(1998) 08 MAD CK 0086

In the Madras High Court

Case No : Tax Case No. 1000 of 1990 (Reference No. 485 of 1990)

Commissioner of Gift-tax APPELLANT

Vs

K. Ramesh RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Citation : (2000) 246 ITR 544

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; S.A. Balasubramanian, for the Respondent

Judgement

A. Subbulakshmy, J.—The reference has arisen at the instance of the Revenue.

2. The assessee is an individual. He filed a nil return of gift for the year of account. The assessee has paid Rs. 19,033 in respect of an insurance policy taken under the Married Women''s Right to Property Act. The assessee claimed that this insurance premium paid under the said Act is not assessable to gift-tax. The Gift-tax Officer did not accept the claim of the assessee and accordingly brought the amount to tax. On appeals, the Appellate Assistant Commissioner and the Tribunal dismissed the appeal. On that, the following question of law is referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the insurance premium paid by the assessee in respect of policy taken under the ''Married Women''s Right to Property Act, was not a gift in favour of his wife within the meaning of the Gift-tax Act and, hence, the amount was not liable to gift-tax ?"

3. The Appellate Assistant Commissioner and the Tribunal had taken the view that in respect of the insurance premium of Rs. 19,033 paid by the assessee under the Married Women''s Right to Property Act, no element of gift is involved.

4. As the insurance premium is paid in discharge of an obligation, undertaken in terms of the agreement between the assessee and the insurance company, there is no immediate transfer of property to the donee. The assessee was discharging only the legal obligation by paying the premium amount towards the insurance policy. By no stretch of imagination can it be stated that any element of gift is involved in the premium paid under the Married Women''s flight to Property Act. The finding of the Tribunal finds support in the decision of the Bombay High Court in Commissioner of Gift Tax Vs. Seth Arvind N. Mafatlal, , wherein it has been held that (headnote):

"The premia paid by the assessee in respect of policies of insurance on his life which were taken out by him under the provisions of the Married Women''s Property Act for the benefit of his sons are in discharge of an obligation in a contract of insurance and do not amount to gifts made by the assessee to the beneficiaries of the policies."

5. The decision of this court in Commissioner of Gift Tax Vs. R.R. Sarma, was followed in the decision cited.

6. Applying the ratio laid down in the above decisions, we hold that the Tribunal was perfectly justified in holding that the insurance premium paid, by the assessee in respect of the policy taken under the Married Women''s Right to Property Act was not a gift in favour of his wife within the meaning of the Gift-tax Act and the amount is not liable to gift-tax.

7. We answer the question in favour of the assessee and against the Revenue. No costs.

