
(1987) 09 RAJ CK 0030
In the Rajasthan High Court
Case No : Gift-tax Reference No. 21 of 1980

Commissioner of Gift-tax

APPELLANT

Vs

Sah Roop Narain

RESPONDENT

Date of Decision : 16-09-1987

Acts Referred:

Gift Tax Act, 1958 — Section 2, 4(1)

Citation : (1988) 169 ITR 794 : (1987) RLW 705

Hon'ble Judges : J.S. Verma, C.J.; I.S. Israni, J

Bench : Division Bench

Advocate : R.N. Surolia, for the Appellant; N.M. Ranka, for the Respondent

Judgement

J.S. Verma, C.J.—This is a reference u/s 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as "the Act"), at the instance of the Commissioner for decision of the following questions of law, namely :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the execution of the release deed in question is a unilateral act and as such, it is not a transfer within the meaning of Section 2(xxiv) of the Gift-tax Act, 1958 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the execution of the release deed in question is not a gift within the meaning of Section 2(xii) of the Gift-tax Act, 1958?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the release deed in question is a bonafide one and as such, it is not hit by Section 4(1)(c) of the Gift-tax Act, 1958?"

2. The relevant assessment year is 1973-74. By a will dated January 15, 1951, executed by Mohan Lal Sanghi, father of Smt. Ayodhya Kumari, wife of Sah Roop Narain, the assessee, the testator bequeathed his properties at Kota comprising of Brij Talkies, Mohan Kutir and Mohan Mansion in favour of Anil Kumar, son of

Smt. Ayodhya Kumari, and Sah Roop Narain, while giving his daughter, Smt. Ayodhya Kumari, and her husband, Sah Roop Narain, the life interest to enjoy the income from these properties without having any right to alienate or encumber the same in any manner. For the assessment years 1963-64 to 1971-72, the assessment was completed in the case of Anil Kumar including the value of these properties treating them as his properties. It appears that an objection was taken to the failure to tax the income from these properties in the hands of Sah Roop Narain and his wife, Smt. Ayodhya Kumari. Accordingly, the Wealth-tax Officer commenced proceedings against them. It then transpired that Sah Roop Narain and his wife, Smt. Ayodhya Kumari, had executed a release deed dated May 27, 1972, under which they had given up their right to enjoy the income from these properties declaring categorically that Anil Kumar, who was the owner of these properties, would also be entitled to enjoy the income thereof.

3. The assessee, Sah Roop Narain, did not include the value of the life interest to enjoy the income from these properties in the gift-tax return and a mention of this fact of relinquishing the same in this manner was made. The Gift-tax Officer wrote a letter dated December 15, 1975, to the assessee saying that this release deed amounted to a gift in favour of Anil Kumar of the life interest of the assessee to enjoy the income from the properties and, as such, the value of the life interest was taxable in the hands of the assessee. The assessee sent a reply dated February 2, 1976, stating that the unilateral act of the assessee was bona fide and it merely accelerated the right of Anil Kumar, who was the owner of the properties, to also enjoy the income therefrom from the date of relinquishment by the assessee. It was also pointed out that Anil Kumar was already in possession of the properties and had been enjoying the income accordingly. The Gift-tax Officer held that the assessee's right to enjoy the income from the properties as a result of the relinquishment by him constituted a gift u/s 2(xii) of the Act and in the alternative it was a deemed gift u/s 4(1)(c) of the Act. Accordingly, the Gift-tax Officer determined the value of this life interest of the assessee at Rs. 3,23,394 and after allowing the exemption held the same to be taxable under the Act.

4. The assessee's appeal to the Appellate Assistant Commissioner succeeded. The Appellate Assistant Commissioner held that this relinquishment by the assessee was a bona fide transaction ; that the transaction was not a gift u/s 2(xii) of the Act ; and that it was also not a deemed gift u/s 4(1)(c) of the Act. Accordingly, the Appellate Assistant Commissioner held that the Gift-tax Officer was not justified in treating it as a gift taxable under the Act. The Tribunal has affirmed the view of the Appellate Assistant Commissioner and dismissed the Revenue's appeal. The Tribunal has held that the release deed executed by the assessee and his wife, Smt. Ayodhya Kumari, is a unilateral act, whereby they have abandoned their life interest to enjoy the income from the property ; that it is not a "transfer of property" as denned in Section 2(xxiv) of the Act or a "gift" within the meaning of Section 2(xii) of the Act. The Tribunal also gave detailed reasons to hold that this act of relinquishment by the assessee and his wife is

genuine with no element to indicate that it was otherwise. It was held that this action had merely accelerated Anil Kumar's right in the property as its owner and the transaction being bona fide it was not even a "deemed gift" u/s 4(1)(c) of the Act. Hence, this reference at the instance of the Revenue.

5. The contention of learned counsel for the Revenue is that the act of relinquishment by the assessee and his wife was not unilateral in character, but a bilateral act inasmuch as Anil Kumar by his conduct had accepted the same, even though execution of the release deed was merely by the assessee and his wife and not by Anil Kumar. He argued that it was a case of "transfer of property" as defined in Section 2(xxiv) amounting to a "gift" as defined in Section 2(xii) of the Act. He also contended that the transaction was not bona fide, since the release deed was executed merely to circumvent an objection which had been taken. On this basis, he argued in the alternative that it was a "deemed gift" u/s 4(1)(c) of the Act. In reply, learned counsel for the assessee referred to certain legislative changes made in the relevant statutory provisions to contend that it is only by virtue of Clause (e) inserted in Sub-section (1) of Section 4 of the Act by the Finance Act, 1980, with effect from April 1, 1980, that such a transaction can be treated as a gift taxable under the Act, but not prior to the assessment year 1980-81 when this newly inserted Clause (e) was not available. He also contended that the release deed executed by the assessee and his wife was a unilateral act and not a "transfer of property" according for Section 2(xxiv) amounting to a "gift" as defined in Section 2(xii) of the Act. He also argued that in the face of a clear finding that the transaction was bona fide, there was no scope for treating it as a "deemed gift" u/s 4(1)(c) of the Act in the alternative as contended by the Revenue. In our opinion, the assessee's contention has to be accepted.

6. We may first refer to the legislative changes made by the Finance Act, 1980, with effect from April 1, 1980, which are available as an aid to construction of the statutory provisions, prior to these changes relied on by the Revenue. The relevant statutory provisions together with the amendments made therein read as under :

"2. In this Act, unless the context otherwise requires,---...

(xii) "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) ;...

(xxiv) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes-

(a) the creation of a trust in property ;

(b) the grant or creation of any lease, mortgage, charge, easement, licence,

power, partnership or interest in property ;

(c) the exercise of a power of appointment (whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made) of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power ; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person ;"

"4. (1) For the purposes of this Act,--...

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been bona fide, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

(e) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount by which such value exceeds the consideration received, shall be deemed to be a gift made by such person."

7. A bare perusal of Clause (e) of Sub-section (1) of Section 4, inserted by the Finance Act, 1980, with effect from April 1, 1980, and applicable from the assessment year 1980-81 clearly shows that where a person who has an interest in property for life and surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated, the transaction is deemed to be a gift made by such person of the amount by which such value exceeds the consideration, if any, received in the transaction. In a case like the present where the assessee and his wife have surrendered or relinquished their interest in property for life, the transaction shall be deemed to be a gift u/s 4(1)(c) inserted with effect from April 1, 1980, but the same was not available during the relevant assessment year 1973-74 with which we are concerned. This distinct enacting provision inserted by the Finance Act, 1980, with effect from April 1, 1980, is a clear indication of the legislative intent and indicates that the other material provisions existing prior to the insertion of this provision with effect from April 1, 1980, did not take within their ambit a transaction like the present for which Clause (e) now makes a specific provision. There is also a corresponding amendment made in Sub-clause (c) of Clause (xxiv) of Section 2 of the Act. The objects and reasons for these amendments in the Gift-tax Act

appearing in paragraph 42.1 at page 48 of the Statutes part of [1981] 131 ITR supports this conclusion. It clearly mentions that to overcome the decision of the Bombay High Court in Commissioner of Gift-tax, Bombay City-I Vs. Jer Mavis Lubimoff, , and to plug the lacunae pointed out in this decision, these two amendments were made in the Gift-tax Act by amending Sub-clause (c) of Clause (xxiv) of Section 2 and the insertion of a new Clause (e) under Sub-section (1) of Section 4 of the Act. It is also significant that earlier the existing Sub-section (2) was inserted in Section 4 of the Act in a similar situation and a corresponding amendment was made in Clause (xii) of Section 2 of the Act to overcome the decision of the Supreme Court in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, , in which it had been held that the throwing into the common hotchpot of the Hindu undivided family of self-acquired property by a coparcener was not a gift under the Act, since it was a unilateral act which did not amount to transfer of property and it did not even require the acceptance by the other members of the Hindu undivided family. Accordingly, by the Finance Act, 1971, Sub-section (2) was inserted with effect from April 1, 1972, along with the corresponding amendment in Clause (xii) of Section 2 to treat such a transaction as a gift. A similar difficulty arising as a result of judicial decisions, particularly the above Bombay High Court decision led to insertion of Clause (e) in Sub-section (1) of Section 4 and the corresponding amendment in Clause (xxiv) of Section 2 of the Act by the Finance Act, 1980, with effect from April 1, 1980.

8. In our opinion, the above legislative history of the relevant statutory provisions clearly supports the conclusion that a transaction like the present one is not a "gift" as defined in Clause (xii) of Section 2 and it is not a "transfer of property" within the meaning of that expression in Clause (xxiv) of Section 2 as the provisions stood prior to the amendments made by the Finance Act, 1980, with effect from April 1, 1980.

9. The Bombay High Court decision in Commissioner of Gift-tax, Bombay City-I Vs. Jer Mavis Lubimoff, was a case where the assessee executed a deed of release by which she relinquished her life interest and all other rights under the settlement by a document unilaterally executed. It was held that it did not amount to a "disposition" under Sub-clause (c) or "transaction" under Sub-clause (d) of Clause (xxiv) of Section 2 and was, therefore, not a "transfer of property" within the meaning of Section 2(xxiv) nor a "gift" within the meaning of Section 2(xii) of the Act. It was also held that in view of the clear finding of fact that the execution of the deed of release was bona fide, the deeming provision u/s 4(1) (c) also did not apply. This decision was based on the Supreme Court decision in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, We have already indicated that both these decisions led to certain legislative changes accepting the construction of the statutory provisions made therein as correct. In Commissioner of Gift-tax, Gujarat Vs. Ansuya Sarabhai-(Decd), , the same view was taken following the said Supreme Court and Bombay High Court decisions. That too was a case in which the life interest in various shares which were settled

in trust by the original settlor was relinquished in favour of the beneficiary specified by the settlor. It was held that the result was that the interest of the remainderman under the original deed of settlement got accelerated on account of self-effacement resorted to by the releasor, i.e., the assessee. It was held that the release deed did not effect any gift between the parties as contemplated by Clause (xii) read with Clause (xxiv) of Section 2 of the Act. It was further held that there being no positive finding that the transaction was not a bona fide one, it was not a "deemed gift" within the meaning of Section 4(1)(c) of the Act. Similar is the view taken in *N.G.E.F. Ltd. Vs. Collector of Central Excise, Bangalore*, the facts of which were similar to the present case. A similar release deed was executed relinquishing life interest in the property which was to enjoy the usufruct of that property during the lifetime of the assessee after which the property was to devolve on her children. The assessee executed a release deed giving up her life interest in the said property in favour of her children. It was held that the release deed could not be considered to be a "gift" as defined in Clause (xii) of Section 2 of the Act. It is significant that in this decision the insertion of Clause (e) in subsection (1) of Section 4 by the Finance Act, 1980, with effect from April 1, 1980, was referred to support this conclusion and it was added that the conclusion would have been different if Section 4(1)(e) was applicable to the case. However, the relevant assessment year involved being prior to the insertion of Clause (e), the benefit of Clause (e) was held to be not available. It was further held that there being no finding that the release deed was not executed bona fide by the assessee in favour of her children, the same could not be treated as a "deemed gift" u/s 4(1)(c) of the Act. It is also clear from these decisions that the conclusion reached by us is supported by adequate authority on the point. The decisions cited by learned counsel for the Revenue are not directly on the point and, therefore, they do not require any consideration.

10. As already indicated, Section 4(1)(c) is also not available to the Revenue because of a clear finding by the Tribunal that execution of the release deed was bona fide.

11. Consequently, the reference is answered against the Revenue and in favour of the assessee by holding that the Tribunal's view was justified on all these points and all the three questions are answered in the affirmative. No costs.