
(1977) 03 KL CK 0013

In the High Court Of Kerala

Case No : Income-tax Reference No. 42 of 1975

Commissioner of Gift Tax

APPELLANT

Vs

P.V. John

RESPONDENT

Date of Decision : 17-03-1977

Acts Referred:

Gift Tax Act, 1958 — Section 2, 5(1), 6

Citation : (1977) 2 ILR (Ker) 146 : (1977) 108 ITR 225

Hon'ble Judges : V.P. Gopalan Nambiyar, Acting C.J.; T. Chandrasekhara Menon, J

Bench : Division Bench

Advocate : P.A. Francis and P.K.R. Menon, for the Appellant; P.C. Chacko and P. Krishnamoorthy, for the Respondent

Judgement

Gopalan Nambiyar, Actg. C.J.

1. The following question of law has been referred by the Income Tax Appellate Tribunal, Cochin Bench, for our determination and opinion, viz. :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income derived from the gifted properties is not one of the circumstances to be taken note of in determining what would be the reasonable gift for the purpose of education of the donees u/s 5(1)(xii) of the Gift-tax Act, 1958?"

2. By four documents all dated December 1, 1969, the assessee made gifts of his immovable properties to his four children, viz., (1) Ranjit, studying in the IVth Standard, (2) Eapen studying in the S.S.L.C. Class, (3) George, studying for B.Sc., and (4) Miss. Annie John, studying for B.A. The assessee filed a gift-tax return wherein he showed the valuation of his property at Rs. 1,74,080. The entire sum was claimed to be exempted u/s 5(1)(xii) of the Gift-tax Act, on the ground that the gifts were for the education of his children. That they were to meet the educational needs of the donees had been expressly mentioned in the gift deed. The Gift-tax Officer accepted the purpose stated in the deed. But,

while allowing the deduction u/s 5(1)(xii) of the Act, he took into account the income earned from the property gifted. In the case of property gifted to Ranjit, he found it yielded an annual income of Rs. 1,800. He assessed the period of study for the purpose of education needed by Ranjit at fourteen years, for which period the income would amount to Rs. 25,200. The expenses to be incurred for education of the boy was calculated at Rs. 50,500. Deducting the income from the property from the estimated figure of expenses, the balance of Rs. 25,300 was regarded as a deduction u/s 5(1)(xii) of the Gift-tax Act. Similarly, in the case of Eapen, the income from the property during the period necessary for education was fixed at Rs. 14,400 and the expenses at Rs. 42,000. A deduction of Rs. 27,600 was allowed to make allowance for the income from the property. In respect of George, the gifted property did not fetch any income. So the entire expenses of Rs. 33,500 was allowed as deduction. In regard to Annie John the entire expenses of Rs. 17,000 estimated, was allowed as deduction, since the property gifted to her also did not fetch any income. In the assessment, the officer estimated the value of the gift at Rs. 2,43,500 and allowed a deduction of only Rs. 1,03,400 representing the total expenses calculated as allowable. The balance of Rs. 1,40,100 was taxed for the purpose of gift-tax. On appeal, the Appellate Assistant Commissioner enhanced the estimated amount required for educational purpose of all the donees to Rs. 1,69,080. He also reduced the valuation. As regards the claim for exemption he agreed with the assessee that the Gift-tax Officer erred in taking into account the income from the gifted properties. He was of the view that the income from the gifted properties is not an element forming part of "the circumstances of the case" to be taken into account for determining the reasonable amount allowable u/s 5(1)(xii). There was a further appeal by the department to the Appellate Tribunal. The contention of the department was that the income from the gifted properties during the period of the donees' education should also be taken into account for calculating the exemption u/s 5(1)(xii). The Tribunal was of the view that the gift-tax being levied on the corpus of the gifted property, the exemption is also related to the corpus of the property and the income derived from the gifted property as such, which was only incidental to that, is an irrelevant consideration. The Tribunal agreed with the Appellate Assistant Commissioner's reasoning for allowing the claim of the assessee u/s 5(1)(xii). It sent up the question of law referred to earlier for our opinion.

3. Section 2(xii) of the Gift-tax Act defines the expression "gift" as follows:

" "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that Section."

4. Section 2(xxii) defines the expression "property" as including any interest in property, movable or immovable. Section 2(xxiv) defines the expression "transfer of property". Section 3 is the charging section. Under that section, the tax is

levied in respect of gifts made by a person during the previous year at the rate or rates specified in the Schedule. Section 6 provides how the value of the gift is to be determined. It is as follows :

"6. Value of gifts how determined.--(1) The value of any property other than cash transferred by way of gift shall, subject to the provisions of Sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date of which the gift was made.

(2) Where a person makes a gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from the property gifted during the period for which the gift is not revocable.

(3) Where the value of any property cannot be estimated under Subsection (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner."

5. The contention of the assessee is that once the market value of the "property" as defined in Section 2(xxii) is determined, the computation of tax must be made with reference to its market value determined as indicated in Section 6; and, thereafter, no further additions such as the income derived from the property for a particular period or for all time, is possible or permissible, under the provisions of the statute. There is considerable force in this submission, having regard to the provisions of the sections referred to earlier, and the scheme provided for computing the tax payable on the transaction of gift. We are in agreement with it. For the revenue, reliance was placed on Section 5(1)(xii) of the Act, which gives the taxing Officer concerned the power to decide the extent to which gifts are proved to the satisfaction of the officer as being reasonable, having regard to the circumstances of the case. It was, therefore, contended that it was open and permissible to the officer to decide in this case whether the properties worth over Rs. 1,00,000 were necessary to be gifted to serve the educational purposes of the children spread over a number of years, as was to be reasonably expected. It seems a little odd to give to a taxing officer the power to decide the extent of property needed by a ward for educational purpose, to whom his parent or other fond donor had endowed property. But Section 5(1)(xii) gives this power to the tax gatherer, who, we are afraid, is bound to have a difficult task, to be discharged with great circumspection and care. It seems difficult for this court to lay down with precision, as pressed by counsel for the revenue, the guidelines to be applied in reckoning the extent of the property which can be said to be reasonable having regard to the "circumstances of the case". Discretion counsels us to leave the officer to his own resources, and to correct him where he is shown to be wrong. We are clear that the principle stated by the Tribunal that having evaluated the market value of the property, the income cannot thereafter be taken into account for assessing the gift-tax is correct on principle. We do not think, on the facts of this case, any further guidelines or principles by way of answer to the question is called for.

6. In the result, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the department.. In the circumstances of the case, we make no order as to costs.

7. A copy of this judgment under the signature of the Registrar, and the seal of the court will be communicated to the Tribunal as required by law.