(1997) 11 MAD CK 0011

In the Madras High Court

Case No : TC No. 434 of 1984 4th November, 1997

COMMISSIONER OF GIFT TAX APPELLANT

Vs

G. VENKATASWAMY RESPONDENT

Date of Decision : 04-11-1997

Acts Referred:

Citation : (1999) 151 CTR 329

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J;N. V. Balasubramaman, J

Bench : Full Bench

Advocate : CV Rajan and None, for the Appellant;

Judgement

N. V. BALASUBRAMAMAN, J.:

At the instance of the Revenue, the Tribunal has stated a case and referred the following questions of law under s. 26(1) of the GT Act, 1958, for

the opinion of this Court.

''I. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the settlement of a piece of land made by the

assessee in favour of his married daughter about 14 years after her marriage would amount to ''gift on the occasion of the marriage'' and

accordingly the assessee would be entitled to exemption under s. 5(1)(vii) of the GT Act, 1958?

2. Whether the Tribunal was justified in holding and had valid materials to hold that there was a promise by the assessee to his daughter at the time

of the latter''s marriage to make a gift for her support and maintenance and the settlement made on 3rd July, 1978 was in fulfilment of the said

promise?

2. The assessee is a retired inspector of police. His daughter got married on 25th Aug., 1964 and the assessee made a gift of land worth Rs.

34,000 to his daughter and claimed exemption during the course of the assessment proceedings for the year 1979-80 under s. 5(1)(vii) of the GT

Act, 1958 (hereinafter to be referred to as ''the Act The GTO disallowed the claim of the assessee for exemption of a sum of Rs. 10,000 which

was confirmed by the AAC on appeal by the assessee. The assessee took the matter in appeal to the

Tribunal by way of a further appeal. The Tribunal held that the assessee was entitled to exemption under s. 5(1)(vii) of the Act for the sum of Rs.

10,000. The order of the Tribunal is the subject-matter of the present tax case reference.

3. Mr. C.V. Ralan, learned counsel for the Revenue, submitted that the marriage had taken place in the year 1964 and after a period of nearly 15

years, the gift was made by the assessee and therefore, the Tribunal was not correct in holding that the gift was made on the occasion of the

marriage of his daughter.

4. Though notice was served on the assessee, there was no representation on behalf of the assessee. 5. We have carefully considered the

submissions made by the learned counsel

for the Revenue and also perused the records. The question for consideration is whether the assessee is entitled to exemption under s. 5(1)(vii) of

the Act. Sec. 5(1)(vii) of the Act reads as under :

5(1) Gift-tax shall not be charged under this Act in respect of gifts made by any person-

(vii) to any relative dependent upon him 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"".

The expression ''on the occasion of the marriage of the relative'' came up for consideration before this Court in Commissioner of Gift-tax Vs.

Neelambal Ramaswamy, and this Court after considering the decision of the Andhra Pradesh High Court in Commissioner of Gift Tax Vs.

Bandlamudi Subbaiah, and dissenting from the view taken by the Patna High Court in Commissioner of Gift Tax Vs. M.S. Rao, held that the

expression, ''on the occasion of the marriage'' in s. 5(1)(vii) could not be given any restricted meaning and if the gift was associated with the event

of the marriage or if the reason for the gift or the immediate cause thereof was the marriage, it would be covered by the said expression and the

relationship between the gift and the marriage was the relevant factor and not the time of making the gift. Applying

the principle of law laid down by this Court, it is seen from the document of gift that even at the time of marriage of the assessee''s daughter, the

donor promised to make a gift for the support and maintenance of his daughter absolutely. The relevant clause of the gift-deed reads as under:

Whereas the donor has not provided with means to live and as he promised at the time of marriage, he devised the property described hereunder,

as unconditional gift for support and maintenance absolutely"".

The recital clearly shows that there was an earlier promise to make a gift in favour of his daughter at the time of her marriage. The Tribunal found

that the assessee, being a retired inspector of police, would not have made a false statement in the gift deed just for claiming exemption of Rs.

10,000. The Tribunal accepted the statement made by the assessee in the gift deed and there are no contra evidence or materials on behalf of the

Revenue. We accept the finding of the Tribunal that there was an earlier promise by the donor at the time of her marriage to make a gift in favour

of his daughter, and in fulfilment of the earlier., promise, the assessee transferred the property by way of gift in favour of his daughter. Since there is

relationship between the gift and the marriage, though there is a long gap of nearly 15 years, we are of the view that the assessee would be entitled

to the exemption under s. 5(1Xvii) of the Act. The Tribunal has come to a correct conclusion in holding that only on the promise made at the time

of marriage of his daughter, the gift was made and we find no infirmity in the order of the Tribunal that the assessee is entitled to exemption under s.

5(1)(vii) of the Act. Since there are no materials produced by the Revenue to show that the alleged earlier promise was not correct, we are of the

view that the Tribunal was correct in holding that there was an earlier promise by the assessee at the time of his daughter''s marriage to make a gift

in favour of his daughter. In this view of the matter, we answer both the questions of law referred to us in the affirmative and against the Revenue.

However, in the circumstances of the case, there will be no order as to costs.

