(1977) 10 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 109 of 1974 (Reference No. 2 of 1974)

Commissioner of Gift Tax APPELLANT

Vs

R.R. Sarma RESPONDENT

Date of Decision : 07-10-1977

Acts Referred:
Gift Tax Act, 1958 — Section 2

Citation : (1978) ILR (Mad) 31 : (1978) 111 ITR 70

Hon'ble Judges : P. Govindan Nair, C.J;A. Varadarajan, J

Bench : Division Bench

Advocate : Nalini Chidambaram, for the Appellant; None, for the Respondent

Judgement

Govindan Nair, C.J.—The question referred by the Appellate Tribunal to this court for our opinion in relation to the assessment years 1967-

68, 1968-69 and 1969-70 reads as follows ;

Whether, on the facts and in the circumstances of the case, it has been rightly held that the insurance premia paid by the assessee could not

constitute gift ?

2. The assessee had taken two policies of insurance on his life, one for a lakh of rupees and the other for Rs. 25,000. The amounts paid by way of

insurance premia during the assessment years 1967-68, 1968-69 and 1969-70, respectively, were Rs. 12,102, Rs. 7,287 and Rs. 7,287. In

deciding the amount on which gift-tax should be imposed for the three years, the assessing authority reached the figures of Rs. 20,246, Rs. 15,431

and Rs. 10,431 for the three years by including in each of those years the insurance premia paid by the assessee which we mentioned earlier.

Though the assessee contested this inclusion before the Appellate Assistant

Commissioner, he did not succeed before him. But, on appeal, the

Appellate Tribunal accepted the assessee''s contention that the insurance premia on his own policies would not amount to a gift to the wife and the

question that has been referred for our opinion turns on the question whether the view taken by the Tribunal that the assessee''s contention is well-

founded is correct or not.

3. We agree with the view taken by the Appellate Tribunal. Though the wife is the nominee under the policy and so the person entitled ultimately to

receive the benefit of the policy in the event of death or on its maturity, the obligation to pay the insurance premia to the insurance company

remained with the assessee and he was merely discharging that obligation as a result of the contract between him and the insurance company and

by no stretch of imagination can the amounts paid in discharge of the obligation in a contract of insurance be said to be a gift made to the nominee

of the insurance policy. No doubt, if the nomination was not cancelled, the wife would have become entitled to the benefits of the insurance policy

on the happening of either of the events which we have mentioned above provided no alteration had been made regarding the nomination. But, that

has nothing to do with the question as to whether the premia paid will amount to a gift or not. To constitute a gift, there must be an immediate

transfer of property which was the subject-matter of the gift by the donor to the donee. No such thing happened in this case. We, therefore,

answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. We direct the parties to bear their

respective costs, since the assessee did not care to enter appearance before this court.

