

(1974) 08 PAT CK 0004
In the Patna High Court
Case No : Tax Case No. 221 of 1971

Commissioner of Gift Tax

APPELLANT

Vs

M.S. Rao

RESPONDENT

Date of Decision : 07-08-1974

Acts Referred:

Citation : (1976) 102 ITR 308 : (1975) 8 PLJR 186 : (1975) PLJR 186

Hon'ble Judges : N.L. Untwalia, C.J.; S.K. Jha, J

Bench : Division Bench

Advocate : Shambu Sharan, for the Appellant; None, for the Respondent

Judgement

Untwalia, C.J.—This is a reference made by the Income Tax Appellate Tribunal, Patna Bench, u/s 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act"). Four questions of law have been referred— one in relation to the claim of exemption made by the assessee u/s 5(1)(vii) of the Act in respect of 60 cents of land at Ranchi gifted by the assessee to his daughter. Three questions of law relate to the claim of exemption by the assessee u/s 5(1)(xii) in respect of the land and house situated at Ranchi gifted by the assessee to his son. The assessee's daughter was married in May, 1963. The deed of gift was executed on September 28, 1964, reciting therein that possession over the gifted land was given to the daughter in April, 1964. The assessee claimed that it was a gift by him to his daughter, who was dependent upon him for support and maintenance, on the occasion of her marriage, and since it was within the maximum limit prescribed u/s 5(1)(vii) of the Act, it was exempt from levy of gift-tax. The Gift-tax Officer held that the gift was effective only on the execution of the deed of gift in September, 1964, which was a long time after the marriage of the assessee's daughter. Hence, it could not be held to be a gift on the occasion of the marriage of the daughter of the assessee. The Appellate Assistant Commissioner on appeal by the assessee took a different view. The department went up in appeal before the Appellate Tribunal, and the Tribunal took the view that oral gift was made at the time of the marriage of the daughter of the

assessee, although possession was delivered later in April, 1964, and a registered deed was executed still later in September, 1964. In that view of the matter, the Tribunal has agreed with the decision of the Appellate Assistant Commissioner and held that the gift of 60 cents of land, the value of which has been determined to be Rs. 7,000, is exempt from gift-tax. In this regard the question of law referred to this court is:

"Whether, in the facts and circumstances of the case, Section 5(1)(vii) of the Gift-tax Act is applicable to the gift in question in favour of the assessee's daughter ?."

2. On September 28, 1964, it appears, the assessee had executed a registered deed of gift, gifting certain properties to his wife, daughter and son. The gift in favour of the wife which was also valued at Rs. 7,000, was held to be exempt from the gift-tax by the Gift-tax Officer himself. In favour of the son, a piece of land together with the house standing thereon was gifted. The value of this was determined to be Rs. 71,000, Rs. 7,000 for the land and Rs. 64,000 for the building, by the Gift-tax Officer. The Appellate Assistant Commissioner held that the gift in favour of the son was exempt from gift-tax to the extent of Rs. 54,000 in view of the provision of law contained in Section 5(1)(xii) of the Act. The Tribunal has agreed with this finding, and the three questions of law referred for opinion of this court in this connection are the following:

"(2) Whether, in the facts and circumstances of the case, the son of the assessee can be said to be a child within the meaning of Section 5(1)(xii) of the Gift-tax Act ?

(3) Whether, in the facts and circumstances of the case, the Tribunal is justified in law in holding that exemption in respect of education as contemplated in Section 5(1)(xii) of the Act can be extended to maintenance also ?

(4) Whether, in the facts and circumstances of the case, Section 5(1)(xii) is applicable to the gift in favour of the son of the assessee ?."

3. Before I proceed to determine the various points involved in this case I would like to quote the relevant provisions of the Act:

"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 rupees ten thousand in value in respect of the marriage of each such relative.....

(xii) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case."

4. I think, there is no difficulty in answering the first question in favour of the revenue. The Tribunal seems to be labouring under a wrong notion of law that a

promise made by the assessee on the occasion of the marriage of his daughter to make a gift of land to her in future was an oral gift. A promise to make a gift can never be termed as oral gift in the eye of law. If it would have been found in this case that possession of the land was delivered to the daughter on the occasion of her marriage, one could say that oral gift of the land was made coupled with delivery of possession on the occasion of the marriage, although in the eye of law there was no gift or, in any event, the gift was not complete until a registered document was executed by the donor. But even delivery of possession was given about eleven months after the marriage of the daughter. Only one document was executed by the, assessee in September, 1964, covering all items of properties gifted to his wife, daughter and son. In such a situation, it was not possible to hold that the gift to the daughter was on the occasion of her marriage. As I have said above, the only basis of this finding in the judgment of the Tribunal is the assessee's promise to make a gift to his daughter. This could not be held in the eye of law to be a gift to the daughter--even oral gift on the occasion of her marriage. I would, therefore, answer the first question in the negative, against the assessee and in favour of the revenue and hold that, on the facts and in the circumstances of the case, Section 5(1)(vii) of the Act was not applicable to the gift in question in favour of the assessee's daughter.

5. In relation to the gift made by the assessee to his son, three or four points do arise:

(1) What is the meaning of the term "children" in Clause (xii) of Sub-section (1) of Section 5 of the Act ?

(2) To what extent were gifts proved to the satisfaction of the Gift-tax Officer and, as a matter of fact, to the satisfaction of the Appellate Assistant Commissioner and the Tribunal as being reasonable having regard to the circumstances of the case, and whether the gift was made for the education of the assessee's child, namely, the son ?

(3) Whether gifts made by any person for the education of his children will include gifts made for the maintenance of the children also ?

6. On the first question posed by me above, I would venture to say that "children" has been used in the sense of issues. Instead of using sons and daughters of the person making the gift, the term used is "children". It does not mean minor children. It means any issue of the assessee who is capable of receiving education, irrespective of his or her age. In this connection, I would refer to the decision of the House of Lords in *Edward Bowen v. Thomas Lewis* [1884] 9 App Cas 890 (HL), Earl of Selborne L.C. said in his speech at page 897 :

"The primary sense of the word "children" is issue of the first generation, and that primary sense ought to be adhered to, when there is nothing, or not enough, to displace it."

7. Of course, this observation was made to repel the argument that the word

"children" used in a will meant and included grand-children also. But I have respectfully adopted the definition given by the Lord Chancellor as, in my opinion, it is aptly applicable to the term used in Section 5(1)(xii). Here also "children" means issue of the first generation, and this primary sense ought to be adhered to when there is nothing, or not enough, to displace it. Surely, the fetter of age is not sufficient to take an issue of the first generation out of the term "children" in the section. To the same effect was the observation in *Atkinson, In re : Pybus v. Boyd* [19]8] 2 Ch 138(Ch D). Younger J. said in the opening sentence of his judgment:

"That offspring in the first degree is the natural and ordinary signification of the word "children" was not disputed at the Bar, nor is there anything in this will to indicate that it is there used in any other sense."

8. It is to be noticed that this observation again concerns the interpretation of the term."children."used in a will. If I were to give a different meaning to the word."children"used in Clause (xii) of Sub-section (1) of Section 5 of the Act, I fail to understand where the demarcation will be drawn. If literally the dictionary meaning were to be taken, it would mean a newly born person and such a child will be incapable of receiving education. A child generally starts education at the age of three and may remain a student even in his twenties. I do not see any justification for drawing any demarcating line for interpreting the word "children" in Section 5(1)(xii) of the Act and confine it to children of a particular age.

9. To what extent the gifts are proved to the satisfaction of the authorities concerned as being reasonable having regard to the circumstances of the case is largely and essentially a question of fact. In this case in that regard it would not have been possible to say that the sum of Rs. 54,000 determined as reasonable by the Appellate Assistant Commissioner and upheld to be so by the Tribunal was not a finding of fact, had one mistake of law not been committed in arriving at that finding. Gifts made by a person must be for the education of his child in order to get exemption u/s 5(1)(xii). Undoubtedly, gifts for the purpose of meeting the expenses of education of the child cannot mean merely the expenses of paying the tuition fees in educational institutions or of purchasing books. It must mean all necessary expenses connected with the education of the child. In a given case lodging and boarding may be the expenses for the education, in another case it may not be. If the child is living with the assessee, boarding with him, then gifts made for the education of such a child may not include his boarding and lodging charges. But if the child is sent outside home, say, he lives in a hostel, then all expenses incurred in the education of the child, including boarding and lodging and also perhaps on clothing, will come under the expenses for the education, and gifts made by any person for meeting such expenses will be termed a gift made by any person for the education of his child. But if in the deed of gift itself, as in this case, it is recited that the gift is made for the maintenance and education of the child, then here the word "maintenance" has been used by the assessee in contradistinction to the word

"education" and not in relation to the maintenance expenses for prosecuting the studies. The Tribunal, in my opinion, is not right in saying that Section 5(1)(xii) in the context includes the maintenance of the child also. Per se, it does not; in a given case it may. In this case when the gift was made both for the purposes of maintenance and education, it is not correct to say that the entire gift was for the education of the son of the assessee. It was open to the department to roughly divide the amount of Rs. 54,000, half and half, allocate Rs. 27,000 as gift for the education of the son of the assessee, exempt it u/s 5(1)(xii) and treat the other Rs. 27,000 as gift for maintenance of the child, which, on the facts of this case, was not permissible to be exempted under the said provision of law.

10. For the reasons stated above, I would answer the other three questions thus:

Question 2 :

On the facts and in the circumstances of the case, the son of the assessee can be said to be a child within the meaning of Section 5(1)(xii) of the Act.

Question 3 :

On the facts and in the circumstances of the case, the Tribunal was not justified in law in holding that exemption in respect of education as contemplated in Section 5(1)(xii) of the Act can be extended to maintenance also.

Question 4 :

On the facts and in the circumstances of the case, in my opinion, Section 5(1)(xii) was applicable to the gift in favour of the son of the assessee to the extent of Rs. 27,000 only.

11. Since nobody has appeared on behalf of the assessee in this reference, there will be no order as to costs.

S.K. Jha, J.

12. I agree.