

(2004) 05 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : GT Ref No. 1 of 1983

Commissioner of Gift Tax

APPELLANT

Vs

Maharaja Amarinder Singh

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Hindu Succession Act, 1956 — Section 5
Income Tax Act, 1961 — Section 256(1)
Wealth Tax Act, 1957 — Section 4(6)

Citation : (2004) 191 CTR 358 : (2005) 274 ITR 381 : (2004) 3 RCR(Civil) 376

Hon'ble Judges : N.K. Sud, J; J.S. Narang, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant; C.S. Aggarwal and Arun Walia, for the Respondent

Judgement

N.K. Sud, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal"), has referred the following question of law arising out of its order dt. 25th Oct., 1982 for the opinion of this Court ;

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that the land transferred by the assessee and the amounts of Rs. 4,00,000 and Rs. 6,00,000 put in the trusts did not attract the provisions of GT Act because the lands belong to the HUF and the amounts put in the trusts came out of the privy purse payments which were properties of the family ?"

2. The facts, as stated by the Tribunal, may first be noticed :

Late Maharaja Yadvindra Singh of Patiala was 9th in succession to the Gaddi of the State of Patiala. The State of Patiala was one of the groups of States known as the "Phulkian States", which were governed by certain rules and regulations for succession and maintenance. These were recorded in the Dastur-ul-Amal containing provisions regarding authority of the ruler of the State, maintenance of Kanwars and others, etc.

After the country got independence, the issue of princely States and their relations with the Union Government arose. The Phulkian States entered into a covenant through their respective rulers on 5th May, 1948 for the purpose of securing the welfare of the people of their region by establishing a State comprising the territory of these States with a common executive, legislature and judiciary. Under this covenant, the ruler of Patiala; late Maharaja Yadvindra Singh, was given privy purse of Rs. 17 lakhs per year. The white paper on the Indian States issued on 5th July, 1948 by the Government of India, printed in the revised edition dt. 19th March, 1950 indicated the circumstances under which the privy purse had been sanctioned.

During the financial year 1971-72, late Maharaja Yadvindra Singh transferred agricultural lands of the value of Rs. 3,82,500 as under :

1. Yuvraj Amannder Singh Rs. 1,12,500
2. Yuvrani Preneet Kaur Rs. 1,35,000
3. Kanwarani Haripriya Kaur Rs. 1,35,000

He also created two trusts : one for his wife known as "Maharani Mohindra Trust" and the other known as "Amarinder Singh Trust" for his son Yuvraj Amannder Singh, his wife and minor children. The corpus of the first trust was Rs. 6 lakhs and that of the second trust was Rs. 4 lakhs. Since, late Maharaja Yadvindra Singh had died, his son Shri Amarinder Singh filed the GT return for the asst. yr. 1972-73 as legal heir of Maharaja Yadvindra Singh, on 18th Dec., 1972 declaring the aforementioned gifts totalling Rs. 13,82,500. However, the entire amount was claimed as exempt u/s 5(1)(xvi) of the GT Act, 1958 (for short "the Act"). During the course of assessment proceedings, a further claim was made vide letter dt. 3rd Feb., 1976 that the transfer of Rs. 10 lakhs towards the corpus of the two trusts could not be treated as gift as it was not without consideration--the consideration being the discharge of the duties towards family members to maintain them out of the privy purse. The gift of agricultural land was also claimed to be exempt on the ground that these had been made to the family members in lieu of their maintenance in future. The contentions raised on behalf of the assessee were rejected by the GTO who treated the amount of Rs. 13,82,500 as gift and after allowing credit for the stamp duty u/s 18(a) of the Act at Rs. 26,875, assessed the net taxable gift at Rs. 13,55,625 vide order dt. 12th Feb., 1976.

Aggrieved by the assessment order, the assessee filed an appeal before the CGT(A), Jalandhar. In the appellate proceedings, a further claim was made that the gifts, if any, were void ab initio as the property out of which gifts had been made was an ancestral impartible estate and, thus, was the property of the HUF. The CGT(A) accepted the claim of the assessee that various properties inherited by Maharaja Yadvindra Singh constituted an impartible estate which was ancestral and thus, it formed part of the estate of the HUF even though its members had neither the right of partition nor the right to restrain alienation by

the head of the family. For this purpose, he placed reliance on the judgment of the Privy Council in AIR 1932 216 (Privy Council) which was followed by the Supreme Court in *The State of U.P. v. Raj Kumar Rukmini Raman Brahma* AIR 1971 SC 1687. The CGT(A), therefore, held that the gift of a portion of the agricultural land out of the impartible estate belonging to the HUF to Yuvraj Amarinder Singh, Yuvrani Preneet Kaur and Kanwarani Haripriya Kaur could not be considered as valid gifts in view of law laid down by a Full Bench of this Court in *COMMISSIONER OF GIFT-TAX, PATIALA Vs. TAJ NATH.*, . However, he did not accept the claim of the assessee that the privy purse also formed part of ancestral impartible estate and, thus, the gifts made out of the same were also not liable to tax in view of the judgment of this Court in *Tej Nath's case* (supra). He, therefore, held that the sum of Rs. 10 lakhs was liable to be assessed as gift under the Act. He, however, partially accepted the claim of the assessee u/s 5(1) (xvi) of the Act to the extent of Rs. 4 lakhs and held that the balance amount of Rs. 6 lakhs was taxable gift.

Both the assessee as well as the Revenue preferred appeals against the order of the CGT(A) before the Tribunal. Vide order dt 25th Oct., 1982, the Tribunal allowed the appeal of the assessee and dismissed the appeal of the Revenue by recording the following findings :

"26. We have given careful consideration to the rival submissions. We have also considered the relevant provisions of statutory law along with the judicial pronouncements referred to by the parties : the White Paper on Indian States published by the Government of India and all other relevant facts and circumstances of the case, for determination of the issues before us. One of the arguments made on behalf of the Revenue before us was that a privy purse is not a payment by way of a quid pro quo to a ruler for parting with his ruling powers. But when we bring into focus the speech of the Hon''ble Minister for State made before the Constituent Assembly, abstracted and incorporated in this judgment above, it becomes crystal clear therefrom that privy purses were offered and accepted as quid pro quo for parting with the ruling powers by the rulers of the native States. In the very words of the Hon''ble Minister of States, "the minimum which we could offer to them as quid pro quo for parting with their, ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are, therefore, in the nature of consideration for the surrender by the rulers of all their ruling powers and also for the dissolution of the States as separate units" (emphasis, italicized in print, supplied). In view of this unequivocal stand taken by the Government of India before such an august body as the Constituent Assembly, the Revenue's contention is incongruous. It is rejected.

27. Since the privy purses were paid as quid pro quo for surrender of ruling powers of a ruler and dissolution of the State as separate unit, we proceed to examine the manner and method of assumption of such ruling powers by the then Maharaja of Patiala who is the assessee before us. In this matter, -inter alia,

two important documents namely, "Dastur-ul-Amal" and the covenant dt. 5th May, 1948, already substantially abstracted and referred to above, require our special attention. In our considered opinion, "Dastur-ul-Amal" signed on 13th day of October, 1860, was a voluntary agreement entered into amongst certain States, including the State of Patiala, called Phulkian States "in order to establish and strengthen the tie and unity of the States in connection with establishments of mutual agreements". It becomes clear from its careful reading that, though Patiala State, after it was carved out by its original ruler, was governed by a ruling chief, yet such a chief's succession was on the basis of the rule of primogeniture (male) and after succession on the Gaddi of the State he had well-defined responsibilities towards the maintenance of Kanwars on scheduled rates and other relatives. On the other hand, it was made obligatory on the part of such relatives including Kanwars to treat the ruler as "the sole authority of all the affairs of the State and its administration". To our mind, the succession or assumption of ruling powers was, thus, not by valour or force of arms or anything else but by the position of birth of a male member into the joint family which controlled and thus governed the State of Patiala. Therefore, the privy purse which was payment as quid pro quo for surrender of ruling powers and dissolution of State and privileges by the ruler, the assessee, became payable to him as per covenant dt. 5th May, 1948 read with Dastur-ul-Amal, inter alia, recognised a prevalent practice and custom.

28. This covenant, in Article XIV, therefore, also guaranteed, "the succession, according to law and custom, to Gaddi of each covenanting State". In Schedule I to this covenant the amount of privy purse was fixed at Rs. 17,00,000 insofar as Patiala is concerned. Article XI of the covenant provided that the ruler of each covenanting State shall be entitled to receive annually from the revenues of the Union of States called, PEPSU, the amount specified against that covenanting State in Schedule I. The proviso to this article laid down that if the sum specified in the Schedule in respect of the ruler of Patiala exceeds rupees ten lakhs, it shall be payable only to the present rulers and not to his successors for whom provision will be made subsequently. But in our considered opinion, this provision to Article XI does not make the amount of privy purse a personal property of the ruler but was in fact, in quantum, limited to that extent till his life time due to diverse considerations.

29. The above position also becomes clear by reading articles of the covenant carefully and part VII with the caption "settlement of rulers' private properties" at p. 63 of the abovementioned white paper. At p. 64 *ibid*, para 158(iv), very clearly records that "the privy purse is intended to cover all the expenses of the ruler and his family including expenses on account of his personal staff, maintenance of residences, marriages and other ceremonies". In our view this is moreso in the case of the assessee whose succession to Gaddi was governed by rule of primogeniture which in turn was on the prevalent custom before Dastur-ul-Amal was signed on 13th Oct., 1860. The reduction, if any, subsequently in the amount of privy purse would not in our view alter its character.

30. The amount of privy purse in the hands of Maharaja of Patiala was, therefore, a property with attributes of HUF property. He was in a way acting as manager/Karta in respect of this amount. He was under an obligation by law and custom applicable to Hindus to provide for support and maintenance to the member of the joint family. We would however, like to make it clear at this stage that our observations made above are applicable to the payments made as privy purse only. There were other payment, made to persons other than the rulers which cannot be considered at par with privy purses.

31. Insofar as the agricultural lands are concerned, on the facts stated above, and in the light of Dastur-ul-Amal, there could not be any manner of doubt that the lands formed an impartible estate. This estate and privy purse amounts formed joint family property. In our opinion such an estate, even if there is neither a right to partition nor a right to restrain alienation is a joint family property. We have formed this opinion after carefully going through the case law cited from both the sides. We, therefore, conclude that the privy purse amounts received by the assessee and agricultural lands mentioned above were joint family properties. Having held so, we proceed to consider as to what follows, from the action of the assessee taken during the accounting period relevant to assessment year under appeal, with regard to above properties.

32. There is a clear-cut finding of fact given by the learned CIT(A) that the sum of Rs. 10 lakhs put in two trusts came out of privy purse amounts received by the assessee. In this regard para 8 of his impugned order gives necessary details and has not been controverted by any evidence by the Revenue. We confirm this finding on the facts and circumstances of the case. We find that the funds and the properties put in trusts are out of joint family properties in view of what is stated in the above paras. Hence, what the assessee did was a family arrangement of joint family properties.

33. In view of our above finding, the position that emerges is that the joint family properties had been placed by the manager/Karta who was handling them, in trusts for the benefit of the members of the joint family as understood under Hindu law. The question that arises, therefore, is whether there was any element of gift involved in these transfers and any gift-tax is leviable on such gifts. Gifts have been defined in Section 2(xii) of the GT Act, 1958, as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or moneys worth and includes the transfer or conversion of any property referred to in Section 4, deemed to be gift under that section. Now u/s 4, certain modes of transfer have been enumerated. Section 2(xxiv) of the GT Act defines transfer of property as any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and without limiting the generality of the foregoing includes :

(a) the creation of a trust in property;

(b) the grant of creation of any lease, mortgage, charge, assessment, licence, power, partnership or interest in property.

(c) The exercise of a power of appointment whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made or property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly to value of his own property and to increase the value of the property of any other person.

These provisions of law came up for consideration before the Supreme Court in the case of *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, and the Hon''ble Supreme Court has held that the partition by a Hindu family did not effect any transfer as generally understood in law and did not therefore, fall within the definition of gift in Section 2(xii) of the Act. The Hon''ble Court further clarified that the partition in the family could not be considered to be disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property within the meaning of these words in Section 2(xxiv) in the Act. In fact, the Hon''ble Court clarified that the partition was not a transaction entered into by the assessee with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person and, therefore, Section 2(xxiv)(d) did not apply.

34. The Hon''ble Supreme Court was considering these provision on the following facts of that case : The assessee was the Karta of an HUF consisting of himself, his son and his six grandsons. There was a partition of the immovable properties of the family through a registered deed executed on 17th Jan., 1958, and the moveable properties were divided on 13th April, 1951, on which date the necessary entries in the account books were made. The total value of the property so divided was Rs. 8,51,440, but under that partition, the assessee took properties worth only Rs. 1,78,343. The remaining properties were allotted to his son and grandsons. The question in that case was whether, by allotting greater share to the other members of the coparcenary other than that to which they were entitled, the assessee could be held to have made a gift by a partition of his share of the properties to the others and was liable to be taxed under the GT Act, 1958. We are thus aware that the observations were made by the Hon''ble Supreme Court on Clauses (xii) and (xxiv) of Section 2 with reference to the facts of that case. However, the observations of the Hon''ble Court are of wide application and in our considered opinion are applicable to the facts of the case before us. As held by us earlier, the assessee was dealing with joint family properties and when he put such properties in the impugned trusts, he was only making a family arrangement. It is not material as to how the assessee understood and treated such transfers earlier or later or as to how the GTO treated them. We have to determine the correct position of facts and of law with regard to the transactions which are under appeal before us, and in our

considered opinion it was merely a family arrangement of the HUF properties, whereby, the assessee provided for the support and maintenance of his wife, son and others all constituting the members of the family, as he thought fit. On such transfers, there was no gift-tax leviable.

35. There have been arguments on the alternative ground taken by the learned counsel for the assessee that in case the privy purse amount out of which Rs. 10 lakhs were transferred to the two trusts and the agricultural lands put in trusts were not considered as joint family properties, the assessee was exempt from tax in respect of these transfers as they fall within the meaning of Section 5(1) (xvi) of the GT Act. This Clause (xvi) of Section 5(1) has been omitted w.e.f. 1st April, 1973 by Section 6 of the Rulers of Indian States (Abolition of Privileges) Act, 1972. Prior to this omission the clause provided that gift-tax shall not be charged under the GT Act in respect of gifts made by any person out of the sums, if any, guaranteed or assured by the Central Government as his privy purse if the gifts are made for--

(i) the maintenance of any relatives dependent on him for support and maintenance; or

(ii) for the performance of any official ceremonies :

Provided that such gifts are in accordance with the practice, usage or tradition of the family to which the persons making the gift belong.

However, we do not find it necessary to go into the alternative contention of the assessee and the arguments of the parties from both the sides in view of the finding given by us that the agricultural lands as well as the privy purse amounts transferred in the manner described above belonged to the HUF and constituted the joint family properties.

36. In deciding the issues before us as above, we have taken into consideration the submissions made by both the sides and relevant authorities cited. If we do not refer to or particularly mention any authority in the decision that we have arrived at, that does not mean that we have in any manner not considered it."

(Emphasis, italicised in print, supplied)

3. Dr. N.L. Sharda, learned counsel for the Revenue, contended that the Tribunal was not justified in holding that the gifts made were in the nature of family arrangement of the joint family properties and, thus, did not involve any transfer or any element of gift. He first referred to the findings of the Tribunal about the nature of privy purse received by late Maharaja Yadvindra Singh in para 27 wherein it has been held that the privy purse was a payment as quid pro quo for surrender of ruling powers and dissolution of the States and privileges by the ruler which had become payable to him as per covenant dt. 5th May, 1948. He, therefore, contended that since this payment was a compensation for surrender of an individual right, it could not be said to be part of the ancestral impartible estate, thereby making it the property of the HUF. He also disputed the

exemption claimed by the assessee u/s 5(1)(xvi) of the Act on the ground that the assessee had failed to show that these gifts had been made out of the privy purse. He further contended that even otherwise, these gifts could not be said to be for the purpose of maintenance of the dependants or for performing official ceremonies as the amounts gifted had been placed in fixed deposits. In respect of the agricultural land, he contended that it was the admitted position that the same was part of the impartible estate and, therefore, it exclusively belonged to late Maharaja Yadvindra Singh in his individual capacity. He submitted that late Maharaja Yadvindra Singh had been filing returns in respect of his properties in the status of individual. He specifically referred to the GT returns filed by him for the asst. yrs. 1962-63, 1970-71 and even 1972-73 wherein gifts made out of the impartible estate had been declared in individual capacity. He pointed out that it was only after his death that a claim was made by his legal heirs that the impartible estate belonged to the HUF. Dr. Sharda further pointed out that it was assessee's own case that the property out of which gifts were made formed an impartible estate which was inherited by late Maharaja Yadvindra Singh and that the Tribunal has recorded a categorical finding of fact that this estate had been inherited by late Maharaja Yadvindra Singh under the rule of primogeniture recognised by Dastur-ul-Amal and the covenant dt. 5th May, 1948. Thus, according to the learned counsel, it cannot be said to be belonging to the HUF. It has also been contended that even if such an impartible estate were to be held to be belonging to the HUF, the Karta had absolute power to deal with such property in whatever manner he liked since the members of such a family have neither the right to partition nor the right to restrain alienation by the head of the family. Thus, according to him, the law laid down by this Court in Tej Nath's case (supra) was not applicable as in that case this Court was dealing with the case of an ordinary HUF governed by the general law of Mitakshara in which the members have the right of partition and also the right to restrain alienation by the Karta except for necessity.

4. Mr. C.S. Aggarwal, learned senior advocate, appeared on behalf of the assessee and contended that no doubt the agricultural land out of which gifts had been made formed part of the impartible estate which had devolved on late Maharaja Yadvindra Singh, the 9th ruler of the State of Patiala, as per Dastur-ul-Amal but since the impartible estate was ancestral, it was the property of the HUF as already held by this Court in Raja Ragavendra Singh Vs. State of Punjab and Others, . In that case, this Court has accepted the claim that the State of Patiala, being an ancestral impartible estate, was the property of the joint Hindu family, on the basis of law laid down by the Privy Council and the apex Court. He did not dispute that in such a joint family, the Karta has absolute power to alienate such property as the other members of the family do not have the right to restrain alienation by him. He further conceded that in such a property, the members also did not have the right to claim partition. These two features distinguish it from an ordinary joint Hindu family governed by general law of Mitakshara. He, however, submitted that with the passage of the Hindu

Succession Act, 1956, the customary rule of primogeniture was abrogated, the impartibility of the property ceased to subsist and. thus, the impartible estate of the former ruler of Patiala ceased to be an impartible estate and vested with the HUF governed by the general law of Mitakshara. For this purpose, he placed reliance on the judgment of this Court in *Guru Amarjit Singh v. CWT* (2002) 254 ITR 510. He also placed reliance on the judgments in *Pratapsinhji N. Desai v. CIT* (1983) 139 ITR 77, *Commissioner of Income Tax Vs. Maharaja Chintamani Saran Nath Sah Deo*, and *Commissioner of Income Tax Vs. U.C. Mahatab, Maharaja of Burdwan*, . To support his contention that the property inherited by late Maharaja Yadvindra Singh had ceased to be an impartible estate with the passage of the Hindu Succession Act, 1956, Mr. Aggarwal referred to the provisions of Sections 4 and 5 of the said Act. He pointed out that Clause (a) of Sub-section (1) of Section 4 clearly provides that any custom or usage, as part of the Hindu law, in force immediately before the commencement of the said Act, shall cease to have effect with respect of any matter for which provision is made in that Act. The Hindu Succession Act deals with succession and the rule of primogeniture, being a customary rule of succession, stood abrogated in view of this provision. Thus, according to him, with the coming into force of the Hindu Succession Act, all customary impartible estates stand abolished except those saved u/s 5(ii) of that Act. He explained that Clause (ii) of Section 5 provides that the Hindu Succession Act shall not apply to an impartible estate which descends to a single heir by the terms of any covenant or agreement entered into by the ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of the Hindu Succession Act. Referring to the terms and conditions of the covenant which was entered into by the rulers of Fandkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh with the Government of India (annexed as Annex. "B"), he pointed out that Article XIV only guarantees the succession to the Gaddi of each covenanting State, and to the personal rights, privileges and titles of the rulers thereof : it does not recognise the rule of primogeniture for succession to all and every estate of the rulers of the covenanting States. Thus, according to the learned counsel, it cannot be said that the agricultural land in question had descended on late Maharaja Yadvindra Singh by the terms of the said covenant so as to be saved by Section 5(ii) of the Hindu Succession Act. For this purpose, he again relied on the judgment of the Gujarat High Court in *Pratapsinhji N. Desai's case* (supra). He, therefore, contended that after the passage of the Hindu Succession Act, the agricultural land ceased to be an impartible estate and vested with the HUF of Maharaja Yadvindra Singh, which was governed by the general law of Mitakshara and the rights of the members to claim partition and to restrain alienations by the head of the family, except for necessity, stood restored. Thus, according to him, once the family was governed by the general law of Mitakshara, the gifts made out of the erstwhile impartible estate of the family were clearly void ab initio in view of the law laid down by this Court in *Tej Nath's case* (supra) and *Commissioner of Gift-tax Vs. Tarlok Singh*, .

5. Regarding the gifts of moveable property amounting to Rs. 10 lakhs, learned counsel could not show as to how the privy purse could be said to be the property of the HUF in view of the categorical finding recorded by the Tribunal in paras 26 and 27 that the privy purse settlements were in the nature of consideration for surrender by the rulers of all their ruling powers and also for the dissolution of the States as separate units and that the privy purse was a payment as quid pro quo for surrender of ruling powers. He, however, contended that even if the privy purse was to be treated as the individual property of Maharaja Yadvindra Singh, the gifts made out of the same were nevertheless exempt u/s 5(1)(xvi) of the Act as the gifts had been made in discharge of obligation imposed on the rulers as per Dastur-ul-Amal to maintain their family members. Counsel also contended that creation of a trust did not amount to transfer of property within the meaning of Section 2(xxiv) of the Act and in the absence of any transfer, no gift could possibly result.

6. We have heard the counsel for the parties and gone through the orders of the authorities below.

7. The assessee has succeeded before the Tribunal solely on the ground that the privy purse as well as the agricultural land formed ancestral impartible estate which belonged to the HUF of Maharaja Yadvindra Singh and, thus, the gifts made out of the same were in the nature of family arrangement of joint family property which did not involve any transfer within the meaning of Section 2(xvi) [sic-2(xxiv)] of the Act. The Tribunal has supported its conclusion by relying on the judgment of the Supreme Court in CGT v. N.S. Getti Chettiar (supra).

8. At the outset, we would like to highlight the fact that the assessee had, for the first time, set up the case about agricultural land and the privy purse being the property of the HUF in appeal before the CGT(A). The claim made by the assessee has been dealt with by the CGT(A) in paras 3 to 7 as under :

"3. During the course of these appeal proceedings before me, the main ground on which the claim for exemption of these gifts was based was that the appellant was the erstwhile ruler of Patiala State and all the properties inherited by him as ruler of Patiala State formed an impartible estate which was created by voluntary agreement styled as "Dastur-ul-Amal" by the rulers of the States of Patiala, Nabha and Jind jointly known as "Phulkian State" on 13th Oct., 1860. In this document viz., Dastur-ul-Amal, it is provided that the authority in respect of all the matters relating to the affairs of the States and its maintenance would vest in the ruling chief and all members, Zildar and subordinates would be under his power and authority and that the maintenance allowance of the Kanwars and other relations of the family of the ruling chief would be fixed according to the norms stated in that document. In this regard reliance was placed on the Punjab High Court's decision in the case of Raja Ragavendra Singh Vs. State of Punjab and Others, in which it was urged by the said appellant before the High Court "that the State of Patiala was an impartible estate of the property of the joint Hindu family of which the appellant was a member. This property was regulated

by the rule of primogeniture in matters of succession. According to this rule, the eldest son succeeds to the Gaddi as a ruler and the younger ones, called the Maharaj Kumars, were entitled to suitable maintenance allowance out of the income of the impartible estate. This right had been recognised from the time when the erstwhile State of Patiala was carved out of its first ruler. Subsequently, on 13th Oct., 1860, the ruler of the erstwhile States of Patiala, Nabha and Jind entered into a voluntary, agreement styled as "Dastur-ul-Amal" granting statutory recognition to the right."

4. Hence, in this context it was urged by the Authorised Representative that the properties of the appellant, out of which the gifts have been constituted, was an impartible estate created originally by the aforesaid agreement which developed into custom of the family. It was further pointed out that the said State of Patiala together with the State of Kapurthala, Jind, Nabha, Faridkot, Nalagarh and Kalsia had entered into a covenant with the Government of India on 5th May, 1948 whereby a new State called Patiala and East Punjab State Union (PEPSU) came into existence and the said covenant dealt with the terms of merger and also other relevant conditions concerning the succession according to law and custom to the Gaddi of each covenanting State and to the personal rights, privileges, dignities, titles of the rulers thereof together with the provision of privy purse to the rulers of each State to cover all the expenses of the ruler and his family including expenses of residence, marriages, etc. It was further pointed out that even though Hindu Succession Act, 1956, abolished all impartible estates yet it made an exception, by virtue of Section 5 thereof, "in respect of any estate which descends to a single heir by the term of any covenant or agreement entered into by the ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of the Act". Hence, according to the Authorised Representative even the said Act exempted in effect the impartible estate in the case of the ruler of Patiala which was the privy purse, the Gaddi and the rights, titles and privileges of the ruler and members of his family while all other private property of the ruler ceased to have the character of impartible estate, as in other cases.

5. Now, all the impartible estates even prior to the enforcement of Hindu Succession Act, 1956, were, whether excepted therefrom or not, always having the status of HUF and hence it was vehemently pleaded by the Authorised Representative that any gifts made by the Karta being the appellant out of such HUF property would be void and not merely voidable and, therefore, it will be no gift within the meaning of GT Act liable to gift-tax as held by the Punjab High Court in the case of COMMISSIONER OF GIFT-TAX, PATIALA Vs. TAJ NATH., . Thus, according to the Authorised Representative there was no justification from this point of view to impose any gift-tax on the aforesaid gifts made by the appellant.

6. I have carefully considered the aforesaid stand taken by Authorised Representative before me in these appeal proceedings but I am afraid I cannot

fully agree with him. No doubt, Authorised Representative's argument that the various properties inherited by the appellant did constitute an impartible estate is acceptable as envisaged in the "Dastur-ul-AmaT and also approved by the Punjab High Court in the aforesaid decision at Raja Ragavendra Singh Vs. State of Punjab and Others, , yet it cannot be said that even the privy purse would fall in the same category. I also, agree with the Authorised Representative that the impartible estate had the characteristics of the HUP property as held in the well known decision of the Privy Council in the case of Shiba Prasad Singh v. Rani Prayag Kumari Debi (1932) 59 ITR 1339 which was followed among others, by the Supreme Court in the case of State of Uttar Pradesh v. Raj Kumar Rukmini Raman Brahma AIR 1971 SC 1687 wherein it was held "if the holder has got the estate as an ancestral estate and he has succeeded to it by rule of primogeniture, it will be part of the joint estate of the HUF. In the case of an ordinary joint family property, the members of the family can claim 4 rights--

1. the right of partition;
2. the right to restrain alienation by the head of the family except for necessity;
3. the right of maintenance; and
4. the right of survivorship"

So saying, the Supreme Court further observed that "it is obvious from the very nature of the property which is impartible that the first of the aforesaid rights cannot exist while the second also is negligible with the custom of impartibility. The right of maintenance and the right of survivorship, however, will remain and it is by reference to these rights that the property though impartible, has to be considered in the eye of law to be regarded as joint Hindu family property. The right of survivorship, inter alia, spes successions can be renounced or surrendered". It was also held by the Supreme Court that in the case of an impartible estate the eldest son succeeding to it is under an obligation to provide maintenance to the junior members of the family. However, as stated earlier, with the passing of the Hindu Succession Act, the impartibility of all the impartible estates has been done away with except those given in Section 5 thereof but in any case the various properties owned by the appellant which originally constituted impartible estate belonged to his HUF with himself as Karta and, therefore, the giving of a portion of such properties to others being the gifting of the agricultural land to Yuvraj Amrinder Singh and Yuvrani Parneet Kaur and Kanwarani Haripriya Kaur cannot be considered as gifts within the meaning of the GT Act relying on the Punjab High Court's decision at COMMISSIONER OF GIFT-TAX, PATIALA Vs. TAJ NATH., referred to above. Hence, insofar as the so-called gifting of these agricultural lands is concerned, no gift-tax would be imposable thereon.

7. In this connection, one of the arguments put forth by the GTO during the course of proceedings before me was that impartible estates cannot be created by an agreement and further that the appellant had himself been showing all

these properties in his wealth-tax assessment in the individual status. But in this regard the Authorised Representative pointed out, and rightly so, that admittedly the properties in question were inherited by the appellant from his forefathers and the same became impartible on account of the "Dastur-ul-Amal", -being the convention of the Phulkian States entered into on 13th Oct., 1860, which had now the force of custom and usage by which the rule of primogeniture was invoked for them making it an impartible estate. Regarding the appellant's action in the past to show these properties in his individual assessments it may be stated; that firstly, it might be due to a mistaken notion about the legal position and, secondly, with effect from the asst. yr. 1965-66, by virtue of Section 4(6) of the WT Act, 1957, which came into force w.e.f. 1st April, 1965, the holder of an impartible estate has to be deemed to be the individual owner thereof for the purpose of wealth-tax assessment and therefore, from that point of view the making of the assessments on the appellant in the individual status for and from the asst. yr. 1965-66 is otherwise also in order though the status for those assessments would correctly be not individual but "HUF deemed to be individual u/s 4(6) of the WT Act". Hence, as stated above, keeping all these facts in view, I agree with the Authorised Representative that the transfer of agricultural lands to the other members of the appellant's family did not constitute a gift because these agricultural lands belonged to the HUF with appellant as the Karta".

(Emphasis, italicised in print, applied)

A perusal of the above clearly shows that the assessee was not disputing the existence of impartible estate as created by Dastur-ul-Amal and as protected by the covenant. It is also clear from para 4 above that it was assessee's own case that gifts had been made out of the impartible estate. The only claim set up by the assessee was that the impartible estate being ancestral, formed part of the joint estate of the HUF and, thus, gifts made out of the same were not liable to tax in view of the decision of this Court in Tej Nath's case (supra). It is further clear from para 7 above that the assessee has justified his past action of showing these properties in his individual assessment w.e.f. asst. yr. 1965-66 onwards by referring to Section 4(6) of the WT Act, 1957, which had come into force w.e.f. 1st April, 1965, providing that the holder of an impartible estate has to be deemed to be the individual owner thereof for the purpose of wealth-tax assessment. This shows the assessee admitted the existence of impartible estate even in asst. yr. 1965-66 onwards. It has nowhere been pleaded that the impartible estate had ceased to exist on the coming into force of the Hindu Succession Act as it was not saved by Section 5(ii) of the Act. Had that been the case, the simple claim would have been that, with the coming into force of the Hindu Succession Act, the impartible estate had ceased to exist and had assumed the character of property of an ordinary joint family governed by the general law of Mitakshara. There could be no occasion to invoke Section 4(6) of the WT Act, 1957, which applies to subsisting impartible estates only. On the contrary, a reading of para 4 above shows that it is assessee's own case that the

impartible estate of Maharaja of Patiala was saved u/s 5 of the Hindu Succession Act. It is further clear from para 6 above that the CGT(A) has accepted the claim of the assessee that the impartible estate belonged to the HUF, on the basis of law laid down in *Shiba Prasad Singh v. Rani Prayag Kumari Debi and Am.* (supra) and *Raj Kumar Rukmini Raman Brahma's* case (supra) and has clearly held that this is a case of a joint family property in which members do not have either the right of partition or the right to restrain alienation by the head of the family except for necessity, which rights are available in an ordinary joint Hindu family governed by the general law of Mitakshara. It is in this context that the findings recorded by the Tribunal in para 31 have to be read. The Tribunal in this para has held as under:

"Insofar as the agricultural lands are concerned, on the facts stated above and in the light of Dastur-ul-Amal, there cannot be any manner of doubt that the land formed an impartible estate. This estate and the privy purse amounts formed joint family property. In our opinion, such an estate, even if there is neither a right to partition nor a right to restrain alienation, is a joint family property."

It is in the light of the above factual backdrop that the question posed before us has to be answered, The issue as to whether the impartible estate of late Maharaja Yadvindra Singh was saved by Section 5(ii) of the Act or not, does not arise in this case at all. It was neither raised nor considered by any of the authorities below. In fact, a reading of para 4 of the order of the GGT(A) (already reproduced above) makes it absolutely clear that it was assessee's own case that the impartible estate of Maharaja of Patiala had continued even after the coming into force of the Hindu Succession Act in view of Section 5 of that Act.

9. It is now settled law that the mere fact that an estate is impartible does not make it a separate self-acquired property of the holder. If the estate is ancestral, it is the property of the joint Hindu family. However, the members of such a family, unlike the members of an ordinary HUF governed by general law of Mitakshara, do not have either the right to partition or the right to restrain any alienation in respect of such an ancestral impartible estate. In *Raja Ragavendra Singh's* case (supra), this Court while discussing the nature of an impartible estate held by the ruler of Patiala, has observed as under :

"..... The trend of the judgments of the Privy Council is that an ancestral impartible estate is a joint family property notwithstanding the fact that there is neither a right to partition nor a right to restrain any alienation (see in this connection *Baijnath Prasad Singh v. Tej Bali Singh* AIR 1921 PC 62, *Komammal v. Annadana Jadaaya Gounder* AIR 1928 PC 68, AIR 1932 216 (Privy Council) and AIR 1934 157 (Privy Council)"

The Privy Council in *Shiba Prasad Singh's* case (supra), has highlighted this distinction as under :

"Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have : (1) the right of partition; (2)

the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility as laid down in Sartaj Kuari's case (1888) 10 All 272, and Rama Krishna v. Venkata Kumara (1889) 22 Mad 383, and so also the third as held in Gangadhara v. Rajah of Pittapur AIR 1918 PC 81- To this extent, the general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right therefore still remains, and this is what was held in Baijnath's case AIR 1921 PC 62. To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exists, the birth-right of the senior member to take by survivorship still remains....."

In Raj Kumar Rukmini Raman Brahma's case (supra), the apex Court in para 8 has observed as under :

"8. Since the decision of the Privy Council in AIR 1932 216 (Privy Council) , it must be taken to be well-settled that an estate which is impartible by custom cannot be said to be the separate or exclusive property of the holder of the estate. If the holder has got the estate as an ancestral estate and he has succeeded to it by primogeniture, it will be a part of the joint estate of the HUF. In the case of an ordinary joint family property, the members of the family can claim four rights (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. It is obvious from the very nature of the property which is impartible that the first of these rights cannot exist. The second is also incompatible with the custom of impartibility as was laid down by the Privy Council in the case of Rani Sartaj Kuari v. Deoraj Kuari (1887) 15 Ind App 51 (PC) and the First Pittapur case (1899) 26 I. A. 83 (PC). The right of maintenance and the right of survivorship, however, still remain and is by reference to these rights that the property, though impartible has, in the eye of law, to be regarded as joint family property....."

Thus, it can be safely concluded that the agricultural land out of which gifts have been made, being ancestral impartible estate of late Maharaja Yadvindra Singh, constituted the property of his HUF. However, the question that requires consideration is as to whether he, as the Karta, could make valid gifts out of that estate.

10. This issue had come up for consideration in Rani Sartaj Kuari v. Deoraj Kuari (1887) 15 I. A. 51 (PC). In this case, a deed of gift had been made by the Karta in favour of one of his Ranis. The older Rani as guardian of her son filed a suit for setting aside the deed on the ground that the holder of an ancestral impartible

estate could not alienate any property when there was no purpose of necessity. The High Court of the North-Western Provinces, affirming the judgment of the subordinate Judge, held that he could not. They examined the case law on the subject and drew the deduction that, inasmuch as the right of single enjoyment was not incompatible with a restriction on alienation, and as such restriction was part of the general law of the joint family. In particular they said :

"It must be conceded that the complete rights of ordinary coparcenership in the other members of the family, to the extent of joint enjoyment and the capacity to demand partition, are merged in, or perhaps to use a more correct term, subordinate to the title of the individual member to the incumbency of the estate, but the contingency of survivorship remains along with the right to maintenance in a sufficiently substantial form to preserve for them a kind of dormant ownership."

The Board reversed the judgment of the High Court and observed that the point of the judgment was that the title to prevent alienation rests upon the present co-ownership of the person who wishes to restrain. It, therefore, held as under :

"The property in the paternal or ancestral estate acquired by birth under the Mitakshara law is, in their Lordship's opinion, so connected with the right to a partition that it does not exist where there is no right to it, . . . By the custom or usage the eldest son succeeds to the whole estate on the death of the father, as he would if the property were held in severally. It is difficult to reconcile his mode of succession with the tights of a joint family, and to hold that there is a joint ownership which is a restrain upon alienation. It is not so difficult where the holder of the estate has no son, and it is necessary to decide who is to succeed." (Emphasis, italicised in print, supplied).

The case of Sarta; Kauri (supra) was considered by their Lordships in Baijnath Prasad Singh and Ors. v. Tej Bali Singh AIR 1921 PC 62, and it was observed as under :

"..... Now what was decided in Sartaj Kuari's case was that in an impartible Raj there was no restriction on the power of alienation by the member of the family who was on the Gaddi and was in possession, in respect that there was no such right of co-ownership in the other members as to give them a title to prevent such alienation. The right of the other members that was being considered was a presently existing right. The chance which each member might have of a succession emerging in his favour was obviously outside the sphere of enquiry."

The decision in Sartaj Kuari's case (supra) was also followed by the judicial committee in AIR 1934 157 (Privy Council) and it was observed as under :

"The recent decisions of the Board constitute a further landmark in the judicial exposition of the question at issue here. While the power of the holder of an impartible Raj to dispose of the same by deed. [Sartaj Kuari's case (1888) 15 I. A. 15 (PC) or by will [the First Pittapur case (1899) 26 I. A. 83 (PC) and AIR

1927 159 (Privy Council) remains definitely established. The right of the junior branch to succeed by survivorship to the Raj on the extinction of the senior branch has also been definitely and emphatically reaffirmed." (Emphasis, italicised in print supplied).

The view taken in Sartaj Kuari's case (supra) and in Ram Sunder Mal's case (supra) stands approved by the Supreme Court in Raj Kumar Rukmini Raman Brahma's case (supra).

11. Reference may also be made to Article 588 of Mulla's Hindu Law, wherein it has been clearly mentioned "that the holder of an impartible estate has power to alienate the estate, though ancestral, by gift or by will, unless the power of alienation is excluded by special family custom or by the nature of the tenure".

12. From the above discussion, it is clear that the holder of an ancestral impartible estate has an absolute power to dispose of the same even though it vests in the joint Hindu family because none of the members have the right either to claim partition or to restrain him from alienating the property. The other members of such a family have no proprietary rights in such an estate and cannot claim joint ownership in the same.

13. In Tej Nath's case (supra), the Full Bench was considering the right of a Karta to transfer coparcenary property by gifts under the general law of Mitakshara. However, the case of an ancestral impartible estate stands on a different footing than coparcenary property under general law of Mitakshara, This distinction has been highlighted in Shiba Prasad Singh's case (supra), While referring to the decision in Sartaj Kuari's case (supra), wherein the validity of the gift made by the holder of an ancestral impartible estate had been upheld by the Board by reversing the decision of the High Court, it was observed as under ;

"..... The decision proceeded on the ground that the inability of the father under the general law of Mitakshara to alienate an ancestral estate arises from the proprietary right which the sons acquire at birth in such an estate, and that this right is so connected with the right to a partition that where that right does not exist, as where the estate is impartible, the proprietary right falls with it."

The ratio of the decision of the Full Bench in Tej Nath's case (supra) is, therefore, not applicable in the present case.

14. We may also refer to the case of Guru Amarjit Singh's case (supra), on Which strong reliance has been placed on behalf of the assessee. In that case, the assessee therein had inherited the property in dispute under the rule of primogeniture prior to the coming into force of the Hindu Succession Act. Since the property was ancestral, it was being assessed in the hands of the HUF upto asst. yr. 1969-70. However, for asst. yrs. 1970-71 and 1972-73 to 1975-76, the WTO took the view that since the assessee was holder of an impartible estate, the same had to be assessed in his hands in the status of an individual in view of the provisions of Section 4(6) of the WT Act, 1957. The assessee's case was that

with the passage of the Hindu Succession Act, the property had lost its character of an impartible estate since it was not saved under the provisions of Section 5(ii) of that Act and, thus, Section 4(6) of the WT Act, 1957, was not attracted. On the other hand, Revenue did not dispute the fact that the impartible estate was not saved under the provisions of Section 5(ii) of the Hindu Succession Act. It, however, maintained that since Guru Amarjit Singh had inherited the property in dispute as impartible estate prior to the coming into force of the Hindu Succession Act, it continued to be so until the provisions of Hindu Succession Act came into play on the death of Guru Amarjit Singh. This plea was negated by this Court and it was held that since the impartible estate was not saved under the provisions of Section 5(ii) of the Hindu Succession Act, the impartible estate ceased to exist immediately on the coming into force of the Hindu Succession Act and was vested with the character of coparcenary property of a normal HUF governed by Mitakshara law.

15. However, the position is converse in the present case. Here, it is assessee's own case that the impartible estate was saved u/s 5(ii) of the Hindu Succession Act and, thus, it was assessable in the hands of Maharaja Yadvindra Singh as an individual as per the provisions of Section 4(6) of the WT Act, 1957. Thus, the decision of this Court in Guru Amarjit Singh's case (supra) is not applicable to the present case.

Thus, in view of the law laid down in Sartaj Kuari's case (supra), which has, thereafter, been affirmed in Ram Sunder Mal's case (supra) and Raj Kumar Rukmini Raman Brahma's case (supra), the finding of the Tribunal in para 31 of its order that the gifts made by late Maharaja Yadvindra Singh out of the impartible estate belonging to the joint family was not valid even though the members of the joint family did not have either the right to partition or the right to restrain alienation, cannot be upheld.

16. Before parting, we would like to mention that the counsel for the assessee had also contended that the question raised in the present reference petition may be sent back unanswered as it was only of academic interest. He pointed out that the proceedings in this case have emanated from the return filed in the case of late Maharaja Yadvindra Singh as an individual. He, therefore, pleaded that even if it were to be held that he had the power to make the gifts out of the ancestral impartible estate belonging to his HUF, no tax would be leviable in his hands as an individual. The tax, if any, can be charged in appropriate proceedings against the HUF of late Maharaja Yadvindra Singh, which is a different taxable entity.

17. We decline to go into this question as it does not arise out of the order of the Tribunal nor has any such question been referred to us for our opinion. The scope of the jurisdiction of this Court u/s 256(1) of the Act is confined only to answering the question of law referred to it for its opinion. It would be open to the assessee to raise this question before the appropriate authority, if permissible under the law at this stage.

18. Accordingly, we hold as under :

(i) the Tribunal was not right in holding that the privy purse of late Maharaja Yadvindra Singh formed a part of his ancestral impartible estate and, thus, was the property of the HUF;

(ii) although the Tribunal was right in holding that the agricultural land out of which gifts had been made, being part of ancestral impartible estate, belonged to the HUF of late Maharaja Yadvindra Singh, yet it fell in error in holding that even though members of this family did not have either right to partition or the right to restrain alienation, the said gifts were only in the nature of a family settlement and were not to be treated as gifts.

The question is, accordingly, answered in favour of the Revenue and against the assessee. However, we make it clear that while giving effect to this order, the Tribunal shall deal with the alternate grounds raised before it which have been left undecided in view of other findings recorded by it. No costs.