

(1978) 12 MAD CK 0038

In the Madras High Court

Case No : Tax Case No. 421 of 1974 (Reference No. 224 of 1974)

Commissioner of Gift-tax

APPELLANT

Vs

Pappathi Anni (by L. Rs.)

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Gift Tax Act, 1958 — Section 16(1)

Citation : (1981) 127 ITR 655

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; T. Srinivasamurthi, for the Respondent

Judgement

Ismail, J.—This reference has been made at the instance of Commissioner of Gift-tax, Madras, on the following question :

"Whether the Appellate Tribunal was right in law in holding that the transfer of property by the assessee to her son by way of allotment under the deed of partition dated November 12, 1959, was not a taxable gift within the meaning of the Gift-tax Act, 1958 ? "

2. The assessee in this case is one Pappathi Anni who is no more and whose legal representative has been brought on record. She was the widow of one Srinivasan, who died on December 14, 1953. There was a partition between Srinivasan and his son, Thiagarajan, of certain ancestral properties under a deed dated April 8, 1953. On the death of Srinivasan, as he had not left any will, succession certificate was applied for by the assessee and her divided son, Thiagarajan, as the only heirs of Srinivasan in March, 1954. The succession certificate was granted in May, 1954. An extension of the succession certificate was granted in December, 1957, and again in February, 1962.

3. On November 12, 1959, a deed was drawn up between Pappathi Anni and Thiagarajan under which there was an equal division of the properties left by

Srinivasan. This document was styled as a deed of partition. It recited, inter alia, that the parties thereto had inherited the properties left by the deceased, Srinivasan, that the assessee and her son were the only heirs of the deceased and were entitled to the deceased's properties in equal shares, that they were desirous of effecting a partition of the properties belonging to them jointly and that the son was allotted the A schedule properties as and for his share and the mother was allotted the B schedule properties as and for her share, absolutely with full powers of ownership. The assessee and her divided son had also settled jointly some of the lands obtained by them from late Srinivasan on their near relatives, during the year ended March 31, 1960. In respect of such settlement, a return of gift was filed on January 28, 1961, by the son, Thiagarajan, as karta of an HUF consisting of himself and his mother, declaring gift of lands of the value of Rs. 1,73,500 on March 10, 1961. The GTO made an assessment on the said HUF determining the gift-tax payable at Rs. 10,200.

4. In respect of the income from the properties left by the deceased, Srinivasan, a dispute arose between the I.T. Dept. and Thiagarajan whether such income was taxable wholly in the hands of the divided son as an individual as contended by the department, or in the hands of the HUF of Thiagarajan and his mother as contended by Thiagarajan. The matter came up to this court and by a judgment dated October 15, 1962, in *The Commissioner of Income Tax Vs. S.S. Thiagarajan Shiyali*, it was held that the widow took the property left by Srinivasan entirely, excluding the divided son, and that, therefore, the properties left by Srinivasan could not be assessed to Income Tax in the hands of Thiagarajan, as the widow was entitled to the entire property left by Srinivasan to the exclusion of the divided son.

5. As a result of this view expressed by this court in the case cited above, the GTO took proceedings u/s 16(1)(a) of the G.T. Act for the assessment year 1960-61, on the ground that the half share in the properties left by Srinivasan had been parted by the widow in favour of her divided son by the document dated November 12, 1959, and that this constituted a gift by her since the entire property was her own property in which the son had no interest. The assessee filed nil return but the GTO assessed her to gift-tax on a gift of Rs. 2,72,000, comprised of gifts to the five relations mentioned earlier and also the gift to the divided son, Thiagarajan, of the value of Rs. 1,00,000 with reference to the properties mentioned in the document dated November 12, 1959. The consequence was the determination of gift-tax at Rs. 21,440 as being payable by the assessee.

6. The assessee took up the matter in appeal before the AAC, who dismissed it. Thereafter, the assessee appealed to the Tribunal and the Tribunal by its order dated January 7, 1969, held that the assessee was not liable to gift-tax on the value of the property allotted to her son in terms of the document dated November 12, 1959. Though the Tribunal rejected the claim of the assessee that the document was one of partition it upheld her claim that gift-tax was not

payable on the basis that the document represented a family arrangement. With reference to this order of the Tribunal, the Commissioner applied for a reference raising the following questions :

" (i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal had any material to hold, and entertain a reasonable view of the facts in holding, that the so-called partition between the assessee and her son amounted to a " family arrangement ", that the said arrangement was for consideration and that the said consideration was the avoiding of future disputes and the security of peace and harmony between the parties ?

(ii) Whether the Appellate Tribunal was right in law in holding that the transfer of property by the assessee to her son by way of allotment under the so-called partition was not a taxable gift within the meaning of the Gift-tax Act, 1958 ?"

7. However, the Tribunal referred only the question set out in the beginning of this judgment. With reference to the question that was not referred there was a petition filed before this court in T.C.P. No. 214/76 and by an order dated June 19, 1978, this court dismissed the said petition. The result is, we have to deal with only one question that is set out already.

8. It is not in dispute that if there is a partition, there would be no question of any gift. It is equally not in dispute that if the son had no antecedent right to the property then there would be a gift in favour of the son by the assessee here. It is also not in dispute that when there was a genuine family arrangement, then to the extent of the son giving up his claim in favour of his mother, there will be a transfer for consideration and there could be no gift. It is in this context that we have to examine the reasoning of the Tribunal. The Tribunal referred to the observations of the Supreme Court in *Sahu Madho Das and Others Vs. Mukand Ram and Another*, wherein it was held that a family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and that the agreement acknowledges and defines what the title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others to the portions allotted to them. Such an agreement is intended to avoid future disputes and to bring about harmony among the parties. The Appellate Tribunal took the view that such was the position in the present case. The GTO himself has posed correctly in his order the question as " to whom the divided share of late Srinivasan devolves after his death ". There was some confusion no doubt in the minds of both the assessee and the department in this matter. Both thought that the divided share of late Srinivasan belonged to the HUF consisting of Pappathi Anni and Thiagarajan, mother and son. It was on this supposition that the department levied gift-tax on a total gift of Rs. 1,73,500 made out of the share left by Srinivasan in the hands of the supposed HUF. We have to consider what operated in the minds of the parties at the time when they entered into this family arrangement in 1959. At that time, as mentioned already, the judgment of this court in *The Commissioner of Income Tax Vs. S.S. Thiagarajan Shiyali*, had not been rendered. Even in that

decision the Bench of this court expressed the view that " if the matter were res integra we would have been inclined to take a different view with great respect to the learned judges who participated in the decision cited above ". This court did not, however, express a dissent from the earlier view but proceeded to consider the matter on the basis of the decision in A.N. Subramanian late minor by G.S. Lakshmi Ammal Vs. A.S. Kalyanarama Iyer and Others, , being correct because the law was amended in the shape of the Hindu Succession Act, 1956.

9. It is in the light of the aforesaid position of law that the question as to whether the assessee transferred any property for consideration or not has to be examined. The Tribunal has pointed out in para. 10 of its order that :

" The Assessee believed rightly or wrongly that her divided son had a claim upon jointly (sic) family estate left by her husband ; to that extent there was an assumption of an antecedent title of some (sic) though not backed by any legal right and thereupon she entered into a family arrangement acknowledging her son's claim and allotted the same to him as and for his share. "

10. In view of this finding in the present case, it is clear that at the time when the family arrangement was entered into, the parties genuinely and bona fide thought that the son, Thiagarajan, had the right to a half share in the properties left behind by Srinivasan and it was on that basis that the document of November 12, 1959, was brought into existence. In this view, there would be no gift liable to gift-tax because any allotment of the property to Thiagarajan was not without consideration. The result is, the question is answered in the affirmative and against the revenue. No costs.