
(1978) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Income-tax Case No. 14 of 1978

Commissioner of Gift Tax

APPELLANT

Vs

Bandlamudi Subbaiah

RESPONDENT

Date of Decision : 16-08-1978

Acts Referred:

Gift Tax Act, 1958 — Section 2, 4, 5(1)

Citation : (1979) 1 AnWR 390 : (1980) 123 ITR 509

Hon'ble Judges : A. Sambasiva Rao, C.J.;Raghuvir, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; None, for the Respondent

Judgement

Sambasiva Rao, C.J.—This tax case raises questions under the Gift-tax Act and the general Hindu law. The revenue seeks reference of the two following questions to this court:

" (1) Whether, on the facts and in the circumstances of the case, the value of the gifts made to the married daughters is eligible to gift-tax under the Gift-tax Act ?

" (2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in setting aside the order of the Appellate Assistant Commissioner in respect of the gifts made to the married daughters ? "

2. The assessment year we are concerned with is 1971-72. There is no dispute that up to 1971, there was an undivided joint family consisting of the father, sons and six daughters, three of whom had been married earlier. In the partition deed of 1971, while dividing the properties, the father and the sons made provision not only for the three married daughters but also for the three unmarried daughters. Agricultural lands of the value of Rs. 29,400 were allotted to the three married daughters and agricultural lands of the value of Rs. 30,625 were allotted to the three unmarried daughters.

3. The assessee, which was the HUF, contended that it was not liable to pay gift-

tax either in regard to the agricultural lands allotted to the married daughters or in regard to the lands allotted to the unmarried daughters. This claim found favour with the Tribunal. The claim in so far as the married daughters are concerned, was accepted by the Tribunal on the basis of Section 5(1)(vii) of the G.T. Act, In regard to the unmarried daughters, the Tribunal acceded to the claim on the ground that the unmarried daughters have a claim on the HUF which, under the Hindu law, has an obligation to maintain and get them married. That obligation is attached to the property of the joint family and, therefore, if any properties are given to the unmarried daughters in pursuance of the discharge of such obligation, those properties cannot be considered as liable for gift-tax. Challenging these two views the revenue is seeking reference of the above two questions to this court.

4. The first question refers to the properties allotted to the three married daughters. Clause (vii) of Section 5(1)(vii) of the G.T. Act exempts from gift-tax, gifts made to any relative dependent upon the donor for support and maintenance on the occasion of the marriage of the relative, subject to a maximum of Rs. 10,000 in value in respect of the marriage of each such relative. It is not in dispute that the property allotted to each one of the married daughters is below the value of Rs. 10,000. The partition deed purported to have made presents of lands to the three married daughters. Therefore, the Tribunal directed the lower authorities to ascertain whether these gifts of lands were proposed to be made on the occasions of the marriages of the three daughters. Undoubtedly, this view is quite correct. It is not unoften that a HUF announces gift of certain properties, generally lands in an agricultural State like Andhra Pradesh, on the occasion of the marriage of the daughter. The gift deed or settlement deed might not have been executed simultaneously with the marriage or the announcement. Later when the family itself splits up on account of partition, what had been agreed upon or announced would be reduced to writing in the partition deed. If really there was an arrangement on the occasion of the marriage of the daughter to give her some property, certainly it would come within the scope of Clause (vii) of Section 5(1)(vii) of the Gift-tax Act, even if the arrangement was reduced to writing much later either in the form of a partition deed or in the form of a settlement or gift deed. This is precisely the view taken by the Tribunal. That is why it directed the lower authorities to ascertain whether, on the occasion of the marriages of the three daughters, the lands which were sought to be given to them, were gifted to the daughters. This is essentially a question of fact. Therefore, we see no justification in calling for reference of the first question.

5. The second question refers to the properties allotted to unmarried daughters. Undoubtedly, a Hindu joint family has an obligation to maintain and get an unmarried daughter married. That right of the unmarried daughter to be maintained and to get married and the obligation of the family to do this may be inchoate, in the sense, that these rights and obligations do not attach to any specific property. But there is an undoubted right under the Hindu law of an

unmarried daughter to be maintained and to get married and the corresponding obligation of the Hindu family to discharge these obligations cannot, therefore, be under any doubt. Once under a partition deed or a family settlement or a gift or other instrument certain properties are set apart for the maintenance and marriage of the unmarried daughters, then the rights of the unmarried daughters and the corresponding obligations of the family gain a coherent and concrete form. They immediately attach to the property thus allotted under the instrument. Since the property is given to the unmarried daughter in recognition of her right, in discharge of the obligation of the family, by no stretch of imagination it could be treated as a gift.

6. " Gift " is defined in Section 2(xii) as " 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 ". It cannot be said that when the joint family made a provision for the unmarried daughters, it has made the said provision voluntarily and without consideration in money or money's worth. When the members of the Hindu joint family allotted certain properties to the unmarried daughters of the family at the time of partition to discharge the binding obligation on them to maintain and to get them married, it cannot be said that the properties were given to the unmarried daughters voluntarily and without consideration in money or money's worth. If they do not make such a provision for the unmarried daughters, the "Hindu family would be obliged to make some other provision. By making such provision, it has ceased to have any monetary obligation towards the unmarried daughters. What the family would have been obliged to spend in money would be given in the form of movable or immovable property. That they do, as we have already observed, not quite voluntarily but only to discharge their legal obligation. Therefore, we hold that the provision made for the unmarried daughters towards their maintenance and marriage is not a gift within the meaning of Section 2(xii) of the Gift-tax Act. Nor could it be deemed to be a gift under any of the clauses of Section 4.

7. When the said provision made in the partition deed in favour of the unmarried daughters is thus by way of discharge of a legal obligation, it is not a gift at all which comes within the ambit of the G.T. Act. The Tribunal is very much right in taking the view that the provision to the unmarried daughters is not liable to gift-tax. Therefore, there is no need to refer the second question either.

8. In the result, the Income Tax case is rejected. There will be no order as to costs.