
(1994) 01 MAD CK 0060

In the Madras High Court

Case No : Tax Case No. 1034 of 1981 (Reference No. 526 of 1981)

Commissioner of Gift-tax

APPELLANT

Vs

P.C. Varghese

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Gift Tax Act, 1958 — Section 5(1)

Citation : (1994) 207 ITR 180

Hon'ble Judges : Venkataswami, J;Rangarajan, J

Bench : Division Bench

Advocate : A.N. Rajeswari, for the Appellant;

Judgement

Rangarajan, J.—The admitted facts in this case are that the assessee settled certain properties on his minor son and two minor daughters by

a deed dated March 4, 1971. The document recited that the gift was for the purpose of education of the three children. The Appellate Tribunal

found that the boy was studying in the seventh standard and the probable expenses for school education, college education and post-graduate

education would come to Rs. 48,000. The first daughter was reading in the sixth standard and the probable expenditure was estimated at Rs.

55,600. The second daughter was studying in second standard and the expenditure for further education was estimated at Rs. 61,000. The

Appellate Tribunal confirmed the view of the Appellate Assistant Commissioner that the total amount of Rs. 1,12,178 should be allowed as

deduction u/s 5(1)(xii) of the Gift-tax Act. On these facts, at the instance of the Revenue, the following question has been referred :

Whether, on the facts and in the circumstances of the case, the computation of the capital value of the annual expenditure for the purposes of

providing education to the assessee's children in the sum of Rs. 1,12,178 is justified ?

2. Learned counsel for the Revenue drew our attention to the decision of the Bombay High Court in K.M. Sheth Vs. Commissioner of Gift-tax,

and contended that the education referred to in that section should be confined to higher education and specialised education and not the normal

education that any parent was expected to give to his children. We have gone through that decision and we find that on the facts it was found that

no portion of the gift was in fact for the education of the minor son in that case. The case is thus distinguishable on the facts itself. Even otherwise,

we are unable to share the opinion of the Bombay High Court which is based on the circular of the Central Board of Direct Taxes that the

reference to education meant in that section was only the higher or specialised education. This is because the property set apart to meet the

expenditure for educating the children really represents expenditure and cannot be regarded as a gift. In other words, the transfer of the property is

itself not without consideration to the extent to which the value of the property goes to meet the expenditure which the parent is obliged to meet.

That obligation is not confined to higher or specialised education and must include even the normal expenditure which any parent is expected to

meet. It is only to prevent the assessee from transferring larger amounts by camouflaging it as an amount set apart for meeting the education that

instructions had been given by the Central Board of Direct Taxes to the Assessing Officers to be alert and to see that the transfer is really meant for

meeting the educational expenses. Such instructions cannot have the effect of treating the actual expenditure as a gift. Even on the facts of this case,

we find that the children were already in school unlike the Bombay case where the child was two years old and the Appellate Tribunal also

considered the background of the assessee, his status and the type of education which was available and which was intended to be given to the

children. Since the Appellate Tribunal has taken into account all the relevant facts in coming to the finding of fact that the amount set apart was

really to meet the expenses of educating the children, we see nothing wrong in the conclusion that the amount of Rs. 1,12,178 was exempted u/s

5(1)(xii). Hence, we answer the question referred in the affirmative and against the Revenue. No costs.