
(1978) 08 AHC CK 0035
In the Allahabad High Court
Case No : Gift-tax Reference No. 430 of 1975

Commissioner of Gift Tax

APPELLANT

Vs

Ram Kishan

RESPONDENT

Date of Decision : 24-08-1978

Acts Referred:

Citation : (1979) 120 ITR 589

Hon'ble Judges : Satish Chandra, C.J;M.B. Farooqi, J

Bench : Division Bench

Advocate : A. Gupta, for the Appellant; R.A. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—The question of law referred for our consideration is:

" Whether the Tribunal was right in holding that no gift-tax is leviable in the present case ? "

2. The assessee is a HUF and the relevant assessment year is 1971-72. The assessee-HUF had 78 acres of agricultural land and the same was assessed as part of its wealth for the assessment year 1970-71. During the year in question Ram Kishan, the karta, executed six different documents called deeds of gifts in favour of each of his five sons and one widow of his pre-deceased son. The gift deeds were registered on 21st April, 1970. As a result of this an area of only 11 acres was left with the karta. The GTO effected the assessment treating the entire value of the subject-matter to tax. On appeal, the AAC annulled the assessment. The revenue moved a second appeal before the Tribunal. The Tribunal held that the transaction was a sort of family settlement by partial partition. By this the co-sharers in the family were allowed shares, though they were themselves co-owners. The documents could not hence be validly called gifts. The different portions of land were marked and were given to five sons and to the widow of a pre-deceased son. We have no hesitation in holding that the Tribunal has committed no error in holding that the transaction was one of family

settlement. In that view, the transfers could not validly be treated as deeds of gifts. In this view, it is not necessary to decide on the alternative plea that the karta of a HUF cannot gift his immovable property to his family members.

3. In the result, we answer the question in the affirmative, in favour of the assessee and against the department. The assessee is entitled to costs which are assessed at Rs. 200.