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**(1990) 06 BOM CK 0084**

**In the Bombay High Court**

**Case No : Gift-tax Reference No. 13 of 1976**

Commissioner of Gift Tax

APPELLANT

Vs

Seth Arvind N. Mafatlal

RESPONDENT

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**Date of Decision : 04-06-1990**

**Acts Referred:**

Gift Tax Act, 1958 — Section 2

**Citation :** (1990) 184 ITR 580 : (1991) 55 TAXMAN 101 : (1991) 54 TAXMAN 60

**Hon'ble Judges :** T.D. Sugla, J; Sujata V. Manohar, J

**Bench :** Division Bench

**Advocate :** G.S. Jetley, for the Appellant; Dilip Dwarkadas, for the Respondent

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## **Judgement**

Mrs. Sujata Manohar, J.—The assessee, for the assessment years 1968-69 and 1969-70, paid a premium of Rs. 3,606 in respect of two policies of insurance on his life which were taken out under the provisions of the Married Women's Property Act for the benefit of his two sons. The premium so paid was charged to gift-tax by the Gift-tax Officer. The assessee preferred an appeal before the Appellate Assistant commissioner who upheld the decision of the Gift-tax Officer. In a further appeal before the Tribunal, the Tribunal has held that the premium paid by the assessee in respect of these two insurance policies taken out under the provisions of the Married Women's Property Act were not gifts made by the assessee to the beneficiaries of the policy. The Tribunal upheld the assessee's contention and deleted the additions made in both the years of these premia amounts. From this decision, the following common question is referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the premia of Rs. 3,606 paid by the assessee under the Married Women's Property Act during the accounting periods relevant to the assessment years 1968-69 and 1969-70 were not gifts made to the beneficiaries of the policies and were not without consideration ?"

2. Mr. Jetley who appears for the applicant has, very fairly, drawn our attention to a decision of the Madras High Court in the case of Commissioner of Gift Tax Vs. R.R. Sarma, . In that case, the wife of the assessee was a nominee under a policy of life insurance taken out by him. The Madras High Court held that the obligation to pay the insurance premia remains with the assessee. He was merely discharging that obligation as a result of the contract between him and the insurance company. The court said that, by the 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. The same ratio would apply to the present case.

3. The policy of insurance in the present case is deemed to be a trust created for the benefit of the assessee's children, but that does not make the payment of each and every premium by the assessee to kept alive the policy of insurance a gift made by the assessee to the beneficiaries of the insurance policies.

4. We agree with the reasoning and conclusion of the Tribunal, the question, therefore, is answered in the affirmative and in favor of the assessee.

5. There will be no order as to costs.