

(1969) 03 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 238 of 1965 (Reference No. 120 of 1965)

Commissioner of Gift Tax

APPELLANT

Vs

Rm. S. Ramanathan Chettiar

RESPONDENT

Date of Decision : 17-03-1969

Acts Referred:

Gift Tax Act, 1958 — Section 2

Citation : (1969) 74 ITR 758

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K. Srinivasan, D.S. Meenakshisundaram and R.C. Rajappa, for the Respondent

Judgement

Veeraswami, J.—We are of the view that the Tribunal's opinion requires no modification. It turns on whether a provision in the partition

deed dated February 8, 1959, for the payment of a sum of Rs. 50,000 to the wife of the karta of the joint family amounted to a gift dutiable under

the Gift-tax Act, 1958. The Gift-tax Officer and the Appellate Assistant Commissioner were divided in their view ; but the Tribunal concurred with

the latter. At the instance of the Commissioner the reference is before us, the question being :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the provision of Rs. 50,000

made in the course of a partial partition of joint family assets was for the maintenance of the karta's wife and that it was not a gift within the

meaning of Section 2(xii) read with Section 2(xxiv) of the Gift-tax Act ?

2. The question itself contains, in brief, the relevant facts : but, in more detail, the assessee was a Hindu undivided family in respect of the

assessment year 1959-60 with which we are concerned. The family consisted, at the time, of the father, who was the karta, and his two sons, of whom one was a major. The female members of the family were the wife of the karta and his daughter. On February 8, 1959, the family decided to have a partial partition at which the yarn and money-lending business valued at Rs. 5,78,818 was partitioned. The terms thereof reduced to writing said that a provision was made in the name of the karta's wife for payment of a sum of Rs. 50,000 to be expended by her at her discretion. There was also set apart a sum of Rs. 10,000 in favour of the karta's daughter, for her marriage expenses. Though, before the revenue and the Tribunal, several points were raised and decided, it suffices, for purposes of the disposal of this reference, to make an enquiry whether the payment of the sum of Rs. 50,000 to the karta's wife was for consideration, as has been opined by the Tribunal. If that is right, no further question can arise.

3. The revenue says that, having regard to the actual words employed providing for the payment of Rs. 50,000 to be expended by the karta's wife in her discretion, it should be construed to be a gift. It is pointed out that the provision was not expressly towards maintenance, and any sum which the family gave to be spent by her as she liked cannot be, regarded as anything but a gift, and to say it was for maintenance would be adding to the words. We are not prepared to uphold this view. Obviously, the family was engaged in partial partition of the assets of the family, at which the members who were entitled either to a share or to any other right in the form of maintenance participated. It is important to bear in mind that no stranger was she, so that a payment to her can easily be considered to be a gift. The karta's wife certainly had a status in the family which entitled her to be maintained out of the coparcenary property. It is true that, unlike in the old Hindu law, she is not entitled to a share in the coparcenary property. But her right is to maintenance, which is, in a sense, in lieu of her pristine share, a share which no longer exists. It is not to say that the right to maintenance, so long as it is not quantified, is anything more than a spes. Even so, it is a right which the family member could enforce against the family property. It is, therefore, not difficult to see that, when a provision was made for payment of Rs. 50,000, it was out of regard for

her right of maintenance in the family. We are not here concerned with the question whether the payment was in discharge of her entire right to maintenance or only a partial fulfilment of the obligation. That is another matter. The Tribunal rightly looked to the other terms in the partition, more especially to the one setting apart Rs. 10,000 for the daughter's marriage, in forming the opinion that the payment of Rs. 50,000 to the karta's wife was for consideration and it could not, therefore, amount to a gift.

4. But it is argued, with reference to Section 2(xii) that, even if the payment was for consideration, it was not one within the phraseology of that sub-section. It is said that the consideration for the payment was not in money. That is obvious enough, Nextly it is said that it is not even in money's worth. We are of the view that this argument should equally fail; for, the obligation of the family to maintain the karta's wife eventually is reducible to terms of money or money's worth. "" Money's worth "", in the sub-section, has a wide connotation and is not necessarily to be understood in the strict context of money in specie. That which could eventually or in the ultimate analysis or result be reduced to or converted into money can well be called as something having money's worth. In that sense, the payment had clearly the effect of giving quittance pro tanto to the family obligation to maintain the karta's wife, and such consideration is in money's worth.

5. We answer the question against the revenue with costs. Counsel's fee Rs. 250.