

(1986) 06 KAR CK 0035

In the Karnataka High Court

Case No : Income-tax Reference Case No. 206 of 1983

Commissioner of Income Tax

APPELLANT

Vs

A. Indiramma

RESPONDENT

Date of Decision : 11-06-1986

Acts Referred:

Gift Tax Act, 1958 — Section 2 (xii), 4 (1) (e)
Income Tax Act, 1961 — Section 256 (1), 64

Citation : (1986) 56 CTR 92 : (1987) ILR (Kar) 1798 : (1986) 160 ITR 829 :
(1986) 28 TAXMAN 482

Hon'ble Judges : N.D. Venkatesh, J; Mohammad Sharif, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; J.N.S. Prasad, for the Respondent

Judgement

K. Jagannatha Shetty, Actg. C.J.

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, and the Income Tax Appellate Tribunal, Bangalore Bench, has referred the following question to this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that income from the property cannot be assessed in the assessee's hands u/s 64 of the Income Tax Act and that the act of the assessee in releasing her life interest in the enjoyment of income from the property in question cannot be treated or deemed as a gift so as to attract the application of section 64 of the Income Tax Act ?"

2. The assessee, Smt. A. Indiramma, received from B. N. Gupta a gift of property bearing No. 21/1, Jayachamarajendra Road, Bangalore City, under a deed of gift dated March 2, 1955. By the terms of the deed, she was entitled to enjoy the usufruct of that property during her lifetime and thereafter the property would devolve on her children in equal shares. The assessee did not want to have the usufruct of the property throughout her lifetime. She executed a release deed

dated December 17, 1976, giving up her life interest in the said property in favour of her children.

3. For the assessment year 1980-81, the Income Tax Officer assessed the income in respect of the said property in the hands of the assessee u/s 64 of the Income Tax Act. He held that the assessee had no right to gift away her property to her children during her lifetime on account of the specific prohibition in the gift deed under which she has received the right to enjoy the property for her lifetime and that, therefore, the income accruing to her children is income accruing to her only.

4. The assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the assessee by executing the said release deed did not gift away her interest in the property and, therefore, the income derived therefrom by her children cannot be brought to tax u/s 64 of the Income Tax Act. Accordingly, he directed the Income Tax Officer to delete that income from the taxable income of the assessee.

5. The Revenue appealed to the Income Tax Appellate Tribunal. The Tribunal, on a consideration of the terms of the release deed, held that there was no transfer of interest in the property by the assessee as it was a unilateral act and, therefore, the provisions of section 64 of the Income Tax Act were not attracted. The Tribunal also held that the assessee, after executing the release deed, was not enjoying the income from the property and, therefore, that income could not be included in her individual assessment. In support of its conclusion, the Tribunal relied upon the decision of the Gujarat High Court in Commissioner of Gift-tax, Gujarat Vs. Ansuya Sarabhai-(Decd),

6. We have perused the terms of the release deed executed by the assessee in favour of her children. She has stated therein that she does not wish to retain any longer her life interest in the property gifted to her by B. N. Gupta. She has also stated that she has released her life interest in the property in favour of her children who were then minors. It was further stated therein that the father and natural guardian of the minors was ready and willing to accept the release deed and the devolution of the property thereunder for the benefit of the minors.

7. The question is whether the Tribunal was right in reaching the above conclusion or whether the release deed could be considered to be a gift deed. Section 2(xii) of the Gift-tax Act provides :

"(xii) 'gift' means 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, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section."

8. So this definition will have to be read along with section 4(1)(c) of the Gift-tax Act. Section 4(1)(c), in so far as it is relevant, provides :

"(c) where there is a release, discharge, surrender, forfeiture or abandonment of

any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been bona fide, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment."

9. Section 4(1)(c) makes it clear that the value of the release made by a person could be deemed to be a gift only to the extent to which it has not been made bona fide to the satisfaction of the Gift-tax Officer. That means, it is for the Gift-tax Officer to be satisfied on the material produced by the assessee that the gift was made bona fide or for extraneous or collateral consideration. In the instant case, there is no finding by the Gift-tax Officer that the release deed was not executed bona fide by the assessee in favour of her children. Therefore, section 4(1)(c) is not attracted to the case and the release deed cannot be considered as a gift deed.

10. In this context, we may also notice the provisions of section 4(1)(e) of the Gift-tax Act which has been inserted by the Finance (No. 2) Act, 1980, with effect from April 1, 1980. The said clause (e) to section 4(1) reads :

"(e) Where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount by which such value exceeds the consideration received, shall be deemed to be a gift made by such person."

11. The answer to the question before us would have been different if section 4(1)(e) is applicable to the case on hand. But it is not. Section 4(1)(e) cannot be applied to the present case since the assessment year involved is 1980-81 (sic).

12. For the reasons stated above, we answer the question in the affirmative and against the Revenue.