(1998) 08 MAD CK 0008

In the Madras High Court

Case No : Tax Case No. 1000 of 1990 10 August 1998 A.Y. 1982-83

COMMISSIONER OF GIFT TAX — APPELLANT

Vs

K. RAMESH — RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Citation : (2001) 163 CTR 470

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

Bench : Full Bench

Advocate : C. V. Rajan, for the Revenue and S.A. Balasubramanian, for the Assessee, for the Appellant;

Judgement

Mrs. A. Subbulakshmy, J.

The reference has arisen at the instance of the revenue .

2. The assessee is an individual. He filed nil return of gift for the year of account. The assessee has paid Rs. 19,033 in respect of insurance policy

taken under the Married Women''s Right to Property Act. The assessee claimed this the 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 appeal, the

Appellate Assistant Commissioner and the Tribunal dismissed the appeal. On that, the following question of law is referred for 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 Property Act, was not a gift in favour of his wife within the meaning of Gift Tax

Act and hence, the amount was not liable to gift-tax ?

3. The Appellate Assistant Commissioner and the Tribunal has 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 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, it can be stated that any element of gift is involved in the premium paid under

the Married Women''s Right 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, (sic- Commissioner of Gift Tax Vs. Seth Arvind N. Mafatlal, wherein it has been held that: ""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.

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

5. 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 Gift Tax Act and the amount is not liable to gift-tax.

6. We answer the question in favour of the assessee and against the revenue . No costs.

