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**(1979) 08 AHC CK 0034**  
**In the Allahabad High Court**  
**Case No : Gift-tax Reference No. 390 of 1977**

Commissioner of Gift-tax

APPELLANT

Vs

S.B. Sugar Mills

RESPONDENT

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**Date of Decision :** 03-08-1979

**Acts Referred:**

Gift Tax Act, 1958 — Section 2, 21, 3

**Citation :** (1979) 120 ITR 126

**Hon'ble Judges :** R.R. Rastogi, J;C.S.P. Singh, J

**Bench :** Division Bench

**Advocate :** R.K. Gulati and Ashok Gupta, for the Appellant; V.S. Saxena, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

C.S.P. Singh, J.—The Income Tax Appellate Tribunal, Delhi Bench D, has referred the following question for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, and on a proper interpretation of the provisions of the Gift-tax Act, 1958, no gift-tax assessment could be made on the firm ?"

2. The facts necessary for answering the question are short :

The assessee manufactures crystal sugar by the sulphuration process. Press-mud is a by-product obtained in the process of manufacture, and is used as a manure for sugarcane crops. During the four assessment years to which this reference relates the assessee-firm supplied press-mud to Mohan Orchards free of cost. The GTO treated the supply of press-mud as a gift made by the firm to Mohan Orchards, and taxed the value thereof. An appeal was filed by the assessee wherein it was contended that as the assessee was a firm it did not fall within the ambit of Section 3 of the Act and no tax could be levied in respect of the supply of press-mud made by it. This contention was not accepted. On an appeal to the Tribunal, the view was taken that a firm did not come within the description of "

person " as defined in Section 2(xviii) of the Act, and as such no tax could be levied u/s 3 of the Act.

3. Thus, the only question that falls for consideration is as to whether a gift made by a firm is liable to be taxed u/s 3. Section 3 makes all gifts chargeable to tax from the 1st day of April, 1958, made by a person during the previous year, at the rate specified in the Schedule to the Act. The word " person " has been defined in Section 2(xviii) of the Act in the following terms :

" "Person" includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not."

4. Sri V.S. Saxena appearing on behalf of the assessee contested that as the word "firm" has been separately defined in Section 2(xi) and has not been specifically included in the definition of the word " person " in Section 2(xviii), Section 3 should be read so as not to include a firm. We are unable to accept this argument for a variety of reasons. To begin with, the definition of the word "person" in Section 2(xviii) is not an exhaustive one, and the categories specified after the word "includes" in that section do not exhaust the category of other persons, who answer the description of a " person ". This apart, a firm is not a separate legal entity, under the general law, but is the collective name of a body of persons, who have entered into a partnership. This being so, a firm would fall within the category "body of individuals or persons whether incorporated or not" as contained in the later part of Section 2(xviii). In the case of M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, , the Supreme Court interpreting the definition of the word "person" in Section 2(9) of the Indian I.T. Act, 1922, which reads " person includes a Hindu undivided family and local authority " held that the definition was wide enough to apply to a firm. It is useful to point out that in the Indian I.T. Act, 1922, the word " firm " had been separately defined as in the G.T. Act. There is another consideration which settled the controversy in favour of the department. It is a settled rule of interpretation that the provisions of a statute must be harmoniously construed and an interpretation should be avoided which renders the other provisions otiose. When one turns to Section 21 of the Act, it provides for liability for tax in the case of a discontinued firm or association of persons. In case the legislative intent was to exclude firms from the purview of Section 3, it was pointless to enact Section 21. Thus, reading Sections 3 and 21 of the Act, it is amply clear that the legislature contemplated a tax in respect of gift made by a firm.

5. The view to the contrary taken by the Tribunal does not appear to be correct.

6. The question referred to us is answered in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, which is assessed at Rs. 200.