
(1984) 02 BOM CK 0033

In the Bombay High Court

Case No : Income-Tax Reference No. 30 of 1975

Commissioner of Income Tax, Poona

APPELLANT

Vs

Devichand Uttamchand

RESPONDENT

Date of Decision : 24-02-1984

Acts Referred:

Transfer of Property Act, 1882 — Section 130

Citation : (1984) 41 CTR 396 : (1984) 148 ITR 530 : (1984) 18 TAXMAN 1

Hon'ble Judges : Sujata V. Manohar, J;Kania, J

Bench : Division Bench

Judgement

Kania, J.—The respondent (assessee) has not been served in this reference. It appears that the notice of the reference was prepared and lodged with the sheriff for service, but there is nothing further to show whether the service has been effected on the respondent. Normally, we would not have proceeded to hear the reference on merits. However, we do so, as it is conceded by Mr. Joshi that the questions raised in this reference are covered against the Department by two decisions of Division Benches of this court.

2. The reference is on a case stated by the Income Tax Appellate Tribunal under s. 256(1) of the I.T.Act, 1961. The questions referred to us for determination are as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the havalas entries of Rs. 38,000 in the respective partners' accounts in the assessee-firm's books constitutes evidence in support of the gift made to various persons in view of the provisions of section 130 of the Transfer of Property Act ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the disallowance of the interest on the alleged gifts was unjustified ?"

3. The assessee is a firm of six partners. The assessment year with which we are

concerned is the assessment year 1963-64. In the course of assessment of the income of the assessee in the assessment year 1963-64, the ITO found that in the relevant previous year, several partners of the assessee had made gifts to their respective wives, minor children and grandchildren. The details have been noted by him. These gifts were made by passing entries in the accounts of the partners concerned in the books of account of the assessee-firm by debiting their accounts and crediting the accounts of the donees. No gift deeds were actually executed and no stamps were affixed against the entries. The entries crediting interest were also made in the accounts of the donees.

4. The ITO held the gifts to be invalid. The AAC and the Income Tax Appellate Tribunal both, however, held the gifts to be valid. It is from the decision of the Tribunal holding these gifts to be valid that the aforesaid questioner have been referred to us.

5. In *Chimanbhai Lalbhai Vs. Commissioner of Income Tax (Central), Bombay*, the assessees had made a gift of Rs. 5 lacs to his son and of Rs. 2 lacs to his daughter and he made the necessary entries in his account books on that date. Subsequently, he instructed the joint family firm which acted as his banker and with which he had an account to debit him with the two sums and interest earned up to that date and credit the accounts of the son and daughter with the corresponding amounts. These instructions were carried out by the firm which submitted a voucher which the assessee signed. Although the Tribunal considered the transaction to be bona fide, it held that the gift was not effectuated on the ground that there was no transfer of possession. It was held by this court that it was not necessary for the assessee to have drawn the cash amounts from the banker and handed them over to his son and daughter and the gift was complete by the issue of the directions by the assessee and the firm making the transfers in its accounts books. The other considerations which weighed with the Tribunal were irrelevant and the gift was complete and valid and the interest on the amounts transferred to the son and daughter respectively could not be included in the income of the assessee. This decision has been followed by another decision of a Division Bench of this court in *Commissioner of Income Tax, Bombay City-II Vs. Popatlal Mulji*, where it was held that there can be a valid gift effected by making entries in the books of accounts if there is evidence to show that the gift was made by the donor and accepted by the donee and acted upon by both of them. In view of the said decision, it is conceded by Mr. Joshi that both the questions raised must be answered in the affirmative and in favor of the assessee. The questions are answered accordingly. No order as to costs.