
(1994) 07 RAJ CK 0041

In the Rajasthan High Court

Case No : Income Tax Reference No. 39 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Dwarka Das and Sons

RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Citation : (1994) 07 RAJ CK 0041

Hon'ble Judges : V.K. Singhal, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : D.S. Shishodia and S. Bhandawat, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal has referred the following question of law arising out of its order dated July 30, 1987, in respect of the assessment years 1980-81 and 1981-82 u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the amounts of gifts of joint family property made by the karta of joint family are not void but only voidable and that any income from the gifted property cannot be included in the hands of the owner the Hindu undivided family--notwithstanding the fact that the gift was invalid under Hindu law and the gifted property was inseparable from the property owned and possessed by the donor ?"

2. The brief facts of the case are that Shri Dwarka Das, karta of a Hindu undivided family, gifted one-third share of Shop No. 110, Dhan Mandi, Sriganganagar, to Sarva Shri Vinod Kumar, son of Shri Ram Kishan and Suresh Kumar, son of Shri Sangarmal. Besides this, the karta has also made a gift of Rs. 5,000 to Master Arvind Kumar, son of Hukam Chand Lila. Both the gifted properties formed part of the joint family property of the Hindu undivided family. The donees are nephews of Dwarka Das, karta of the family. The Income Tax Officer was of the view that the gift by the karta or any other coparcener to the

strangers is void ab initio. Reliance was placed on the decision of the apex court in the case of Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, and on that basis, the income from the gifted property was assessed in the hands of the assessee-Hindu undivided family. The appeal filed against the aforesaid order was dismissed by the Appellate Assistant Commissioner and in second appeal before the Income Tax Appellate Tribunal, it was pointed out that in the gift-tax proceedings, the Appellate Assistant Commissioner, Jodhpur, has held that the gift so made is voidable and not void and the said order has become final. The Income Tax Appellate Tribunal in view of this fact observed that the gift in question has not been declared void and has been considered to be voidable by the Appellate Assistant Commissioner. The income from that gifted property cannot be included in the hands of the donor, i.e., assessee-Hindu undivided family. The appeal was accordingly allowed.

3. We have considered the matter. The fact that in the gift-tax proceedings the gift was held to be voidable was accepted by the Department and has not been challenged before the Tribunal is not denied. The income of the gifted property was enjoyed by the donees. In the case of Commissioner of Income Tax Vs. H.C. Gupta, it has been held by the Allahabad High Court that any order passed under the Gift-tax Act in the case of one assessee will not be binding on the Income Tax Officer while taking assessment proceedings against another assessee, even though the transaction giving rise to proceedings under the Gift-tax Act and the Income Tax Act, respectively, against the two assesseees may be the same. Mulla in Hindu Law, 16th edition, at paragraph 357, observed, that a Hindu, whether governed by the Mitakshara or the Dayabhaga school, may dispose of by gift his separate or self-acquired property, subject in certain cases to the claims for maintenance of those whom he is legally bound to maintain. In paragraph 258, it has been said that according to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners. The law with regard to the gift of the property of the Hindu undivided family is that the karta cannot make a gift to a stranger. The gift in such a case is void. If the karta gifts the property to the member of the Hindu undivided family or such member receives more share than what he is entitled to on partition, then such a gift is voidable, but the family property cannot be gifted to a stranger. The transaction being void, it has to be considered as invalid and the gifted property as inseparable from the property owned and possessed by the donor and, therefore, the entire income arising therefrom has to be assessed in the hands of the Hindu undivided family. The decision which has been given under the Gift-tax Act cannot be said to be conclusive and binding in the proceedings under the Income Tax Act. Under the Income Tax Act, the income is assessed, and even if there is a subsequent diversion of such income to the alleged donee, it would not affect the basic character of the

income that the property has not been validly gifted and, therefore, has to be considered to be the property of the Hindu undivided family. The Income Tax Appellate Tribunal was not justified in holding that the amount of gifts of joint family property made by the karta of the joint family are not void, but only voidable and that any income from the gifted property cannot be included in the hands of the owner of the Hindu undivided family notwithstanding the fact that the gift was invalid under Hindu law and the gifted property was inseparable from the property owned and possessed by the donor.

4. So far as the question of gift of Rs. 5,000 is concerned, the position stands on a different footing as it was a cash gift which may arise because of the necessity of social obligation or like circumstances, when the karta can make gift of reasonable amount to a stranger in the marriage of other relatives who are not members of the family. The gift of a reasonable amount which is occasionally given cannot be considered to be invalid. If, however, the amount is unreasonable in respect of movable property, the coparcener has the right against the karta and the gift cannot be said to be valid. In the present case, the amount of Rs. 5,000 gifted to Master Arvind Kumar cannot be said to be unreasonable, and therefore, is not invalid.

5. Consequently, the reference is answered partly in favour of the Revenue and against the assessee. No order as to costs.