

(1993) 03 KL CK 0035

In the High Court Of Kerala

Case No : O.P. No. 3183 of 1984-S

Commissioner of Gift-tax

APPELLANT

Vs

P. Gopinathan

RESPONDENT

Date of Decision : 01-03-1993

Acts Referred:

Gift Tax Act, 1958 — Section 16, 2, 26, 4(1)

Citation : (1993) 204 ITR 324

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nair, for the Appellant; P. Balachandran and George George K., for the Respondent

Judgement

K.P. Balanarayana Marar, J.—The original petition is filed u/s 26(3) of the Gift-tax Act, 1958. The Revenue is the petitioner. The respondent is the legal heir of the late P. Narayani Ammal. She was assessed in the status of a Hindu undivided family from the assessment year 1964-65 onwards. A partition was effected among the members of the family on March 31, 1972. The family consisted of five members, viz., Narayani Ammal, her son, her daughter and two grand-daughters. The properties were divided into five equal shares, the value of each coming to Rs. 80,885. The share of Narayani Ammal valued at Rs. 80,885 was relinquished in favour of the other four sharers. Gift tax proceedings were initiated against her in respect of the relinquishment. She filed a nil return to the notice u/s 16 of the Act and contended that no gift was made but only a partition. That contention was rejected and the Gift-tax Officer held that there was a gift within the meaning of Section 2(xii) of the Gift-tax Act, 1958, and he levied gift-tax on Narayani Ammal's share of property gifted in favour of the others. The Gift-tax Officer further held that the document constituted a deemed gift within the meaning of Section 4(1)(c) of the Gift-tax Act. The Gift-tax Officer computed the value at one-fifth of the fair market price, viz., Rs. 1,24,000. The assessment was confirmed in appeal. The assessee carried the matter to the Tribunal. The claim of the assessee was allowed and it was held that no gift was

involved. According to the Tribunal, the document evidences a partition by metes and bounds whereunder no separate share was allotted to the assessee. The gift-tax assessment was, therefore, found to be unjustified.

2. Aggrieved by that order, the Revenue wanted a reference to this court on four questions of law. The Tribunal dismissed the application. Hence, the original petition u/s 26(3) of the Gift-tax Act for a direction to the Income Tax Appellate Tribunal, Cochin Bench, to state the case and refer the following questions of law for a decision of this court:

"(i) Whether, on the facts and in the circumstances of the case, and also in view of Clause 9 of the partition deed, which stated that "the assessee voluntarily surrendered her share of property worth Rs. 80,885 to other members", the Tribunal is right in holding that "the division of the properties in the deed of partition does not involve any gift and that the assessment is not justified"?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal is right in interfering with the assessment ?"

Heard counsel on both sides.

3. Learned counsel for the Revenue urges that there had been a division among the sharers by the partition deed and the relinquishment took place since then. The question whether a gift has been created or whether a deemed gift has to be inferred depends upon the interpretation of the partition deed and as such a question of law arises, according to counsel. The partition deed is not available before the court but an extract showing some of the clauses has been produced. Pointed attention is drawn by counsel to Clauses (8) and (9). By Clause (8), the total value of the properties was estimated at Rs. 4,04,425. It is further recited that the executants of the document had agreed to divide the properties into five equal shares. The value of each share was estimated at Rs. 80,885. It was thereafter by Clause (9) that the first executant, Narayani Animal, relinquished her share valued at Rs. 80,885 in favour of executants Nos. 2 to 5. Relying on these two clauses, learned counsel for the Revenue strenuously contends that there has been a severance of status among the sharers. The subsequent clause by which the rights were relinquished in favour of the other executants amounts to a deemed gift according to counsel. On the other hand, it is the contention of learned counsel for the respondent that the intention to separate and the desire to relinquish are expressed in the same document and that no gift coming within Section 4 of the Gift-tax Act is contemplated. Counsel also relies on the decision of the Supreme Court in *The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar*, . The Supreme Court held that the partition 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 Gift-tax Act. It was further held that the partition cannot be considered to be a disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property within the meaning of those words in Section 2(xii) of the Act. It was also held 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(xii) did not apply. The Supreme Court held that, in that case, there was no gift by the assessee on which he was liable, to pay gift-tax. The Supreme Court did not decide the question as to what would be the position in law if there was first a division in status in a Hindu undivided family and it was followed up by a division by metes and bounds in which one of the coparceners took properties worth less than he would be entitled to under the law. Learned counsel for the Revenue placed considerable stress on this observation of the Supreme Court leaving open the question about the position in law if there was first a division in status followed by a division by metes and bounds. That, according to counsel, is the position here. By Clause (8), there has been a division in status which was followed by a division by metes and bounds among executants Nos. 2 to 5, the first executant having relinquished her rights in favour of others, argues counsel. But all the recitals in the document are to be read and understood together or as a whole in order to ascertain the intention of the parties and the nature of the transaction.

4. It is true that mention has been made about the share value of Smt. Narayani Ammal and also about the intention of the parties to divide the properties among themselves. But, at the same time, the first executant, Smt. Narayani Ammal, had relinquished her share to the other executants. No share was therefore, allotted to the first executant. In effect, the properties were divided among executants Nos. 2 to 5 and shares were allotted only to them. The question arises as to whether a deemed gift can be inferred from the circumstances so as to attract Section 2(xii) of the Gift-tax Act. That sub-clause stipulates that a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, shall be deemed to be a gift made by the person responsible for the, release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the Assessing Officer to have been bona fide.

5. The Tribunal has referred to Clauses (8) and (9) apart from Clauses (10) and (11) of the partition deed. It is mentioned that it is provided in Clause (10) that Smt. Narayani Ammal, the assessee, shall not have thereafter any manner of right, title or interest in the properties and the same had vested in the other members. Reference is also seen made to Clause (11) which stipulated that property worth Rs. 1,01,106.25 has been allotted to each of the four members to ensure that the allotment of shares among the children is fair and equitable. Mention is also made about Clause (23) wherein it is stated that the properties are valued for the purpose of registration at Rs. 4,04,425. On an interpretation of the various clauses, the Tribunal observed that the properties had been divided by metes and bounds without allotting a specific share to the assessee and that the assessee had not acquired exclusive and absolute right over any property on partition. It was, therefore, held that there can be no transfer and much less a gift in the arrangement and the deed evidences only a partition. The contention

on behalf of the Revenue that there is an element of gift involved in the execution of the deed as the assessee had not taken her due share was rejected.

6. A further contention was raised before the Tribunal that the common property in which the assessee's children had a share was worth Rs. 52,800 and that the remaining items were acquired in the name of the assessee and it belonged to her absolutely. The Revenue wanted a gift to be inferred to this extent, This argument also was turned down by the Tribunal by holding that the properties had been held jointly by the executants and that one of the items was acquired in favour of the assessee with funds advanced by her husband for the benefit of the tarwad. The properties had been enjoyed as belonging to a tarwad and divided among the members as tarwad property. This contention was also rejected by the Tribunal.

7. On hearing counsel on both sides and on a perusal of Clauses (8) and (9) and referring to the other clauses mentioned in the order of the Tribunal, we are of the view that the order of the Tribunal does not disclose any error of law. The conclusion that there is no deemed gift coming within the scope of Section 4(1)(c) was reached by the Tribunal for proper reasons. The Assessing Officer gets jurisdiction to invoke Section 4(1)(c) of the Gift-tax Act only to the extent to which the abandonment has not been found to his satisfaction to have been bona fide. There has not been such a finding by the Tribunal. Section 4(1)(c) cannot therefore be invoked in order to treat the abandonment of the rights by the assessee as a gift. Since no error has been committed by the Tribunal in its finding that the relinquishment of the rights by the assessee does not amount to a gift or a deemed gift, the request for a direction to the Appellate Tribunal to state the case and refer the questions of law formulated in the original petition has to be declined.

8. For the aforesaid reasons, the original petition is found to be devoid of merit and is hereby dismissed but without costs.