(2002) 09 KL CK 0097

In the High Court Of Kerala

Case No : IT Ref. No. 88 of 1999

Commissioner of Gift Tax	APPELLANT
Vs	
P.M. Abraham and Others	RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:
Gift Tax Act, 1958 — Section 2, 3

Citation : (2003) 179 CTR 409 : (2004) 265 ITR 430

Hon'ble Judges : G. Sivarajan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; P.B. Sahasranaman and K. Jagadeesh, for the Respondent

Judgement

G. Sivarajan, J.—The following questions are referred u/s 26(1) of the GT Act, 1958, for decision at the instance of the Revenue:

"1. Whether, on the facts and in the circumstances of the case, was the Tribunal right in law and fact in finding that property gifted in this case cannot be viewed as a gift, within the meaning of the GT Act?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that whether the assessee is entitled to exemption u/s 5(1)(vii) of the GT Act does not arise?"

2. The matter arises under the GT Act, 1958 (hereinafter referred to as ''the Act''). The assessment year concerned is 1988-89. The respondent-assessee is an individual owning about 30 acres of rubber estate in Punalur. Out of the above, he had gifted one acre of rubber estate to his daughter at the time of her marriage as per a registered document No. 3562 of 1987, dt. 3rd Nov., 1987. For the asst. yr. 1988-89, the assessee filed a return of gift declaring a taxable gift of Rs. 20,000. The value of the property was shown in the document and in the return at Rs. 50,000 which was worked out at the rate of Rs. 500 per cent. The assessing authority did not accept the said valuation. He estimated the value of

the gifted property at Rs. 1,50,000. After giving the basic deduction allowable u/s 5 of the Act and the further deduction u/s 5(1)(vii) of the Act, the taxable gift was determined at Rs. 1,20,000 and raised a demand of Rs. 34,750. Being aggrieved by the said assessment, the assessee filed appeal before the Dy. CGT(A), Thiruvananthapuram. In the said appeal, the assessee, relying on the order of the Tribunal in Smt. Indira Devi v. GTO (GTA Nos. 12 and 34/Coch/86, dt. 13th May, 1991), contended that the gift in question is completely exempted from gift-tax. The appellate authority took the stand that the said decision was rendered in the context of the provisions of the Hindu law and that the said decision has no application in the case of a gift by a Christian father. The appellate authority also did not accept the contention regarding the value of the gifted property. The assessee filed second appeal before the Tribunal, Cochin Bench, and contended that the gift deed was executed in connection with the marriage of his daughter, that it was specifically stated in the gift deed that the marriage was fixed to be solemnised on 5th Nov., 1987, and that the property was gifted for the maintenance and future security of the daughter. It was also contended that there is a custom in the community of Marthoma Syrian Christians to give a share of the parental property to the daughter at the time of marriage even before the Supreme Court has declared the Travancore Christian Succession Act as inoperative. The assessee relied on the decision of this Court in Scariah Varghese v. Marykuty 1991 (2) KLJ 26 : (1991) 2 KLT 71 wherein it was specifically held that a Christian father has got the obligation to maintain the child. The assessee also relied on the decision of the Tribunal in Smt. Indira Devi''s case (supra). The Tribunal took the view that by gifting the property, the Christian father was discharging his obligation in connection with the marriage of his daughter and accordingly held that the gift in question is not exigible to tax under the Act.

3. The standing counsel for the Revenue submitted that the decision relied on by the Tribunal in Smt. Indira Devi''s case (GTA Nos. 12 & 34/Coch/86, dt. 13th May, 1991) had been reversed by this Court in Commissioner of Gift-tax Vs. Smt. B. Indira Devi, . The standing counsel further submitted that the decision of this Court in Scariah Varghese v. Marykutty mentioned above was not followed in view of the decision of a Full Bench of this Court in Commissioner of Income Tax Vs. P.M. Paily Pillai, . The counsel also relied on the decision in Commissioner of Gift-tax Vs. M.C. George, which clearly held that the obligation of the Christian father to maintain his daughter obviously ceases when he has given her away in marriage. The standing counsel accordingly submitted that the gift in question is exigible to tax under the Act and the Tribunal was not justified in holding to the contrary.

4. Shri P.B. Sahasranaman, the learned counsel appearing for the respondent - assessee, submits that there is a custom in the community of the Marthoma Syrian Christian to give properties to the daughter at the time of marriage and that the assessee had proved the said custom by producing a certificate from the Carmel Marthoma Church. He further relied on the decision of this Court in

Scariah Varghese v. Marykutty (supra) mentioned above. The counsel also submits that if for any reason the order of the Tribunal cannot be sustained since the Tribunal has not considered the question of valuation of the gifted property, the matter has to be sent back for considering the said question.

5. As already noted, the assessee had gifted one acre of rubber estate to his daughter at the time of her marriage, that he had valued the gifted property at Rs. 50,000 and filed a return of gift before the assessing authority. He did not raise any contention regarding the total exemption before the assessing authority. However, he had raised the question of exemption before the first appellate authority in view of the decision of the Tribunal in Smt. Indira Devi''s case (supra) and on the basis of the decision of this Court in Scariah Varghese''s case mentioned, (supra). The first appellate authority had distinguished the decision in Smt. Indira Devi''s case and held that the said decision was rendered in the context of a gift made by a Hindu mother to her daughter at the time of her marriage and that the said decision has no application to a case of gift made by a Christian father to his daughter at the time of marriage. It is relevant to note that the decision of the Tribunal in Smt. Indira Devi''s case was ultimately decided by this Court against the assessee and in favour of the Revenue in CGT v. Smt. Indira Devi (supra). In that case the assessee made a gift of her self-acquired property to her daughter on the event of daughter''s marriage. The GTO assessed the gift-tax. The assessee contended before the appellate authority that no gift of property was made by her voluntarily coming within the meaning of Section 2(xii) of the Act but the properties were gifted by her to her daughter to discharge a moral, if not legal, obligation to give her daughter in marriage and to provide for her comfortable living after marriage. The assessee also relied on the custom in her particular community. The Tribunal accepted the said contention. However, this Court held that the gift deed executed by the assessee in favour of her daughter to secure her future after marriage was not due to the legal obligation enjoyed by the assessee by virtue of Section 20 of the Hindu Adoption and Maintenance Act, but for other considerations and, therefore, the gift being voluntarily given, coming within the meaning of Section 2(xii) of the Act was liable to tax.

6. Again the question came up for consideration before this Court in CGT v. M.C. George (supra). In that case the assessee who is a Christian while marrying away his daughter, gifted to his daughter a sum of Rs. 85,001. He did not file a return under the Act in respect of the said gift. However, he filed a return pursuant to a notice issued u/s 16(1) of the Act and contended that it was not a gift as defined under the Act, that it was really a transfer of money to his daughter in consideration of the discharge of his obligation as a Christian father. The said contention was rejected by the assessing authority and by the first appellate authority. However, the Tribunal took the view that a Christian father was under a legal obligation to maintain his daughter and the discharge of such an obligation at the time of the marriage of the daughter did not amount to a gift exigible to tax. This Court elaborately considered the question with reference to

the various decisions of this Court including Scariah Varghese v. Marykutty (supra) and CGT v. Smt. Indira Devi (supra). This Court held that even going by the principles of justice, equity and good conscience enunciated in the decision in Scariah Varghese v. Marykutty (supra), the obligation of the Christian father to maintain his daughter obviously ceases when he has given her away in marriage and once the marriage takes place, the obligation to maintain her is that of her husband as is clear from the said decision. It was also observed that this Court in CGT v. Smt. Indira Devi (supra) held that the obligation of the Hindu father also ceases when the daughter is given in marriage and a gift made to her on marriage was exigible to tax under the Act. The Division Bench also observed that the decision of the learned Single Judge in Scariah Varghese v. Marykutty (supra) cannot be followed in the light of the clear pronouncement on the question by the Full Bench in the decision in CIT v. P.M. Paily Pillai (supra). The Division Bench accordingly held that the transfer of the sum of Rs. 85,001 by the assessee-father to his daughter could only be deemed to be a gift as defined in the Act.

7. Thus, it is clear that the question raised in this case is squarely covered by the decision in CGT v. M.C. George mentioned supra. Following the said decision, we answer the first question referred in the negative, i.e., against the assessee and in favour of the Revenue. Since the second question is only a facet of the first question which we have now answered, it is unnecessary for us to answer question No. 2 specifically. We thus decline to answer question No. 2.

8. In this case, the assessee has also challenged the valuation of the property which is the subject-matter of the gift. In view of the finding rendered by the Tribunal that the gift in question is not exigible to tax under the Act, the question of valuation was not considered by the Tribunal. Now that this question is answered against the assessee, it is necessary to direct the Tribunal to consider the question of valuation . In the above circumstances, we direct the Tribunal to consider the question of valuation while passing orders as contemplated u/s 26(1) of the Act.

