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**(2005) 05 RAJ CK 0035**  
**In the Rajasthan High Court**  
**Case No : IT Ref. No. 112 of 1998**

Commissioner of Gift Tax

APPELLANT

Vs

Late H.H. Bhagwat Singh

RESPONDENT

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**Date of Decision :** 02-05-2005

**Acts Referred:**

Gift Tax Act, 1958 — Section 15(3), 16, 17(1), 26(1), 26(3)

**Citation :** (2006) 204 CTR 544 : (2008) 304 ITR 41

**Hon'ble Judges :** Rajesh Balia, J; Rajendra Prasad Vyas, J

**Bench :** Division Bench

**Advocate :** K.K. Bissa, for the Appellant; Rajendra Mehata, for the Respondent

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## Judgement

1. Heard learned Counsel for the parties.
2. At the directions of the High Court following question of law has been referred along with statement of case by the Tribunal in respect of gift-tax relating to assessment year under the GT Act, 1958:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was under a bona fide belief that amount in question was not chargeable to gift-tax and as such no penalty u/s 17(1)(c) is leviable?

3. Briefly stated the facts are that the assessee-late H.H. Maharana Bhagwat Singh of Mewar (now represented through his son and his legal heir M.K. Arvind Singh) in response to notice u/s 16 of the GT Act had filed a return declaring value of taxable gifts at nil. In the assessment completed u/s 15(3) on 3rd March, 1979, the GTO held that the following amounts were chargeable to gift-tax.

The assessee during the year under consideration sold his 1/4th share in the property known as Daisylea House situated at Bombay for a sum of Rs. 2,50,000. This property was purchased in 1959 by the four co-owners for Rs. 10

lakhs. The assessee's share came to Rs. 2.5 lakhs. The assessee sold his 1/4th share to his son M.K. Mahendra Singh, one of the co-owners. The Departmental valuer valued this property as on 31st March, 1970 at Rs. 14 lakhs vide his report dt. 17th May, 1978. On the basis of this report, the GTO adopted the market value of the 1/4th share of the assessee at Rs. 3,50,000. The GTO held that the property worth Rs. 3,50,000 has been transferred by the assessee for Rs. 2,50,000 otherwise than for adequate consideration and the difference of Rs. 1 lakh was taken as deemed gift.

The GTO noticed that the assessee had made payments out of privy purse, to various persons and claimed that these payments were for maintenance expenses of the members of the ruler's family. However, the following payments were treated by the GTO as taxable gift:

- (a) Rs. 25,000 to Princess Yogesh Kumari, married daughter.
- (b) Rs. 15,000 to Smt. Raghuraj Kumari, married sister. It was held that since they were married, they were not dependent upon the assessee for maintenance.
- (c) Rs. 4,800 to natural parents, on the ground that the assessee came to royal family by adoption and hence his real parents are not entitled for maintenance out of the privy purse. Hence the payment of Rs. 4,800 was treated as gift.
- (d) Rs. 2,50,000 paid to M.K. Arvind Singh, son in addition to "Hath Kharcha" allowance of Rs. 23,404. This payment was not treated as paid for maintenance purposes and treated as gift.

4. The assessment was completed on taxable gift of Rs. 3,84,800. Simultaneously proceedings to levy penalty u/s 17(1)(c) of the GT Act were initiated as according to GTO, the assessee has concealed particulars of taxable gift. After affording an opportunity to the assessee, the GTO levied penalty for Rs. 32,600. The CIT(A) cancelled the penalty on the ground that the assessee had disclosed all material facts in the letter filed along with the return of income about the "Hath Kharch" allowance and although it was a good case for levy of gift-tax, it was not a fit case for levy of penalty u/s 17(1)(c). In second appeal, the Tribunal upheld the order of the CIT(A).

5. Application under Sub-section (1) of Section 26 was rejected by the Tribunal for making reference by holding that no question of law arises out of the order of the Tribunal. However, on the application under Sub-section (3) of Section 26, the aforesaid question has been framed and the Tribunal was directed to submit statement of case and referred the questions of law before this Court.

6. The finding that the assessee has disclosed all the material facts necessary for the assessment along with his return is not challenged. In view of that finding of fact obviously in terms of Section 17(1)(c) no penalty could have been levied.

7. In our opinion, the Tribunal was justified in not sustaining the penalty.

Section 17(1)(c) provides that penalty can be imposed when assessee has

concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof.

Apparently the manner in which the additions (were) made clearly goes to show that no case for deliberately furnishing inaccurate particulars was made out and also since all relevant and primary facts about the transfer of the property for consideration charged and the disbursement of the Hath Kharch or presents to the first degree relation of the assessee who happen to be erstwhile ruler, claimed to be maintenance, which were deemed to be the gift, subject to tax, have been disclosed along with return. It was not a case of the concealment of particulars of any transfer. It was not a case of concealment of any particulars of any gift or deliberately furnishing inaccurate particulars at all, but was claim of the assessee that the disbursement of amount was part of discharge of his obligation of maintenance towards members of his family and that consideration disclosed, in sale was correctly disclosed, which was also found to be not (sic) genuine by the GTO. Thus, there being no case of concealment of particulars or furnishing of inaccurate particulars was made out. Merely because the assessee has claimed that disbursement of sum did not amount to gift but part of his expenses as discharge of his obligation as patriarch of household by itself cannot make him liable to penalty unless the ingredients necessary for imposition of penalties u/s 17(1)(c) of GT Act, 1958 are established. Finding that the assessee has disclosed all particulars necessary for assessment along with his return and there is no case for deliberate furnishing of inaccurate particulars, the Tribunal was justified in not sustaining penalty u/s 17(1)(c) against the assessee.

8. Accordingly, we answer the question referred to us in affirmative, that is to say against the Revenue and in favour of the assessee. No costs.