear and unequivocal declarations by the deceased of his having divested himself of all interest in the funds and

of his intention of vesting of the funds in the donees. There can be no doubt that there has been a clear declaration by the donees of his intention to

make there gift and we shall presently consider whether there has been such delivery of possissoon as the subject of the gift is capable of and

whether there has been valid acceptance of there gift by or on behalf of the donees. :

The leaned judges after referring to the decision in E. S. Hajee Abdul Kareem and Son Vs. Commissioner of Income Tax, Madras, and A.M.

Abdul Rahman Rowther and Co. Vs. The Commissioner of Income Tax, Madras, , observed as follows (p. 370) :

In the instant case, as already pointed out, not only are there book entire but we have subsequent declaration by the deceased in court

proceedings clearly an categorically acknowledging the interest of the donees in the funds. It must be noted that the books entire are not in the

accounts books of the donor himself.

12. As regards acceptance, m the learned judges further observed as follows (p. 370) :

It is well established that in the case of a gift by a father to his minor child or by a legal guardian to his wars, all that is necessary is to establish a

bons fide intention to give. No change or transference of possession is necessary. The person entitled in order to the guardianship of the property

of a minor are : (1) father, (2) his executor, (3) father's father and (4) his executor. If none of them is alive, the court may appoint nay other person

as guardian of the propriety of th minor. We have, therefore, no difficulty in upholding the validity of the claim of Gulzar, the sixths defendant, to her

interest in the firm of Gulzar and Co.

13. The question whether there is in the instant case a valid gift of a sum of Rs. 25,000 in favour of the minor son by the assessee has to be

decided in the light of the principles laid down in the above decisions. it is not disputed that there are debit entire in the books of the assessee and

credit entire in the name of the minor son. But it is not a case of there being only book entire. the assessee has on the date of the gift self filed a

return of gift before the GTO. In the said return he has categorically made a

declaration that he has made a gift of Rs. 25,000 in favour of his minor son. This is a declaration against his own interest. By this declaration the assessee must be intended to have divested himself of his dominion and control over the said sum of Rs. 25,000. There is no substance in the contention that the cash balance as on the date of the gift was only Rs. 1,097.19. As pointed out by Srinivasan J. in *E. S. Hajee Abdul Kareem and Son Vs. Commissioner of Income Tax, Madras*, it is not necessary that there should be cash balance to the extent of the amount covered by the gift. The very fact that the assessee has debited himself and credited his minor son to the extent of Rs. 25,000 would clearly show that from that date onwards the assessee considered himself to be a debtor to the minor son the sum of Rs. 25,000. Further it must be deemed that the assessee has gifted a slice of the assets to the extent of Rs. 25,000 in respect of his business to his minor son. It was made obligatory that a sum of Rs. 25,000 to his minor son. To borrow the language of Srinivasan J. in *E. S. Hajee Abdul Kareem and Son Vs. Commissioner of Income Tax, Madras*, we are exceedingly loath to believe that the validity of the gifts, having regard to the nature of the subject-matter of the gift, should be made to depend upon such an impractical course. In this case, there is the further circumstance that the assessee has credited interest to the account of the minor son and the minor son has withdrawn the same from time to time. As a matter of fact, the AAC has factually found this to be the case and on this basis he excluded the interest accrued for the relevant years from being taken into account in the computation of the net wealth of the assessee.

14. Before parting with this, it is but fair to refer to the decision cited by the learned standing counsel for the Revenue. He cited the following

decisions : (1) *Mrs. Ida L. Chambers and Others Vs. Kelland Huxford Chamber's*, (2) *Ramanathan Chettair v. Palaniappa Chettair*, ILR [1945]

Mad 500; AIR 1945 Mad 473, *E. M. Vs. MUTHAPPA CHETTIAR v. COMMISSIONER OF Income Tax, MADRAS*, (4) *BHAU RAM*

JAWAHARMAL Vs. COMMISSIONER OF Income Tax, U. P., (5) *CONTROLLER OF ESTATE DUTY, MADRAS Vs. V. S.*

SURYANARAYAN, and (6) *Commissioner of Income Tax, Andhra Pradesh Vs. Toshoku Ltd., Guntur and Others*. No doubt, there are

observations in these decision to the effect that mere entries in the books of accounts will not constitute a gift or create a trust. However, the factual

situations in which these observations were made were entirely different and hence are not applicable to the facts of this case. Further, one of the

decisions cited by the learned standing counsel for the Revenue viz., *m BHAU RAM JAWAHARMAL Vs. COMMISSIONER OF Income Tax*,

U. P., supports the assessee and not the Revenue. It is significant to refer to the following observation of Pathak J., speaking for the Bench. at P.

775 :

It seems to us that it is not necessary in every case for the validity of a gift that there should be physical delivery of the amount by the donor to the

donee, and in every case the decision of the questions turns upon whether the mode of transfer results in a transfer of the amount gifted from the

donor to the donee. We think it sufficiently settled that such transfer can be effected in the books of a firm by making a debit entry in the account

of the donor and making a corresponding credit entry in the account of the donee. So long as the entry is made in the respective accounts put the

gifted amount beyond the control of the donor and result in his ownership in it being replaced by the ownership of the donee, there is no reason

why a valid gift cannot be effected through such book entry. We also think it to be established law that an adequate cash balance in the books of

the firm sufficient to cover the amount of the gift on the date it is made is not a necessary condition to the validity of the gift. The adequacy of a

cash balance in the books of the firm on the relevant date is of no moment when the financial resources of the firm are sufficient and the amount in

the donor's account is large enough to cover the amount gifted by him.

15. We are, therefore, of the opinion that the decisions cited by the learned standing counsel are of little assistance to him so far as this case is

concerned. The principles enunciated by this court in *E. S. Hajee Abdul Kareem and Son Vs. Commissioner of Income Tax, Madras*, and *A.M.*

Abdul Rahman Rowther and Co. Vs. The Commissioner of Income Tax, Madras, are directly attracted to the facts of this case.

16. We, therefore, hold that on the facts of this case there has been a valid gift of Rs. 25,000 by the assessee in favour of his minor son as on

March 28, 1969. Consequently, neither the sum of Rs. 25,000 nor the interest

that accrued in the subsequent years would be includible in the net wealth of the assessee as on the respective valuation dates, viz., 31st March, 1969, 31st March, 1970, 31st March, 1971, and 31st March, 1972. We, therefore, answer the question in the affirmative, in favour of the assessee and against the Revenue. The assessee will be entitled to his costs. Counsel's fee Rs. 500.