**(2003) 03 KL CK 0028**

**In the High Court Of Kerala**

**Case No :** Income-tax Reference No. 164 of 1999

Commissioner of Gift-tax APPELLANT

Vs

V. Sundaram Achari RESPONDENT

**Date of Decision :** 05-03-2003

**Acts Referred:**
Hindu Adoptions and Maintenance Act, 1956 — Section 20, 3

**Citation :** (2004) 190 CTR 203 : (2004) 266 ITR 681

**Hon'ble Judges :** J.M. James, J;G. Sivarajan, J

**Bench :** Division Bench

**Advocate :** P.K.R. Menon and George K. George, for the Appellant; K. Anand and Latha Krishnan, for the Respondent

# Judgement

G. Sivarajan J.

1. This is a reference u/s 26(1) of the Gift-tax Act, 1958 (for short "the Act"), at the instance of the Revenue. The following questions are referred for decision of this court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that there is no taxable gift in this case?

(2) Whether, on the facts and in the circumstances of the case, and in the light of the decision of the Kerala High Court in Indira Devi [1998] KLJ (Taxman) 352, the Tribunal is right in law in arriving at the findings and the conclusion reached in paragraphs 5 and 6 of its order ?

(3) Whether, on the facts and in the circumstances of the case, is not the gift exigible to gift-tax and the assessee entitled only to an exemption u/s 5(1)(vii) of the Gift-tax Act ?"

2. The brief facts necessary for decision of this case are as follows. The respondent-assessee is a goldsmith. He gave 51 sovereigns to his daughter, Jayalakshmi, at the time of her marriage, the value of which came to Rs. 73,174.

 

Pursuant to a notice issued by the Gift-tax Officer, the assessee filed a nil return. The assessee contended that he has given the 51 sovereigns to his daughter at the time of her marriage as a part of his obligation under the Hindu Adoptions and Maintenance Act, 1956 (for short "the Adoption Act"), and therefore, there is no gift exigible to tax under the Act. This was not accepted by the Gift-tax Officer, who noted that the assessee gave a sworn statement before the Assistant Director, Income Tax (Investigation), Kottayam, wherein he had stated that he gave 51 sovereigns to his daughter, Jayalakshmi, at the time of her marriage, and observed that the above statement clearly proved that the entire 51 sovereigns were gifted at the time of marriage. He, accordingly, assessed the sum of Rs. 73,174, representing the value of 51 sovereigns, to gift-tax after giving the exemption available u/s 5(1)(vii) of the Gift-tax Act. Being aggrieved by the said order, the assessee filed appeal before the Deputy Commissioner of Gift-tax (Appeals), who, by his order dated August 30, 1994, allowed the said appeal. In appeal by the Department, the Tribunal confirmed the same. Hence, this reference.

3. Shri P. K. R. Menon, senior Central Government standing counsel appearing for the Revenue, submits that the gift in the instant case is not covered by the provisions of Section 3(b) of the Adoption Act. Senior counsel, with reference to the provisions of Section 3(b)(i) of the said Act, submits that it is only the expenses, which are incurred and incidental to the marriage of the daughter alone, that can be roped within the purview of the said section and that any gift given to the daughter at the time of marriage cannot be included.

4. Learned counsel appearing for the assessee, on the other hand, submits that reasonable expenses of and incidental to marriage provided in Section 3(b)(ii) of the Adoption Act necessarily includes gold ornaments, given at the time of marriage of the daughter for being worn by her on the occasion of the marriage. Counsel also submitted that it is customary among Hindus to give gold ornaments to the daughter on the occasion of the marriage, which is a necessary expense to be incurred by the father according to his capacity, and therefore, the giving of gold ornaments at the time of marriage of a daughter is a legal obligation of the father under the provisions of the Adoption Act. It is in these circumstances, learned counsel submits that there is no gift involved in such a transaction. Section 20 of the Hindu Adoptions and Maintenance Act, 1956, reads thus :

"20. Maintenance of children and aged parents.--(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried

 

daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

5. Section 3(b)(ii) of the said Act, reads :

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

(b) ''maintenance'' includes--. . .

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage ;"

6. Under the provisions of Section 20 read with Section 3(b)(ii) of the Adoption Act a Hindu is bound during his life time to maintain his legitimate or illegitimate children, and if the Hindu father fails to maintain his legitimate or illegitimate children, they can claim maintenance from their father. Similarly, the obligation of the father to maintain a daughter, who is unmarried, extends, in so far as she is unable to maintain herself, to her marriage. Maintenance provided in Section 20 also takes in reasonable expenses of and incidental to her marriage. Admittedly, the assessee gave 51 sovereigns to his unmarried daughter, at the time of her marriage. The question is as to whether this gift of 51 sovereigns to the unmarried daughter can be treated as a reasonable expense of or incidental to her marriage. Ordinarily, so far as the father is concerned, when a daughter is given in marriage, as per the custom prevailing in every community, be it Hindus, Christians or Muslims, there is an obligation to give gold ornaments to the daughter at the time of marriage for being worn by the daughter. From the point of view of a father, whatever expenses are incurred, which are having a direct connection with the marriage, are expenses of and incident to the marriage. When Section 3(b)(ii) of the Adoption Act says that maintenance includes, in the case of an unmarried daughter, also reasonable expenses of and incident to her marriage, necessarily it will mean that the gold ornaments, which are given to the daughter for being worn by her at the time of her marriage, to a reasonable extent, must be treated as a reasonable expense of or incidental to her marriage, incurred by the father. Here, in the instant case, according to the assessee, he saved 51 sovereigns of gold over a period of 40 years of his work as a goldsmith, and he had given the said gold sovereigns to his daughter on the occasion of her marriage. We have already noted that the assessing authority entered a clear finding that the 51 sovereigns were given by the assessee to his daughter at the time of her marriage. In these circumstances, having regard to the facts and circumstances of the case on hand, giving of 51 sovereigns by the assessee to his daughter is a reasonable expense of the assessee contemplated u/s 3(b)(ii) of the Adoption Act. In these circumstances, we are of the view that the conclusion reached by the two appellate authorities in the instant case is perfectly justified.

7. We will at once make it clear that the reasonableness of the expenses contemplated u/s 3(b)(ii) of the Adoption Act is a question of fact to be decided on the facts and circumstances of each case, and the decision in this case is not

 

an authority for the position that in all cases where gold ornaments are given to a Hindu the entire gold ornaments so given are entitled to be treated as falling u/s 3(b)(ii) of the Adoption Act, without assessing the reasonableness of such expense. As already stated, reasonableness is a matter for the Assessing Officer to decide in each case.

8. In the light of what we have stated, we do not think it necessary to consider the applicability of the decision of this court in Commissioner of Gift-tax Vs. Smt. B. Indira Devi, . We answer the questions referred to us against the Revenue and in favour of the assessee.

9. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.