

(1971) 05 KAR CK 0002

In the Karnataka High Court

Case No : Tax Referred Case No. 9 of 1968

Commissioner of Gift Tax

APPELLANT

Vs

V. Ramachandra Bhat

RESPONDENT

Date of Decision : 24-05-1971

Acts Referred:

Gift Tax Act, 1958 — Section 26 (1)

Citation : (1972) 84 ITR 703

Hon'ble Judges : Mohammad Sharif, J;G.K. Govind Bhat, J

Bench : Division Bench

Advocate : S.R. Rajashekhara Murthy, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Govinda Bhat, J.—This is a reference u/s 26(1) of the Gift-tax Act, 1958, hereinafter called "the Act". The assessee was a member of a Hindu undivided family. He had acquired by his personal exertions a good deal of property both movable and immovable. By a deed dated November 16, 1963, the assessee declared two of his self-acquired properties to the properties of the Hindu undivided family consisting of himself, his three sons and his wife and by the same deed one of the properties known as "Ashok Hotel" was partitioned among the members of the family. The Gift-tax Officer, Hubli, called upon the assessee to file a return under the Act. The assessee filed a return showing nil gift but declared Rs. 86,953 in Annexure "I". The assessee contended before the Gift-tax Officer that the unilateral declaration of a Hindu coparcener, whereby he throws his self-acquired property into the common stock of joint family property does not amount to a transfer so as to attract the provisions of the Act. The Gift-tax Officer overruled the contention of the assessee and assessed tax following the decision of the Andhra Pradesh High Court in Commissioner of Gift-tax v. C. Satyanarayanamurthy.

2. On appeal preferred by the assessee, the Appellate Assistant Commissioner held that no tax was leviable under the Act, following the decision of this court in

D. H. Nazareth v. Gift-tax Officer, wherein this court has held that the Gift-tax Act is unconstitutional so far as it purports to impose tax on gifts of immovable properties. Against the said order of the Appellate Assistant Commissioner, the department preferred an appeal to the Income Tax Appellate Tribunal, Bombay Bench "C". Before the Tribunal, the assessee relied on the decision in Nazareth's case and also the decision in Laxmibai Narayanarao Nerlekar v. Commissioner of Gift-tax delivered on January 12, 1967, in T. R. C. No. 3 of 1963. That is a decision of this court wherein it was held that the act of throwing the self-acquired property by a member of a Hindu undivided family into the common hotchpot does not amount to a transfer so as to attract tax under the Act. Thereafter, on the application made by the revenue, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, it was rightly held that the gift of the immovable and movable properties was not liable to gift-tax for the assessment year 1964-65 ?"

3. The above question required to be recast having regard to the facts of the case which we have set out above. The main contention of the assessee before the Gift-tax Officer which was also accepted by the Tribunal was that the act of throwing the separate property by a member of a Hindu undivided family into the common hotchpot does not amount to a transfer and therefore it cannot amount to a gift so as to attract tax under the Act. That contention was also supported by a decision of this court. But, while referring the question, the Tribunal has assumed that the act of the assessee in declaring his separate properties as joint family properties amounts to gift of movable and immovable properties. Since the question referred does not reflect the real controversy between the parties, we recast the question thus :

"Whether, on the facts and in the circumstances, it was rightly held that there was no gift of the movable and immovable properties liable to gift-tax for the assessment year 1964-65 ?"

4. It has to be observed that the decision of this court in Nazareth's case has been reversed by the Supreme Court in Second Gift-tax Officer v. Nazareth but that question is really not relevant in view of the decision of the Supreme Court which has affirmed the view taken by this court in Nerlekar's case. In Goli Eswariah v. Commissioner of Gift-tax, the Supreme Court has reversed the decision of the Andhra Pradesh High Court relied on by the Gift-tax Officer. The Supreme Court has affirmed the view taken by this court in Nerlekar's case.

5. In view of the decision of the Supreme Court in Goli Eswariah's case, it is clear that the unilateral declaration of a Hindu coparcener, whereby he throws his self-acquired property into the common stock of joint family property, does not amount to a transfer so as to attract the provisions of the Act. Therefore, we answer the question in favour of the assessee and against the department as follows :

"That, on the facts and in the circumstances of the case, it was rightly held that there was no gift of the movable and immovable properties liable to gift-tax for the assessment year 1964-65."

6. The assessee is entitled to costs of this reference. Advocate's fee Rs. 250.