

(1979) 12 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 19 to 22 and 34 to 37 of 1977, 16, 23, 75, 78 and 88 of 1978 and 31, 51, 117, 154, 155, 168, 169, 171 and 172 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Daljit Singh

RESPONDENT

Date of Decision : 10-12-1979

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 64(1)

Citation : (1980) 15 CTR 260 : (1981) 131 ITR 719

Hon'ble Judges : R.N. Mittal, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Ashok Bhan, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This order will dispose of Income Tax Reference Nos. 19 to 22, 23, 24, 34 & 35, 36 and 37 of 1977 ; 16, 23, 75, 78 and 88 of 1971 ; 31, 51, 117, 154 & 155, 168 & 169 and 171 & 172 of 1979, wherein the following questions of law have been referred to this court for determination u/s 256(1) of the LT. Act, 1961 :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the gifts made out of the HUF funds by the karta to the wives and children of his brothers were valid gifts ?

(ii) Whether, on the facts and in the circumstances of the case, the gifts made by the assessee to the wives and children of his brothers and the brothers making gifts to the wife of the assessee, attract the provisions of Section 64(1) of the Income Tax Act, 1961 ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the gifts made in the above manner were not "cross-gifts" ? "

2. The facts in this judgment are being given from Income Tax Reference Nos. 19 to 22 of 1977.

3. The dispute is regarding the assessment years 1969-70 to 1972-73. The assessee family comprised of the following members :--

1. Daljit Singh (married in 1958)
2. Smt. Charanjit Kaur (wife of Daljit Singh)
3. Ajaypal Singh (Son--date of birth : 23-2-1959)
4. Bhupinder Kaur (daughter--date of birth : 17-6-1963)
5. Karanbir Singh (son--date of birth : 2-4-1967)

4. The assessee is an HUF. It started the business in the year 1957-58 after having separated from the bigger HUF headed by Jaimal Singh. The constitution of the bigger HUF headed by Jaimal Singh and the dates of separation of various members of the said HUF are mentioned as under :

1. Jaimal Singh
2. Smt. Ram Kaur (wife)
3. Satnam Singh (son)
4. Daljit Singh (son)
5. Inderjit Singh (son)
6. Baldev Singh (son)
7. Gurmit Singh (son)
8. Amarjit Singh (son)
9. Harjit Singh (son)

(separated from the joint family prior to 29-3-1957 and is carrying on business at Ludhiana)

(separated from HUF on 29-3-1957)

(separated from HUF on 31-3-1962)

(separated from HUF on 31-3-1964)

(separated from HUF on 31-3-1964)

(separated from HUF on 21-8-1965)

(separated from HUF on 31-3-1967).

5. Two firms were constituted for carrying on business in cloth in the name and style of M/s. Jaimal Singh Daljit Singh, Hoshiarpur, and M/s. Gurdit Singh Inderjit

Singh, Hoshiarpur, in which the above-mentioned persons and their wives were partners. The constitution of the two firms is as follows :

(I) M/s. Jaimal Singh Daljit Singh Constitution up to 30-9-1971

1.

Jaimal Singh

30%

2.

Daljit Singh s/o Jaimal Singh

30%

3.

Amarjit Singh s/o Jaimal Singh

20%

4.

Harjit Singh s/o Jaimal Singh

20%

Constitution with effect from 1-10-1971

1.

Jaimal Singh

1/7

2.

Daljit Singh s/o Jaimal Singh

1/7

3.

Amarjit Singh s/o Jaimal Singh

1/7

4.

Harjit Singh s/o Jaimal Singh

1/7

5.

Baldev Singh s/o Jaimal Singh

1/7

6.

Inderjit Singh s/o Jaimal Singh

1/7

7.

Gurmit Singh s/o Jaimal Singh

1/7

(II) M/s. Gurdit Singh Inderjit Singh Constitution up to 30-9-1971

1.

Baldev Singh s/o Jaimal Singh

1/3

2.

Inderjit Singh s/o Jaimal Singh

1/3

3.

Gurmit Singh s/o Jaimal Singh

1/3

Constitution with effect front 1-10-1971

1.

Baldev Singh s/o Jaimal Singh

25%

2.

Smt. Ram Kaur w/o Jaimal Singh

15%

3.

Smt. Charanjit Kaur w/o Daljit Singh

15%

4.

Smt. Harkirat Kaur w/o Inderjit Singh

15%

5.

Smt. Gurdip Kaur w/o Gurmit Singh

15%

6.

Smt. Parminder Kaur w/o Amarjit Singh

15%

6. The ITO during the scrutiny of the accounts of the above-mentioned firms found that the partners of the firm, M/s. Jaimal Singh Daljit Singh, had been making gifts to the wives of the partners of the firms, M/s. Gurdit Singh Inderjit Singh, Hoshiarpur. Similarly, he found that the male members of the firm, M/s. Gurdit Singh Inderjit Singh, made gifts to the wives of the partners of M/s. Jaimal Singh Daljit Singh, Hoshiarpur. He also found that the assessee had made various gifts to the wives of his brothers, who were partners in the firm, M/s. Gurdit Singh Inderjit Singh, and to the minor children of two brothers as under :--

S. No

Name of the donee

Amount

Date

1.

2.

3.

4.

5.

6.

Smt. Harkirat Kaur w/o. Sh. Inderjit Singh

Smt. Harshran Kaur, w/o Baldev Singh

Smt. Gurmit Kaur, w/o Gurmit Singh

Smt. Parminder Kaur w/o Amarjit Singh

Satbir Singh s/o Inderjit Singh (minor)

Khushbir Kaur, D/o Baldev Singh (minor)

5,000

5,000

10,000

10,000

10,000

10,000

6-1-1968

2-2-1968

31-1-1970

20-2-1971

30-9-1971

30-9-1971

7. The ITO further found that the husbands of the above-mentioned donees (except that of Smt. Parminder Kaur) and father of the donee mentioned at serial Nos. 5 and 6 above made gifts to Smt. Charanjit Kaur, wife of the assessee, from their personal accounts in the books of the firm, M/s. Gurdit Singh Inderjit Singh, as under,

S. No.

Date

Name of donor

Amount

1.

2.

3.

4.

5.

6.

25-12-1967

6-1-1968

5-5-1968

9-3-1970

16-3-1970

21-3-1970

Inderjit Singh

Baldev Singh

Gurmit Singh

Inderjit Singh

Baldev Singh

Gurmit Singh

5,000

5,000

5,000

5,000

5,000

5,000

8. He further found that the following amounts of interest were credited to the account of Smt. Charanjit Kaur on the above-mentioned gifts :

Year ending 31-3-1968

Year ending 31-3-1969

Year ending 31-3-1970

Year ending 31-3-1971

Year ending 30-9-1971

Rs.

235

1,958

2,229

4,223

2,284

9. Later, Smt. Charanjit Kaur became partner of the firm, M/s. Gurdit Singh Inderjit Singh, with effect from October 1, 1971.

10. The 1TO was, prima facie, of the opinion that the above gifts were cross-gifts. He, therefore, asked the assessee to explain as to why the interest income earned on the above gifts and profits from the firm, M/s. Gurdit Singh Inderjit Singh, in the name of the karta's wife be not assessed in his hands. The assessee gave an explanation that the status of the assessee was that of an HUF

and that he made the gifts to the third parties. Similarly, he stated that the husbands of the third parties made similar gifts to his wife on which she had full control. He then stated that she herself became a partner in M/s. Gurdit Singh Inderjit Singh. He, therefore, said that the interest income earned by her before October 1, 1971, and the profits earned by her after September 30, 1971, from the firm, M/s. Gurdit Singh Inderjit Singh, were not assessable.

11. The ITO did not accept the explanation of the assessee and held that the gifts made by Him to the wives and the children of his brothers were void. He further held that the amounts of cross-gifts which came to Rs. 30,000 were the funds of the HUF headed by the assessee and were lying in the wife's account. Hence, he observed that the assets and the income earned therefrom, though standing in the name of the assessee's wife, would constitute assets and income, respectively, of the assessee's HUF. He, therefore, included the income from the interest and the share of profit from M/s. Gurdit Singh Inderjit Singh in the name of the assessee's wife towards the total income of the assessee. He also included towards the net wealth of the assessee's HUF the credit balance in the account of his wife in the books of the firms, M/s. Gurdit Singh Inderjit Singh and M/s. Ahuja Traders, Hoshiarpur.

12. The assessee went up in appeal before the AAC against the orders of the ITO and WTO. It was contended before him that there was no material on the record to show that there had been cross-gifts as the amounts of gifts made by the assessee to the wives of his brothers were much more than the gifts made by them to his wife. It was also contended that neither the ITO had established any scheme for cross-gifts nor he established any connection between various gifts. It was then contended that the ITO had wrongly interpreted the provisions of Article 225 of the Hindu Law by Mulla. The AAC accepted the assessee's contention and held that the various gifts made by the assessee were legal and the ITO wrongly interpreted Article 225 of Mulla's Hindu Law. He further held that the gifts did not form part of the same transaction and could not be said to be cross-gifts. He, therefore, deleted the additions made by the ITO and WTO on account of interest income and share of profit from the various firms in the name of the assessee's wife towards the total income of the assessee for the various years and also assets standing in the name of the assessee's wife in various firms towards the wealth-tax assessment of the assessee.

13. The department filed appeals against the order of the AAC before the Income Tax Appellate Tribunal, Amritsar. The Appellate Tribunal came to the conclusion that the gifts made by the assessee to the wives and the minor children of his brothers were quite valid as they were made out of love and affection. It also held that these were fully covered by the provisions of Article 225 of Mulla's Hindu Law. It also found that the gifts by the brothers of the karta to his wife were out of love and affection and could not be equated with the gifts made to the family. Consequently, it did not accept the plea of cross-gifts advanced by the department. Reliance was placed by it on the observations of this court in S.

RAGHBIR SINGH SANDHAWALIA Vs. COMMISSIONER OF Income Tax, PUNJAB, PEPSU AND HIMACHAL PRADESH, SIMLA., . For the aforesaid reasons, it dismissed the appeal of the department.

14. An application was filed by the department u/s 256(1) of the I.T. Act to the Tribunal for referring the above-mentioned questions to this court. In the aforesaid circumstances, the references have been made.

15. The first question that arises for determination is as to whether the Tribunal was right in law in holding that the gifts made out of the HUF funds by the karta to the wives and the children of his brothers were valid gifts. It was faintly urged by the learned counsel for the department that the gifts were made by the karta of the assessee-firm in pursuance of a scheme. He has eventually argued that, in view of the scheme, the husbands or fathers of the donees also made gifts in favour of the wife of the assessee. According to him, the gifts by the assessee in favour of the wives and children of his brothers could not be said to be on account of love and affection and were contrary to Article 225 of Mulla's Hindu Law.

16. We have given due consideration to the argument of the learned counsel but regret our inability to accept it. Article 225 provides that the father has the power of making within reasonable limits gifts of ancestral movable property without the consent of his sons for the purpose of performing indispensable acts of duty, and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress and so forth. From a reading of the section it is clear that the father of a joint Hindu family has been empowered to give gifts within a reasonable limit for love and affection. It is admitted that the donees are nearly related to the donor. If he made some gifts in favour of the donees on account of love and affection these cannot be said to be void. If the gifts are of excessive amounts or are not given for love and affection, these may be termed as voidable. In that eventuality, these can be challenged by the sons and not by third persons.

17. In the aforesaid view, we are fortified by the observations in S. RAGHBIR SINGH SANDHAWALIA Vs. COMMISSIONER OF Income Tax, PUNJAB, PEPSU AND HIMACHAL PRADESH, SIMLA., . In that case, an HUF which possessed property, the value of which ran into several millions of rupees, consisted of the karta and his only son. The first wife of the karta died in 1943, and he contracted another marriage in 1945. In November, 1948, he requested the company, in which the family held 800 shares, to transfer 300 shares to his second wife. The board of directors of the company at a meeting held in December, 1948, approved the transfer and later confirmed this decision. The son of the karta was present at the meeting of the board of directors when the application for transfer of these shares in the name of the second wife was being considered but he took no steps to challenge the gift. In March, 1949, the karta made transfer entries in the books of the family debiting the capital account with a sum of Rs. 2,40,000 representing the paid up value of 300 shares and crediting the account of the

wife with a corresponding amount. In the year 1950-51, the karta submitted a return declaring the income of the family but excluding the dividend on those shares. The wife submitted a separate return showing the dividend as her personal income but the department assessed the dividend as the income of the family on the ground that the gift of the shares to the wife was void. The Tribunal, on appeal, upheld the assessment. The matter was referred to this High Court. It was observed by the learned Bench that there was an intention on the part of the karta to make a gift to his wife and the gift being in the name of his wife, must be presumed to have been made out of love and affection and that, according to Hindu law as interpreted in the Punjab, the gift of the shares to the wife was not void but voidable at the instance of the son. It was further held that even if the gift was not made with the consent of the son, a Hindu father governed by the Mitakshara had full power within reasonable limits to make gifts of movable property to his wife, daughter etc., and the word " reasonable " meant what was just, fair and equitable in view of the value, income and financial position of the estate, the number of members who constituted the joint Hindu family, the relationship which the donor bore to the donee and other relevant and material circumstances. The Bench, consequently, came to the conclusion that assuming that the gift was made without the consent of other adult coparcener, the son, it was reasonable and, consequently, valid and effective.

18. In the case in hand, the AAC came to the conclusion that the gifts made by the assessee exceeded the gifts received by his wife and that there was considerable lapse of time between the various gifts and no interconnection had been established from which it could be gathered that the various gifts formed part of the transaction. That finding of fact has not been challenged and is also binding on this court. It has also not been shown that the gifts were not within reasonable limits. In the circumstances, we are of the opinion that the gifts made by the assessee out of the HUF funds to the wives and children of his brothers were valid gifts and we decide question No. 1 accordingly.

19. The second question is whether the gifts made by the assessee to the wives and children of his brothers and the brothers making gifts to the wife of the assessee attract the provisions of Section 64(1) of the I.T. Act, 1961. The learned counsel for the department has half-heartedly submitted that the aforesaid gifts fall within the preview of Section 64(1) (i) and (iii) of the I.T. Act, 1961. We are, however, not impressed with the argument of the learned counsel. Section 64(1) (i) and (iii) reads as under:

" 64. Income of individual to include income of spouse, minor child, etc.--(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;.....

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm ."

20. From a bare perusal of the section it is evident that it does not relate to the gifts. According to Clause (i), the income of the spouse of an individual arising from his/her membership in a firm carrying on a business in which such individual is a partner is liable to be included in the income of the individual. The section, as stated above, does not talk of gifts. In the present case, even the wife of the assessee is not a partner in the firm in which he is a partner. Similarly, the minor children are not partners in the firms. Consequently, the income of the wife of the karta cannot also be clubbed with the income of the assessee. We, consequently, answer question No. 2 in the negative, i. e., against the department.

21. Question No. 3 is whether the Tribunal was justified in holding that the gifts made in the above manner were not " cross-gifts ".

22. This matter has been dealt with while discussing question No. 1. As already said above, the AAC came to the conclusion that the gifts made by the assessee exceeded the gifts received by his wife and that there was considerable lapse of time between the various gifts. He further held that no interconnection between the gifts had been established from which it could be inferred that these formed part of the same transaction. From the dates and the amounts of gifts we find that the above observations cannot be assailed. The learned counsel for the department has argued that these gifts had been made on account of certain arrangement. According to him, therefore, these should be considered as cross-gifts. We are not convinced with this contention. In addition to the aforesaid facts, it is also worth mentioning that the gifts in favour of the wife of the assessee-karta have not been made by the donees of the karta but by the other persons.

23. The wife of the karta had also full control over the gifts made to her. In the circumstances, it cannot be held that these are cross-gifts.

24. For the aforesaid reasons, we answer questions Nos. 1 and 3 in the affirmative, i. e., in favour of the assessee and question No. 2 in the negative, i .e., against the department.

25. No order as to costs.

Dhillon, J.

26. I agree.