
(1971) 11 AHC CK 0005

In the Allahabad High Court

Case No : Wealth-tax Reference No. 63 of 1969

Commissioner of Wealth Tax

APPELLANT

Vs

Gulab Rai Govind Prasad

RESPONDENT

Date of Decision : 25-11-1971

Acts Referred:

Wealth Tax Act, 1957 — Section 2

Citation : (1972) 85 ITR 308

Hon'ble Judges : R.S. Pathak, J;H. Swarup, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; Kameshwar Prasad, Shanti Bhushan and Ashok Gupta, for the Respondent

Judgement

H. Swarup, J.—This reference has come to us on an application made by the Commissioner of Wealth-tax, U P. I, Lucknow, u/s 27(1) of the Wealth-tax Act, 1957.

2. The question of law referred to us is:

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 2 lacs was rightly excluded from the computation of the assessee's wealth ?"

3. The facts leading to the reference are that there was a Hindu undivided family consisting of R B. Hari Kishan Das and his son, Sri Kishan Das and his sons. There was a partial partition in the family in 1942 between Hari Kishan Das and Sri Kishan Das and his two sons, Om Prakash and Laxmi Prakash. Hari Kishan executed a will by which Rs. 6 lacs left by him devolved equally on his two grandsons, Om Prakash and Laxmi Prakash, after the death of Hari Kishan on January 37, 1944. A third son, Prakash, was born to Sri Kishan on August 25, 1949. Sri Kishan, the karta of the Hindu undivided family purported to transfer through book entries a sum of Rs. 2 lacs to his minor son, Tej Prakash, on October 6, 1954. This amount was claimed by the Hindu undivided, family consisting of Sri Kishan and his sons as a gift to Tej Prakash and was sought to

be excluded from the wealth of the Hindu undivided family. Subsequently, on attaining majority, Om Prakash and Laxmi Prakash also ratified the gift.

4. For the assessment year 1964-65 the Wealth-tax Officer rejected the assessee's claim for excluding the amount of Rs. 2 lacs from the wealth of the Hindu undivided family on the ground that the transfer did not amount in law to a gift to the minor son, Tej Prakash. The appeal filed by the assessee was dismissed by the Appellate Assistant Commissioner who confirmed the finding of the Wealth-tax Officer. The Appellate Tribunal, however, held that the gift was a valid gift and the amount was liable to be excluded from the wealth of the assessee. The present question has now been referred to us for opinion.

5. The facts found by the Tribunal are that on the date of the alleged gift, i.e., on October 6, 1954, the cash balance available with the assessee was only Rs. 7,626 although the assets, including negotiable assets, were about Rs. 7 lacs. The Tribunal has recorded a further finding that it was nobody's case that negotiable assets of Rs. 2 lacs value were gifted. Only an entry in the books of the assessee was made by which, the capital account of the Hindu undivided family had been debited and that of Tej Prakash credited with a sum of Rs. 2 lacs on October 6, 1954. On this amount no interest was ever paid to Tej Prakash except in October 1963, when a sum of Rs. 12,852 was credited by way of interest in the account of Tej Prakash. Some immovable properties in the name of Tej Prakash were purchased later on during the minority of Tej Prakash, out of the amount of the alleged gift, but the fruits of the purchase were utilised by the Hindu undivided family and not exclusively by the minor donee. The amount of the gift was never utilised by Tej Prakash for any of his own ends but was always available and utilised in the business of the Hindu undivided family which retained full control over the money all along. From the facts stated above it is clear that the amount of Rs. 2 lacs which is claimed to have been gifted was not available to the assessee for making the gift. The only easily convertible asset consisted of securities but as found by the Tribunal it was not the assessee's case that the negotiable assets were gifted. This amount of Rs. 2 lacs cannot therefore be held to be available to the assessee for making a gift of and mere book entries crediting the amount of Rs. 2 lacs in the assessee's own books in the name of Tej Prakash cannot amount to a gift of the same amount. The circumstances that no interest was credited to the assessee for a number of years and the money was available for the business of the Hindu undivided family also show that there was no intention of making the transfer out of the Hindu undivided family funds.

6. There is no evidence of acceptance of the gift. No act of the guardian has been alleged which might indicate that the gift was ever accepted by the donee. The only act alleged to be connected with the gift was the making of entries in the books, but there is no evidence to show that the karta in the capacity of the guardian of the minor had accepted the gift. The Tribunal went wrong in thinking that the donor and the donee were the same person. If the two were the same

person, there could be no gift at all. If they were two persons, then there is no evidence of acceptance of the gift by Sri Krishan Das in his capacity as guardian of the minor.

7. On the facts and in the circumstances of the case, we are of opinion that no gift in fact had been made by Sri Kishan Das to Tej Prakash and the sum of Rs. 2 lacs could not be excluded from the computation of the assessee's wealth. We, accordingly, answer the question in the negative.

8. The reference is allowed with costs which we assess at Rs. 200. Counsel's fee is assessed at the same figure.