

(1976) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Gift-tax Case No. 1 of 1973

Commissioner of Gift-tax

APPELLANT

Vs

Ch. Chandrasekhara Reddy

RESPONDENT

Date of Decision : 07-07-1976

Acts Referred:

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

Hindu Adoptions and Maintenance Act, 1956 — Section 3

Citation : (1976) 105 ITR 849

Hon'ble Judges : B.J. Divan, C.J.;Muktadar, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; S. Dasaratharama Reddy and S.R. Ashok, for the Respondent

Judgement

B.J. Divan, C.J.—In this case, at the instance of the revenue, the following question has been referred to this High Court for its opinion :

"Whether, on the facts and in the circumstances of the case, the transfer of lands made by the assessee to his only daughter fell within the meaning of "taxable gift" under the Gift-tax Act ?"

2. The facts leading to this reference are as follows : The assessee transferred 10 acres and 54 cents of wet land in Nellore district to his only daughter, C. Vijayalakshmi, he having no son, in consideration of her marriage. The betrothal had taken place on October 15, 1966, and the marriage took place on March 1, 1967, and on January 1, 1967, i.e., during the period between the betrothal and the marriage, the assessee transferred 10 acres and 54 cents of land to his daughter. Before the Gift-tax Officer, the assessee contended that this transfer did not amount to a gift as contemplated by the Gift-tax Act, as the appropriation of joint family funds for the purpose of marriage of an unmarried daughter would not constitute a gift. This contention was rejected by the Gift-tax Officer, since the assessee was assessed as an individual in the Income Tax records. He, however, held that the assessee, in his capacity as father, had made the gift in

consideration of the marriage of the donee and granted exemption u/s 5(1)(vii) besides the basic exemption u/s 5(2) of the Gift-tax Act and determined the taxable gift at Rs. 43,000. He came to the conclusion that the value of the lands conveyed by the assessee to his daughter was Rs. 63,000 at the date of the conveyance. The assessee carried the matter in appeal and before the Appellate Assistant Commissioner it was contended on his behalf that he had got 27 acres of wet land on a partition between himself, his brother and his father on August 29, 1957, and that his correct status was that of Hindu undivided family, though due to ignorance of law, he erroneously declared his status as an individual for the purpose of Income Tax. It was further contended on his behalf that, whether the assessee's properties were his separate properties or joint family properties, he was under a legal obligation to perform the marriage of his daughter; that the transfer was only a provision made in discharge of that obligation ; and that, therefore, there was no gift at all attracting liability to gift-tax. The assessee also disputed the valuation of the lands. The Appellate Assistant Commissioner held that the question regarding the correct status of the assessee was irrelevant since a Hindu father, having separate properties or joint family properties, is bound to look after his children and also perform the marriage of his daughters. But he held that the law does not cast an obligation on him to make a gift of certain properties to his daughter who is being married. The Appellate Assistant Commissioner upheld the assessment made by the Gift-tax Officer as well as the valuation adopted by him.

3. On further appeal before the Appellate Tribunal, it was pointed out on behalf of the assessee that the transfer in question was made on January 1, 1967, in consideration of his daughter's marriage, which was fixed on March 1, 1967, and that the transfer of 10 acres and 54 cents of land by the assessee to his only daughter was made as a provision for her marriage in order to enable her to get married to a proper match, which obligation as a Hindu father he had to discharge under the Hindu Adoptions and Maintenance Act, 1956, apart from his liability under the general Hindu Law in a Hindu undivided family. It was, therefore, contended that the said transfer was not liable to gift-tax. Before the Appellate Tribunal also, the valuation adopted by the taxing authorities was disputed.

4. The Appellate Tribunal considered the liability of a Hindu to maintain his children as provided under Sub-section (1) of Section 20 of the Hindu Adoptions and Maintenance Act, 1956, and held that the assessee was under an obligation, both under the general Hindu law as well as under the Hindu Adoptions and Maintenance Act, to get his daughter married in a manner befitting his status and also to enable her to acquire a status and dignity in her husband's family. The Tribunal found that the transfer in question was made in discharge of the obligation which the assessee owed to his daughter. The Tribunal also found that the transfer of 10 acres and 54 cents of land out of the total extent of 27 acres and odd, which the assessee got on partition, was a reasonable provision for his only daughter's marriage and the same was not without consideration and did

not fall within the meaning of "taxable gift" under the Gift-tax Act. The Tribunal did not go into the question of valuation of the transferred lands, as it was unnecessary in view of the finding regarding the non-taxable nature of the so-called gift. Therefore, at the instance of the revenue, the question set out hereinabove has been referred to us for our opinion.

5. Sub-section (xii) of Section 2 of the Gift-tax Act defines "gift" to mean 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. The rest of the definition is not material for the purpose of this judgment. Section 20 of the Hindu Adoptions and Maintenance Act provides for maintenance of children and aged parents. Under Sub-section (1) of the said section, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. Sub-section (b) of Section 3 defines :

"Maintenance" includes--(i)...

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage."

6. It is nobody's case that the transfer in question was effected for the purpose of expenses of the marriage of the assessee's daughter and the whole question that has to be considered in the present case is whether the transfer or conveyance by the assessee to his unmarried daughter in anticipation of the marriage can be said to be by way of reasonable expenses incident to her marriage. The learned commentator of Hindu law, Mr. N. R. Raghavachariar, in his commentary on Hindu Law, 5th edition, states at page 1103 :

"The words "incident to marriage" are used to indicate the necessity for inclusion in the expenses payable for the marriage of an unmarried daughter not only the actual expenses of her marriage but also the expenses incidental to the marriage, namely, presents at the marriage, and other necessary expenses that have to be customarily incurred both before and after the actual marriage such as the expenses of the betrothal function and the nuptials that may take place after the marriage."

7. In Black's Law Dictionary, 4th edition, at page 904, it has been pointed out that the word "incident" is also used to denote anything which is usually connected with another, or connected for some purposes though not inseparably. Therefore, if the giving of laud is usually connected with the marriage, it can be said to be incident to the marriage, so far as this particular community of the assessee or the family of the assessee is concerned.

8. The learned counsel for the revenue has drawn our attention to Siroud's Judicial Dictionary 3rd edition (page 1412), wherein the meaning of the word "incident" is given as under :

"A thing is "incident" to another when it appertains to, or follows on, that other which is more worthy, or principal, e.g., a Court Baron is incident to a manor,

rent to a reversion, distress to rent, timber trees to the freehold, title deeds to an estate, etc., "and of incidents, some be separable, and some inseparable"; ...
"

9. It was contended on behalf of the revenue that, in order that such conveyance of the land can be said to be incident to the marriage, it must be shown that conveyance and marriage are inseparable or closely connected with each other. In our opinion, the definition given in Black's Law Dictionary correctly brings out the import or intendment of the word "incident". Therefore, in order to find out whether conveyance of land on the occasion of the daughter's marriage can be said to be incident to the marriage, it must be found whether the usual custom or practice was to convey land on the occasion of a daughter's marriage so far as this particular community of the assessee or the family of the assessee was concerned.

10. In *Kamala Devi Vs. Bachu Lal Gupta*, the Supreme Court had occasion to consider the position under the general Hindu Law regarding the power of a Hindu widow to make an alienation of a reasonable portion of her husband's property in favour of the daughter as marriage gift. S.K. Das J., who delivered the judgment of the court, has considered all the relevant authorities on this point from paragraph 14 onwards and in paragraph 20 the learned judge has summarised the legal position thus:

"On an examination of the decisions referred to above the following principles clearly emerge: (1) It is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage to a suitable husband ; it is a duty which must be fulfilled to prevent degradation, and direct spiritual benefit is conferred upon the father by such a marriage.....(6) Some decisions go to the length of holding that there is a moral or religious obligation of giving a portion of the joint family property for the benefit of the daughter and the son-in-law, and a gift made long after the marriage may be supported upon the ground that the gift when made fulfils that moral or religious obligation."

11. In the different authorities, which have been considered in paragraph 14 onwards, it has been pointed out that a reasonable portion of the joint family property may be given to the daughter on the occasion of her marriage and it appears to us that when the legislature enacted in Section 3(b)(ii) of the Hindu Adoptions and Maintenance Act that reasonable expenses of and incident to her marriage amount to maintenance, it was merely re-enacting the position which prevailed under the general Hindu law. Therefore, both under the Hindu Adoptions and Maintenance Act as well as under the general Hindu law, the father is under an obligation to give some property to the daughter on the occasion of her marriage and the only question is whether this is usually done or not.

12. Mr. P. Rama Rao, for the department, has drawn our attention to two decisions, one is of the Madras High Court and the other of this court in this

connection. The first decision is M.S.M. Ratnaswami Nadar Vs. Commissioner of Income Tax, . That case arose under the provisions of Section 16(3)(a)(iv) of the Indian Income Tax Act, 1922, and the question was whether the income derived from the properties settled by the assessee on his daughters was liable to be included in the total income of the assessee u/s 16(3)(a)(iv). That decision rendered in the context of the provisions of the Income Tax Act can hardly be helpful to us. Mr. Rama Rao particularly relied upon the following observations of Ramaswami J., who delivered the judgment of the court:

"A consideration of these cases would show that in order to take the case out of the provisions of section 16(3)(a)(iv), the consideration must be a valuable consideration and the use of the word "adequate" before the word "consideration" implies that the valuable consideration should be measurable in terms of money or money's worth. In other words, if the consideration could not be measured in terms of money or money's worth and there is no objective measure for assessing the adequacy, it would not satisfy the provisions of the section though for purposes of enforcing the agreement or contract, there was consideration within the meaning of the Contract Act. The learned counsel for the assessee contended that the liability to maintenance is a financial obligation and that it could be measured in terms of money. In fact, Section 23 of the Hindu Adoptions and Maintenance Act, 1956, sets out the facts and circumstances, which the courts shall have regard to in fixing the amount of maintenance. It may be the quantum depends on the evidence, but it cannot be said that the liability could not be measured in terms of money and that, therefore, the transaction is supported by adequate consideration. So ran the argument of the learned counsel for the assessee. The argument, of course, is attractive. But we are unable to accept the submission of the learned counsel. What is transferred is the property and not the income from the property alone. The property had been transferred irrevocably and for ever, though the liability to maintain is only so long as the son is a minor or unable to maintain himself within the meaning of the Hindu Adoptions and Maintenance Act. By executing this document, we are also unable to hold that the assessee is relieved from his obligation. If the property is lost, or does not yield any income, the assessee could not plead that he was not liable to maintain the son any longer ; nor could the minor relieve himself of his right to be maintained by any contract with the father, as such a contract will not be binding on him. At best, the settlement amounts only to a provision for maintenance."

13. Now, it must be noted that the above observations are made in the context of a different provision of law altogether and the considerations which weighed with the learned judges while considering the provisions of Section 16(3)(a)(iv) of the Income Tax Act are hardly the factors which require consideration in the problem before us. Under these circumstances, this decision of the Madras High Court relied upon by Mr. P. Rama Rao for the department can hardly help us.

14. The other decision on which Mr. Rama Rao relied strongly is the decision of

this court in Commissioner of Gift-tax Vs. Bhupathiraju Venkata Narasimharaju, . The question before the Division Bench of this court consisting of Obul Reddi C.J. and Sriramulu J. was whether the father in his capacity as the karta of a Hindu undivided family can make a valid and reasonable provision for the maintenance of his minor daughters. There was no question before the court in that case whether the transfer could be said to be for consideration within the meaning of the definition in Section 2(xii) of the Gift-tax Act. Therefore, the observations in the above-said decision of this court have no bearing on the problem before us.

15. It may be pointed out that in Commissioner of Gift Tax Vs. Rm. S. Ramanathan Chettiar, the words "money's worth" in Section 2(xii) of the Gift-tax Act came up for consideration before a Division Bench of the Madras High Court and it was held that the words ""money's worth" in Section 2(xii) of the Gift-tax Act, 1958, have a wide connotation and are not necessarily to be understood in the strict context of money in specie but that which would eventually or in the ultimate analysis or result be reduced to or converted into money and, as the payment in the instant case had the effect of giving quittance to the family obligation to maintain the karta's wife, such consideration is money's worth and, hence, the payment was not a gift."

16. To the extent to which we have proceeded on the footing that, if the conveyance can be said to have been made to discharge the obligation of the father to provide maintenance for the marriage of his daughter in the shape of providing for reasonable expenses incident to the marriage, it can be said to be a transfer for consideration. This decision of the Madras High Court helps the assessee.

17. We find from the order of the Tribunal that the Tribunal has not considered as to whether, looking at the usual practice among this particular community, the conveyance of 10 acres and 54 cents of land by the assessee to his only daughter could be said to be reasonable or not. No doubt, the Tribunal has observed that the conveyance could be said to be provision of reasonable expenses incident to the marriage. But the question as to whether this was the usual practice in this particular community has not been examined by the Tribunal.

18. Two courses, as pointed out by the Supreme Court in COMMISSIONER OF Income Tax, WEST BENGAL I Vs. INDIAN MOLASSES CO. P. LTD., are open to us : (1) to call for a supplementary statement of the case from the Tribunal, (2) to decline to answer the question raised by the Tribunal and to leave the Tribunal to take appropriate steps to adjust its decision u/s 26(6) of the Gift-tax Act in the light of the decision of this court. If we direct the Tribunal to submit a supplementary statement of the case, the Tribunal will, according to the decisions of the Supreme Court in New Jehangir Vakil Mills Ltd. Vs. Commissioner of Income Tax, North, Kutch and Saurashtra, ; PETLAD TURKEY RED DYE WORKS CO. LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY NORTH., and The Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, be restricted to

the evidence on the record and may not be entitled to take additional evidence. That may result in injustice.

19. In the circumstances we think it proper to decline to answer the question on the ground that the Tribunal has failed to consider and decide the question whether the conveyance under consideration was by way of usual provision for the marriage of the daughter and thus incidental to the marriage in this particular family or in this particular community. It will be open to the Tribunal to dispose of the appeal u/s 26(6) of the Gift-tax Act in the light of the observations made in this judgment, after determining the question which ought to have been decided. There will be no order as to costs.