

(1969) 03 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 212 of 1965 (Reference No. 106 of 1965)

Commissioner of Gift-tax

APPELLANT

Vs

V.A.M. Ayya Nadar

RESPONDENT

Date of Decision : 05-03-1969

Acts Referred:

Gift Tax Act, 1958 — Section 4, 6(3)
Gift Tax Rules, 1958 — Rule 10

Citation : (1970) ILR (Mad) 49 : (1969) 73 ITR 761

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K. Srinivasan, D.S. Meenakshisundaram and K.C. Rajappa, for the Respondent

Judgement

Veeraswami, J.—This reference involves rather a peculiar question. The assessee was a partner of a firm under the name and style of

V.A.M. Rathinam Brothers, which carried on business at Virudhunagar. It had nine partners with four minors admitted to the benefits of the

partnership. The assessee had a third share in the profits of the firm as well as its liabilities. By a deed dated March 31. 1958, the firm was

reconstituted with effect from January 31 of that year. By that time, one of the minors having become a major, he was taken as a full-fledged

partner and the remaining minors continued to have the benefits of the partnership. One further change which is important for the reference was that

the assessee was allotted a one-ninth share out of the one-third share and the balance of two-ninths share was distributed as between two other

partners. The Gift-tax Officer treated the distribution of the two-ninths share as a gift, which was valued at Rs. 52,518 and charged to gift-tax. The

Appellate Assistant Commissioner did not share that view and held that there was no transfer of any existing right in movable or immovable

property. He took that view because the Gift-tax Officer had valued the distribution of two-ninths share as if it was a part of the goodwill which he

thought could be valued only as at a dissolution of the firm. The Tribunal sustained his conclusion. Its view was that there was a re-allocation of the

shares of the different partners, which did not involve any transfer or surrender of the two-ninths share in favour of the other two partners. The

redistribution of the shares, it said, was the result of mutual consent. It was also observed that notwithstanding the distribution of two-ninths share,

the assessee's share capital remained as it was prior to January 31, 1958, and that the transfer if at all was only of a two-ninths share in the future

profits and losses of the business. At the instance of the Commissioner of Gift-tax the following question comes up :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not liable to

pay gift-tax ?

2. At first sight, it seemed as though the Tribunal was right, but on a reference to the relative statutory provisions and the nature of the assessee's

right to share the profits of the firm, we are unable eventually to sustain its conclusion. The Act defines a gift as 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. The concept

includes any transfer of any property deemed to be a gift u/s 4, Property includes any interest in property, movable or immovable. The definition of

transfer of property gives a wider scope and content to that phraseology so as to include, inter alia, the grant of partnership or interest in property

and also "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." Property, be it movable or immovable, is a bundle of rights and a transfer can possibly be

of that bundle or one or more rights comprised in the bundle. If grant of partnership amounts to transfer of property, logically we do not see why

the distribution of two-ninths share out of the one-third share of the assessee is any the less transfer of property. A grant of partnership may mean

an individual getting into a partnership agreement with another, implying by that process the creation of new rights or distribution of rights between

him and his partner. The term may also include an existing firm of partnership taking one or more partners and re-aligning the basis of sharing.

What we have before us may be yet another instance of none being newly taken into the partnership but the sharing basis being re-aligned or

redistributed among the partners. Quite apart from this reasoning, we are inclined to think that a right of a partner to share in the profits is as much

property as a right of a partner to share in the assets of the firm. It is the right of a partner which entitles him to a share in the profits of the firm and

that, as we think, is a valuable right and capable of transfer at least as between the partners by common consent. When so much is clear, we

encounter no difficulty in approving the next step that when there is distribution of a quantum of the share of profit as between its original holder

and certain others who are all partners, it involves a transfer of the right which has the effect of diminishing the assessee's interest and

correspondingly increasing the value or quantum of the shares earlier held by the other two partners. On that view we think that the distribution by

way of re-alignment of the one-third share of the assessee did involve transfer of property amounting to a gift chargeable, to tax,

3. Mr. Rajappa, for the assessee, contends that a right to share in future profits is not an existing right and that in fact even an interest of a partner

in the firm is not a specific right or a right to specific property or asset of the firm and the right eventually of a partner is to share the profits of the

firm at dissolution. He invited our attention to *Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others*, , Controller

Commissioner of Gift-tax, Madras Vs. N.S. Getti Chettiar, and the judgment in T.C. No. 52 of 1965, Commissioner of Gift-tax, Madras Vs.

M.K.K.R. Muthukaruppan Chettiar, . We do not think that Mr. Rajappa's contention is really to the point. *A. Narayanappa v. B. Krishnappa*

was concerned with the inadmissibility of a certain document for want of registration and it was in that connection the Supreme Court held that the

right of a partner to share in the profits of the firm was not a right to any immovable property and therefore the transfer of such a right did not

require registration. Likewise, *Commissioner of Gift-tax v. Getti Chettiar* also dealt with a different situation, not whether distribution by a partner

of his right to share the profits among the partners including himself is a transfer of property within the meaning of the Gift-tax Act.

4. Reference was made to rule 10(3) of the Gift-tax Rules, but it seems to us that this certainly will not cover the case of distribution such as is

involved in this reference. We are also not concerned with the question of the propriety and the manner of valuation. But we must observe, on the

view we have taken on the question under reference, that the transfer we have held to be a gift here, cannot be regarded as of a share in the

goodwill of the firm. It will follow that the revenue will have to re-value the gift. But in that connection we do not propose to indicate our own view

as to how it should be valued. It is, however, necessary to point out that Section 6(3) contemplates rules to be prescribed for valuing a property

which cannot be estimated under Sub-section (1) of that section. In the absence of any rule framed, Section 6(3) may really serve no purpose. But

as we are not in the present reference concerned with the valuation, we refrain from expressing any final opinion on the question.

5. We answer the question in the reference in favour of the revenue. No costs.