

**(1999) 02 DEL CK 0059**

**In the Delhi High Court**

**Case No :** Income Tax R. No"s. 12 of 1981, 192 and 305 of 1982 and 372 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Rameshwar Dayal (HUF)

RESPONDENT

---

**Date of Decision :** 22-02-1999

**Acts Referred:**

**Citation :** (2000) 241 ITR 204

**Hon'ble Judges :** J.B. Goel, J;Arun Kumar, J

**Bench :** Division Bench

**Advocate :** Sanjeev Khanna, R.D. Jolly, R.C. Pandey, Prem Lata Bansal and Ajay Jha, for the Appellant; Santosh K. Aggarwal, for the Respondent

---

## **Judgement**

Arun Kumar, J. 1. These Income Tax references raise a common question about gifts made by the karta of a Hindu undivided family in favor of the coparceners/ near relations. The references pertain to the assessment years 1970-71, 1975-76 and 1976-77. The question of law framed in these Income Tax references are as under ;

Income Tax Reference No. 12 of 1981 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest on amounts gifted by the karta of the Hindu undivided family to his son could not be included in the assessor?s income ?"

Income Tax Reference No. 192 of 1982 :

"Whether, on the facts and in the circumstances of the order of the Commissioner of Income Tax (Appeals) and thereby directing that the two share income in question were to be excluded from the assessor?s total income ?" (sic)

Income Tax Reference No. 305 of 1982 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the interest on amounts gifted by the karta of the Hindu undivided family to his sons could not be included in the assessor's income ?"

Income Tax Reference No. 372 of 1985 :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the interest income received by Ravinder Kumar and Virender Kumar was not includible in the assessment of the assessee, a Hindu undivided family ?"

2. At the outset learned counsel for the assessed has submitted that the gift-tax authorities have accepted the returns filed by the assessed for the assessment years under reference meaning thereby that the very gifts which are being questioned in the Income Tax proceedings, have been accepted as valid by the Gift-tax Officer. The same has become final. This fact is not disputed by learned counsel appearing for the Revenue. Learned counsel for the assessed has relied upon in Commissioner of Wealth Tax, T.N. Vs. K.N. Shanmugasundaram, to urge that once the gifts are accepted as valid in the assessment proceedings under the Gift-tax Act, the Income Tax authorities cannot challenge or dispute the same. In the case relied upon by learned counsel for the assessee, the Supreme Court observed as under (page 358) :

"We do not consider it necessary to deal with the said contention urged by Dr. Gauri Shankar because in the facts of these appeals, we find that the gifts which were made by the assessed in favor of the three minor daughters were accepted as valid gifts by the Gift-tax Officer and the order of the Gift-tax Officer was upheld in appeal by the Appellate Assistant Commissioner and the said order has become final. Since the Revenue has already treated these gifts as valid gifts for the purpose of gift-tax, it is not open to the Revenue to assail the said gifts in connection with the Income Tax and wealth-tax assessments. We, Therefore, do not find any merit in these appeals and the same are accordingly dismissed. No order as to costs."

3. As noticed already, admittedly, the assessments under the Gift-tax Act have become final and the gifts made by the karta of the Hindu undivided family in favor of the coparceners (a close relation in one case) have been accepted as valid. It is, not now open to the Revenue to assail the gifts in connection with the Income Tax assessments. Learned counsel for the Revenue submitted that in one case the gift was in favor of son of the brother of the karta and, Therefore, it was not in favor of the coparcener and cannot be accepted. He submits that gifts other than those in favor of the coparceners, have to be treated as gifts to strangers and, Therefore, cannot be held to be valid. If the gift is not accepted as valid the income derived from such a gift has to be added to the income of the assessee. Relying on COMMISSIONER OF Income Tax Vs. DWARKA DAS AND SONS., , which is a decision of the Rajasthan High Court, learned counsel for the Revenue submits that the conclusion arrived at by the gift-tax authorities in this behalf cannot be said to be conclusive and it is still open to the Income Tax

authorities not to accept such a gift. In view of the decision of the Supreme Court referred to above, we are of the view that it is no longer open to the Income Tax authorities to challenge the gifts which have already been accepted by the gift-tax authorities. In our view, the aforesaid decision of the Supreme Court puts the controversy to rest and it is no longer open to urge that the gifts accepted by the gift-tax authorities are not conclusive and binding on the Income Tax authorities.

4. Before we conclude, we would only like to note that the gifts in question were made in 1970-71 and their impact/validity came in for consideration before the Income Tax authorities year after year. Learned counsel for the assessed points out that except the years in consideration in these references, the gifts were accepted as valid by the Income Tax authorities with respect to rest of the assessment years.

5. For the foregoing reasons, all the questions referred to the opinion of this court are answered in favor of the assessed and against the Revenue.

6. The references stand disposed of.