

(1982) 08 MAD CK 0043

In the Madras High Court

Case No : Tax Case No. 1018 of 1977 (Reference No. 698 of 1977)

Commissioner of Income Tax

APPELLANT

Vs

V.A. Muthumanickam

RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Transfer of Property Act, 1882 — Section 122

Citation : (1985) 155 ITR 351

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : Nalini Chidambaram, for the Appellant; A.K. Lakshminarayanan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is an individual. For the assessment year 1970-71, he filed a return on October 28, 1970, declaring two gift deeds, one in favour of his wife and another in favour of his daughter and valuing them at Rs. 19,925. Subsequently, on October 10, 1972, he filed a revised return with which a statement was enclosed, wherein the assessee stated that he had executed two other settlements, one dated February 21, 1970, in respect of agricultural land worth Rs. 81,000 in favour of his brother's daughter, Pramodhini, aged 8 years and another dated March 4, 1970, in respect of agricultural land worth Rs. 76,000 in favour of his brother's daughter, Anuradha, aged 4 years, but they were inoperative as the donees were not prepared to accept the gifts and, consequently, there were no taxable gifts in respect of these two documents. It was also pointed out by the assessee in that statement that even though these two settlements were registered on March 30, 1970, two deeds of revocation came to be executed and registered later canceling the earlier settlements. The GTO, however, did not accept the assessee's claim. He was of the view that the two settlements were validly drawn up instruments and were in force until revoked, and that the settlement deeds were registered on March 30, 1970, though the deeds of revocation came to be drawn up on April 5, 1970, which indicated that the settlements were intended to be given effect to

notwithstanding the deeds of revocation. According to the GTO, the title to the agricultural lands gifted in favour of the assessee's brother's daughters had passed to the donees, even according to the recitals in the revocation deeds. The assessee also put forward a case before the GTO that the settlement deeds executed in favour of Pramodhini and Anuradha were in contravention of the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, hereinafter referred to as the Land Reforms Act, and, therefore, the settlements cannot be taken to be taxable gifts. The GTO, however, rejected the said contention of the assessee on the ground that the provisions contained in the Land Reforms Act cannot affect the levy of gift-tax. In this view, he brought to tax the two items of gifts made by the assessee in favour of Pramodhini and Anuradha and determined the total taxable gift to be Rs. 1,79,000. The assessee took the matter in appeal to the AAC contending that the minor donees cannot be deemed to be the owners of the properties in question for the short period of six days between the registration of the settlement deeds and the execution of the deeds of revocation on April 5, 1970. The AAC agreed with the assessee and held that reading both the settlement deeds as well as the revocation deeds together, it should be taken that there should be no operative gifts which could be brought to tax. He, therefore, directed the deletion of the two amounts of Rs. 81,000 and Rs. 76,000 from the total amount of the taxable gift.

2. Aggrieved by the order of the AAC, the Revenue went in appeal before the income tax Appellate Tribunal, contending that the settlement deeds and revocation deeds were independent transactions, that under the provisions of the G.T. Act, there was a separate definition of gift which unlike the provisions of the Transfer of Property Act, did not require the acceptance by the donee and that, therefore, the settlement deeds became effective as soon as they were executed and registered, thus attracting liability to gift-tax. It was also contended by the Revenue that whether there was consent or not by the donees, the gift deeds once executed and registered ipso facto take effect, and notwithstanding their revocation on a subsequent date, the original gifts are chargeable to gift-tax. The Revenue further contended that s. 22 of the Land Reforms Act only empowered an authorised officer to declare a particular transaction to be void and, therefore, until such an action was taken by the concerned officer, the documents could be valid, that the opinion of the AAC that the documents being void under the provisions of the Land Reforms Act, they cannot be taken to be valid gifts for the purpose of the levy under the G.T. Act, cannot be accepted as taxable in law. It was also pointed out by the Revenue that the effect of s. 22 of the Land Reforms Act was only to make the transaction voidable and not void, and, therefore, the settlement deeds were valid gifts which can be subjected to gift-tax.

3. The assessee, on the other hand, contended before the Tribunal that though the G.T. Act did not refer to acceptance of the gift in the definition of a "gift", it could not be read de hors the general law relating to the process by which a gift could be validly effected, that, unless there is acceptance by the donees of the settlements in question, they cannot be taken to be clear gifts chargeable to gift-

tax. In support of the said contention, the assessee relied on the decision of the Kerala High Court in *Commissioner of Gift-tax Vs. R. Kesavan Nair*, . The assessee also contended that the settlement deeds have been executed by the assessee for the purpose of reducing his liability under the Land Reforms Act; that they are void under s. 22 of the Land Reforms Act; and that as such they could not be taken to be valid for the purpose of the G.T. Act.

4. The Tribunal after considering the above rival contentions held that though as per the definition of "gift" under s. 2(xii) of the G.T. Act, the consent of the donee is not a sine qua non for validity of the gift as was the case in the definition of "gift" contained in s. 122 of the Transfer of Property Act, that the definition of the word "donee" under the Act would indicate that consent of the donee is necessary before a gift can be taken to be valid and effective, and that this proposition is supported by the decision of the Kerala High Court above referred to. The decisions relied on behalf of the Revenue in *PRINCE AZAM JAH BAHADUR Vs. COMMISSIONER OF Income Tax, A.P.*, and *Vadulla Venkata Rao Vs. Commissioner of Gift Tax*, which have laid down that consent of the donee is not contemplated under the provisions of the G.T. Act have been distinguished by the Tribunal on the ground that the question as to whether the consent is necessary for validating the gift did not arise directly in these cases and such a question directly arose only before the Kerala High Court and that, therefore, the decision of the Kerala High Court should be taken to lay down the law on the question as to whether consent of the donee is necessary to validate the gift under the G.T. Act. In the view it took, the Tribunal did not go into the question as to whether the settlements in question which are dated February 21, 1970, and March 4, 1970, made by the assessee in favour of his brother's daughters were hit by the provisions of the Land Reforms Act and whether the settlements are void under the provisions of that Act. Thus, the Tribunal upheld the assessee's case that since the consent of the minor donees has not been obtained, the settlements in favour of the minor donees should be taken to be incomplete and inoperative and, therefore, they will not be liable for charge under the G.T. Act. Aggrieved by the decision of the Tribunal, the Revenue obtained a reference to this court on the following question of law:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding and had valid materials to hold that the gifts of agricultural lands by the assessee to his brother's minor daughters were incomplete and accordingly the gifts in question were not liable to gift-tax?

5. From the facts set out above, it will be clear that the case, right from the beginning, involves two questions, namely: (1) whether the settlements executed by the assessee in favour of his brother's minor daughters are ineffective and incomplete for want of consent of the minor donees and as such not liable for gift-tax under s. 5 of the G.T. Act? (2) Even assuming that the settlements in question are valid and effective notwithstanding want of consent on the part of the minor donees as contended by the Revenue, whether the

settlement deeds will be invalid under the provisions of the Land Reforms Act and as such cannot attract gift-tax?

6. On the first question, the GTO held that notwithstanding want of consent on the part of the donees, the transactions will be chargeable to gift-tax as the definition of the word "gift" in the G.T. Act does not contemplate the consent being obtained from the donees to make the gift an effective one. The AAC took a different view and he held that want of consent on the part of the donees coupled with the fact that they have taken steps to have the gift deeds revoked within a few days, would indicate that the property never passed to the donees under the gift deeds and that, therefore, there was no valid and effective gift in favour of the donees which could be brought under the G.T. Act. The Tribunal has also held that though consent is not contemplated by the definition of "gift" in s. 2(xii) of the G.T. Act, the other definitions in the Act, particularly the one dealing with donee, would indicate that consent or acceptance of the donee is essential to validate the gift, following the decision of the Kerala High Court in *Commissioner of Gift-tax Vs. R. Kesavan Nair*, . The Tribunal has distinguished the cases relied on by the Revenue in *PRINCE AZAM JAH BAHADUR Vs. COMMISSIONER OF Income Tax, A.P.*, and *Vadulla Venkata Rao Vs. Commissioner of Gift Tax*, Having regard to its view on the first question, the Tribunal has not gone into the question as to whether even if the documents are to be taken to be valid gifts, they will be hit by the provisions of the Land Reforms Act. On that question, the AAC has held that in view of s. 22 of the Land Reforms Act, the documents have to be taken as void. Though the same two contentions that were urged before the Tribunal had been urged before us, we are of the view that even if the contention of the Revenue that notwithstanding the acceptance and consent of the donees, the settlements can be taken to be valid and effective is accepted, the second question will definitely arise as to whether the settlements are hit by the provisions of the Land Reforms Act. Therefore, we proceed to deal with the second question before we deal with the first question.

7. According to the learned counsel for the Revenue, the settlement deeds will fall under s. 22 of the Land Reforms Act which enables the concerned authorised officer to declare a transfer to be void if he finds that the transfer defeats any of the provisions of the Act. So the concerned authorised officer has to go into the nature of the settlements to find out whether they were executed with a view to defeat the provisions of the Act and it is only then he can declare the settlements to be void. According to the learned counsel for the Revenue, there is no such declaration so far by the concerned authorised officer and, therefore, the transactions cannot be taken to be void under s. 22. The main contention of the Revenue is that unless the settlements are found to have been made with a view to defeat any of the provisions of the Act and actually declared to be void by the authorised officer, it is not open to the assessee to contend that the settlements are void under s. 22 of the Act. But having regard to the dates of the settlement deeds, we are of the view that the settlements will fall under s. 23 and not under s. 22 of the Act. Section 22 contemplates transfers made on or after the date of

the commencement of this Act but before the notified date. In this case, the settlement deeds have been executed on February 21, 1970, and March 4, 1970, which are after the notified date. All transactions which took place after the notified date and before the publication of a notification under sub-s. (1) of s. 18 of the Act have been declared to be void by s.23, as amended, with retrospective effect from April 6, 1969. Though s. 23 was amended after the settlements have been executed, as the amendment has taken effect retrospectively from April 6, 1969, the settlement deeds executed in this case in 1970 will also come within the mischief of s. 23. It cannot be disputed that the settlement deeds came to be made after the notified date and before the publication of a notification under s. 18(1). As a matter of fact, even the AAC refers to the proceedings of the authorised officer ignoring the settlement deeds executed by the assessee in favour of his brother's minor daughters and including the lands gifted in their favour in the holding of the assessee. Thus, it is clear that the authorised officer has proceeded on the basis that the settlement deeds are void and, therefore, they have to be ignored under s. 23 for the purpose of fixing the ceiling area of the assessee under the provisions of the Land Reforms Act. Therefore, we are of the view that the AAC is in error in thinking that the settlement deeds will fall under s. 22, while in fact they will fall only under s. 23. If s. 23 is the provision that should be applied, then the settlement deeds should be taken to be void ab initio as per the statutory declaration, declaring the transaction between the two dates as being void. We are not inclined to agree with the contention advanced on behalf of the Revenue that the settlement deeds can be taken to be void only for the purpose of the Land Reforms Act and not for any other purpose and particularly for the purpose of the G.T. Act. When the statute says that a particular transaction is void and it should be deemed to have been always void, it is not open to the Revenue to say that the transaction will be void only for the purpose of the statute which declares it to be void and that for all other purposes, it should be taken to be valid. We are not in a position to appreciate the above contention. When the statute declares a particular transaction to be void, it has to be taken to be non est in law for all purposes. In this view, the settlement deeds which were executed in this case by the assessee after the notified date, but before the notification under s. 18(1) was published by the authorised officer, having been declared by s. 23 of the Land Reforms Act to be void, it is void even for the purpose of the G.T. Act. Therefore, there is no settlement which could be brought to charge under the G.T. Act. We are, therefore, of the view that even assuming that the Revenue is right in its submission that notwithstanding the consent or acceptance of the donee, the settlements will be valid and effective for the purpose of levy of gift-tax, since the settlement deeds are void under the provisions of the Land Reforms Act, there is no settlement validly in existence which would attract the liability to gift-tax.

8. In the view we have taken on the second question, it is unnecessary for us to consider the question as to whether the consent or acceptance of the donee is

necessary to validate the gifts for the purpose of the G.T. Act as, in any event, the Revenue has to fail on the second question. Therefore, without expressing any opinion on the first question, referred to above, the question referred can be answered by merely answering the second question. Therefore, we answer the question referred to us in the affirmative and against the Revenue. The Revenue will pay the costs of the assessee. Counsel's fee Rs. 500.