

(2001) 03 DEL CK 0132

In the Delhi High Court

Case No : Gift-tax Case No. 1 of 1986

Commissioner of Wealth Tax

APPELLANT

Vs

Santokh Singh

RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Citation : (2001) 252 ITR 707 : (2002) 124 TAXMAN 100

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : R.C. Pandey and Premlata Bansal, for the Appellant; D.N. Sawhney, for the Respondent

Judgement

Arijit Pasayat, C.J.—This is a petition u/s 26(3) of the Gift-tax Act, 1958 (in short "the Act"). The only question that was considered by the Revenue and the Income Tax Appellate Tribunal, Delhi Bench "A", New Delhi (in short, "the Tribunal"), whether there was a gift in terms of Section 4(1)(c) of the Act for the assessment year 1978-79. According to the Assessing Officer and the Commissioner of Gift-tax (Appeals) (in short, "the Commissioner"), there was a gift in terms of Section 4(1)(c) of the Act, but the Tribunal held otherwise.

2. The dispute arises in the following background :

The assessed, an individual, was required by the Assessing Officer to show as to why the memorandum entered into on July 7, 1979, stipulating arrangement of properties settled amongst various co-owners should not be covered by Section 4(1)(c) of the Act. According to the Assessing Officer, in terms of the memorandum of agreement, the assessed surrendered his rights as co-owner in respect of properties at two places in New Delhi. The assessed's stand was that the settlement arrived at between the co-owners was bona fide and as such the provisions of Section 4(1)(c) of the Act were not attracted. The Gift-tax Officer held that the assessed had surrendered his share of properties in question, thereby attracting Section 4(1)(c) of the Act. The first appellate authority was of

the view that there was no bona fide settlement. The Tribunal referred to various clauses of the family settlement and held that the assessed had bona fide abandoned his share in the properties to avoid disputes, differences and misunderstandings which were likely to occur and arise amongst co-owners for all times to come. It was also noted that the properties which had been respectively allotted on "reallocation were in the possession of the persons, to whom they were allotted and the title deeds were also registered in the names of the respective co-owners. No formal deed was considered necessary because the title deeds were already registered in the respective names. In the aforesaid background, it was held that the settlement was bona fide and genuine.

3. We have heard learned counsel for the parties. Learned counsel for the Revenue submitted that the assessed had abandoned his entire share in the properties and this cannot by any stretch of imagination be considered to be a bona fide settlement. Additionally, it is submitted that the memorandum ought to have been registered and that having not been done, clearly the transaction was not one which involved bona fide action on the part of the concerned parties. Reliance is placed on a decision of the apex court in *Kale and Others Vs. Deputy Director of Consolidation and Others*, , to substantiate the plea. Learned counsel for the assessed, on the other hand, submitted that a factual finding has been recorded by the Tribunal that the arrangement was bona fide. That being the position, no question of law arises. It is to be noted that an application in terms of Section 26(2) of the Act was rejected by the Tribunal on the ground that the findings of fact have been recorded giving rise to no question of law.

4. Section 4(1)(c) of the Act essentially reads as follows :

"4. Gifts to include certain transfers.-(1) For the purposes of this Act,-. . .

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the Assessing Officer to have been bona fide, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment."

5. A bare reading of Section 4(1)(c) makes it clear that the transactions enumerated therein are encompassed only if such transaction resulting in release or surrender, etc., is not made bona fide. The Assessing Officer has to reach a satisfaction in that regard. The object is to give credence to real and genuine transactions. Bona fide means something which is done in good faith, genuine, real. Per Bramwell L.J. In *R. v. Holl* [1881] 7 QBD 575, the equivalent of the phrase is "honestly". As stated in *Strand's Judicial Dictionary*, the correct province of the phrase is, Therefore, to qualify things or actions that have relation to the mind or motive of the individual ; and it has no meaning when joined to things or actions common to all mankind, though sometimes it is thus used in a figurative, but inaccurate, sense. A fact completely within physical

apprehension can neither be bona fide nor mala fide ; a mental fact may be either. According to Tom-lin's Law Dictionary, the expression means in good faith, without fraud or deception ; honestly, as distinguished from bad faith, openly, sincerely. According to Black's Law Dictionary, it means in or with good faith ; honestly, openly and sincerely, without deceit or fraud ; truly, actually, without simulation or pretence ; innocently, in the attitude of trust and confidence. According to Wharton's Law Lexicon, bona fide means good faith, implying the absence of all fraud, unfair dealing or acting ; whether it consists in simulation or dissimulation.

6. As has been rightly submitted by learned counsel for the assessed, the question to be decided on the facts is whether the arrangement was bona fide. The Tribunal after referring to various aspects came to hold that the arrangement was bona fide. The conclusion is essentially factual. It could not be shown to us by learned counsel for the Revenue as to how the conclusions are perverse, giving rise to a question of law. Therefore, the Tribunal was right in rejecting the prayer for making a reference.

7. We may deal with the other submission made by learned counsel for the Revenue about registration. In the very judgment relied upon by learned counsel for the Revenue, i.e. Kale and Others Vs. Deputy Director of Consolidation and Others, the requirement of registration in certain circumstances have been highlighted. In paragraph 10 of the judgment, it has been observed by the apex court as follows :

"10. In other words to put the binding effect and the essentials of a family settlement in a concretized form, the matter may be reduced into the form of the following propositions :

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family ;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence ;

(3) The family arrangements may be even oral in which case no registration is necessary ;

(4) it is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and, Therefore, does not fall within the mischief of Section 17(2) (sic) (Section 17(1)(b) ?) of the Registration Act and is, Therefore, not

compulsorily registrable ;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favor of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same ;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

8. In *Krishna Beharilal Vs. Gulabchand and Others*, , it was pointed out that the word "family" had a very wide connotation and could not be confined only to a group of persons who are recognised by law as having a right of succession or claim to have a share. It was observed that to consider a settlement as a family arrangement, it is not necessary that all the members should belong to one family. Reference was also made to the decision in *Ram Charan Das Vs. Girjanandini Devi and Others*, , where it was observed that the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being group of persons who are recognised in law as having a right to succession or having a claim to share in the property in dispute. If the dispute, which is settled, is one between near relations, the settlement of such dispute can be considered as a family arrangement. The court leaned strongly in favor of the family arrangements to bring about harmony in a family and to do justice to those various members and avoid in anticipation few disputes which might ruin them all. In *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, , it was observed that if in the interest of the family, properties and family peace, the close relations settle their dispute amicably, this court (the apex court) will be reluctant to disturb the same. The courts generally lean in favor of the family arrangements.

9. The above being the position, the document in question did not require registration. As was indicated by the apex court in *K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and Others*, a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. Where a document was no more than a memorandum of what had been agreed to the same did not require registration.

10. In view of the above, we find no reason to direct a reference.

11. This petition is dismissed.