**(2002) 02 RAJ CK 0161**

**In the Rajasthan High Court**

**Case No :** Gift-tax Reference Application No. 43 of 1991

Commissioner of Gift-tax APPELLANT

Vs

Nizamuddin RESPONDENT

**Date of Decision :** 11-02-2002

**Acts Referred:**
Gift Tax Act, 1958 — Section 26(3), 5(1)(xii)

**Citation :** (2003) 261 ITR 289

**Hon'ble Judges :** S.K. Garg, J;N.N. Mathur, J

**Bench :** Division Bench

**Advocate :** J.K. Singh, for the Appellant; Mahendra Ganeshia, for the Respondent

## Judgement

1. This is an application u/s 26(3) of the Gift-tax Act, 1958, at the instance of the Revenue seeking reference on the following question, a question of law arising from the order of the Income Tax Appellate Tribunal, Jaipur Bench, dated May 30, 1989.

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the transfer of immovable properties by the assessee to his minor sons, specifically for the purpose of their education, was not in the nature of gift in view of the Madras High Court''s decision reported in Commissioner of Gift-tax Vs. N. Jothi Kumar, without considering the facts of the two cases in detail ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the order of the Commissioner of Gift-tax (Appeals) even though he did not decide the point of valuation of the property as specifically mentioned in para. 6.1 of his order as under ?"

2. The brief facts leading to the instant reference application are that the Gift-tax Officer during the assessment proceeding for the year 1983-84 found that the assessee had made a gift of immovable property valuing Rs. 94,620, Rs. 38,560 and Rs. 41,000 to his three minor sons. The assessee claimed exemption u/s 5(1)

(xii) of the Gift-tax Act on the ground that said gifts were for providing higher and advance education to the minor sons. The assessing authority denied exemption as in his opinion the value of properties was much in excess of the expenses required for the purpose of providing educational facilities to the minor sons and the amount was not reasonable. On appeal the claim of the assessee was allowed by the appellate authority. The order of the appellate authority was confirmed in second appeal by the Income Tax Appellate Tribunal. The appellate authorities having considered the entire material on record in depth and detail arrived at the conclusion that looking to the total value of the property owned by the assessee a comparatively small portion of the property was gifted to three minor sons for the purpose of meeting their educational requirements. Thus the appellate authority granted exemption to the assessee u/s 5(1)(xii). Thus the conclusions of both the appellate authorities are based on facts. The Andhra Pradesh High Court in the case of Commissioner of Gift-tax Vs. Bhupathiraju Venkata Narasimharaju, , has held that the karta of the family can gift properties in favour of the minor daughter or the son within a reasonable limit. He further held that what is reasonable is a question of fact which depends on the facts of each case. In the instant case we are of the view that the findings of both the appellate authorities on the question of reasonableness are findings of fact. No question of law arises from the order of the Tribunal. The reference application is rejected.