

(1965) 12 MAD CK 0047

In the Madras High Court

Case No : Tax Case No. 65 of 1963 (Reference No. 18 of 1963)

Controller Commissioner of Gift-tax, Madras

APPELLANT

Vs

N.S. Getti Chettiar

RESPONDENT

Date of Decision : 10-12-1965

Acts Referred:

Gift tax Act, 1958 — Section 2, 2(xii), 2(xxiv), 2(xxiv)(d), 20
Income Tax Act, 1961 — Section 16(3)(a)(iv)

Citation : (1966) 60 ITR 454

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—The question for decision referred to us in this case is :

Whether there was a gift by N. S. Getti Chettiar of Rs. 2,47,376 on which he is liable to pay gift-taxi ?

2. N. S. Getti Chettiar, the assessee, was the karta of a Hindu undivided family consisting of himself and his son, Govindaraju Chettiar, who had six sons. There was partition of immovable properties by a registered deed exacted on January 17, 1958 and of moveable properties by entries in the books on April 13, 1958. On November 29, 1958, The claim of the assessee for partition was granted by the department. The total value of the joint Family properties so divided was Rs. 8,51,440. Though the half share of Getti Chettiar would be Rs. 4,25,720 he took only Rs. 1,78,343 the balance being allotted to his son and grandsons.

3. The Gift-tax Officer held that no reasons were advanced by the assessee for allotting a share far in excess of half share to the other members of the family and that, therefore, there had been a gift within the meaning of the Gift-tax Act, and assessed the tax on a sum of Rs. 2,36,377, which was the excess allotment to the other sharers. On appeal the Appellate Assistant Commissioner held that there was no transfer of property in the case of partition when the joint enjoyment came to an end and, therefore, the transaction did not involve any gift exigible to tax. The Income Tax Appellate Tribunal agreed with the view of

the Appellate Assistant Commissioner and held that no gift was made by one coparcener to another when a partition took place between the members of Hindu undivided family. On the application of the Commissioner of Gift-tax, Madras, the Income Tax Appellate Tribunal has referred the question of law to this court for decision u/s 26(1) of the Gift-tax Act.

4. The admitted facts are that the assets of the joint family were worth Rs. 8,51,440. Though Getti Chettiar was entitled to a half share, viz., Rs. 4,25,720, he took only Rs. 1,78,343. The question is whether the excess amount of Rs. 2,36,377 allotted by Getti Chettiar to his son is a gift under the gift-tax Act and such exigible to tax.

5. The contention of the learned counsel for the revenue is that, when a partition takes place in a Hindu undivided joint family and there is a division in status, the shares of each of the members are crystallised, and, if by any transaction the value of the share of one person is reduced resulting in an increase of the share of the other person it amounts to a gift within the meaning of the Gift-tax Act.

6. The would "gift defined in the Gift tax Act 1958, as Follows :

Gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or moneys worth, and includes the transfer of any property deemed to be a gift u/s 4.

7. This definition apart from the gift maintained in the earlier portion also includes the transfer of property deemed to be a gift u/s 4. The extended meaning of the would "gift" by virtue of the deeming clause will be dealt with later. A Gift contemplates transfer by one person to another of movable or immovable property without consideration. The person by whom the transfer is made is the donor, and the person to whom the transfer is made is the donee. "Donor" means any person, who makes gift. "Donee" means any person who acquires any property under a gift and where a gift is made a trustee for the benefit of another person, includes both the trustee and the beneficiary.

8. A portion in joint Hindu family effects a division in status and every coparcener becomes entitled to share upon partition. The right to Survivorship is put an end and each coparcener becomes entitled to a specific separate share. After a division in status a division of the joint family properties by metes and bounds follows. The assumption is that every coparcener has some sort of tilt to the entire family properties and by agreement each of the coparceners relinquishes all his right to the properties other than those that are allotted to him and recognizes the right of other coparceners to the share allotted to them respectively. Therefore, there is no transfer of any interest passing the title from one, in whom it reside to another receiving it without any title. As every one of the coparceners has title to the entire joint family properties, there is no transfer involved in a partition. The contention of the learned counsel for the revenue that immediately after the severance in status is effected, the share of each of the

coparceners becomes ascertained, and thereafter, when he deals with his share in such a manner as to reduce the value of his share and increases the share of another coparcener, it would amount to a transfer amounting to a gift, is not supported by any authority. At this stage, as already stated, we are not dealing with the extended meaning of the word "gift" under the Act.

9. In *Narasimhulu v. Someswara Rao* it was held that the allotment at a partition of jyeshtabagam to the eldest brother was no more than giving a larger share than would strictly be due him and involved no gift by the younger brother or brothers. Dealing with the nature of the partition, the court held that under a partition arrangement each co-owner gets a specific property in lieu of his right in all joint properties that is to say, each co-sharer renounces his right in other common properties in consideration of his getting exclusive right to and possession of specific properties in which other co-sharers renounce their rights. The court further held that the transaction is one of renunciation of mutual rights and does not involve any transfer by one co-sharer of his interest in the properties to the other. In *Radhkrishnayya v. Sarasamma* the question whether partition is transfer was elaborately considered. Subba Rao J. (as he then was), speaking for the Bench, referred to the divergent views of the courts in the following terms :

(1) Partition is a conversion of joint enjoyment into enjoyment in severalty. The crucial test of a transfer by a person having right in favour of a person having no right is not satisfied. There is no conveyance but a transformation of property, an allotment by virtue of his antecedent title as co-sharer. (2) It is a conveyance of a portion of joint right in exchange for a similar right from his co-share.

10. The learned judge held that the later view of partition as conveyance of a joint right involved an introduction of fiction and was also contrary to the fundamental conception of partition. The learned judge further observed :

Partition, therefore, is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and, therefore, no conveyance is involved in the process as a conferment of a new title is not necessary.

11. In *M. K. Stremann v. Commissioner of Income Tax* a Bench of this court took the same view. It held that a partition of joint family property did not constitute a transfer of assets, direct or indirect, within the scope of section 16(3)(a)(iv) of the Income Tax Act. The Bench observed :

12. Obviously no question of transfer of assets can arise when all that happens is separation in status, though the result of such severance in status is that the property hitherto held by the coparcenary is held by the thereafter by the separated members as tenants-in-common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the tenants-in-common to each of such tenants-in-common."

13. The view as expressed in *Radhakrishnayya v. Sarasamma and M. K. Stremann v. Commissioner of Income Tax* was approved by the Supreme Court in *Commissioner of Income Tax v. Keshavlal Lallubhai Patel*. In *Sahu Madho Das v. Mukand Ram Bose J.* stated the position thus at page 10 :

It is well-settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

14. In a recent decision of the Supreme Court in *Kalooram Govindram v. Commissioner of Income Tax* the question arose whether the assessee of a Hindu undivided family is entitled to claim depreciation in respect of the assets of the old Hindu undivided family on the basis of the original cost to the family or on the basis of the valuation at which the assessee took over the assets. In a partition between the members of a Hindu undivided family, G was declared to be entitled to a 10/16th and B to 6/16th share. One of the items was a sugar factory and it was sold in auction and knocked down for a sum of Rs. 34,00,000. The question that arose was whether Gs family was entitled to depreciation of the factory under the Indian Income Tax Act on the amount of Rs. 34,00,000, the depreciation not having been allowed for any earlier part. In holding that the depreciation allowance ought to be computed on the basis of the valuation at which G took over the assets, Subba Rao J., who spoke for the majority, observed as follows :

Coparcenary is a creature of Hindu law. The concept involves community of interest, unity of possession and common enjoyment. Each coparceners right extends to the whole joint family property. Though each one of them has interest in the whole family property, he has no definite share therein. Partitioning is the ascertainment of individual shares and it can be brought about by an unambiguous declaration of their intention to divide, i.e., by a conscious alteration of their status. Such a declaration brings about a division in status. At that stage the members of an erstwhile joint family become tenants-in-common. The next step is the division by metes and bounds whereunder separate properties are allotted towards the said definite shares of the individuals. Whether the said process involves transfer or not within the meaning of the Transfer of Property Act, it certainly confers on a divided members an absolute title to a specified property, whereas before the partition he had only some interest in the entire joint family property.

15. It was contended by the learned counsel for the revenue that the Supreme Court has not decided the question whether the process of division by metes and bounds is a transfer or not, and this question was left open. It was not necessary for the Supreme Court in the case of decide the question; but in the decisions of the Supreme Court cited already, it has been clearly laid down that the process of division by metes and bounds, whereunder separate properties are allotted towards the definite shares of individuals, is not a transfer of property. On a consideration of the authorities cited above, it is clear that the partition by metes and bounds between the divided members of the family subsequent to a division in status would not amount to a transfer of property.

16. The next question that has to be considered is whether the transaction in question would come within the extended meaning of the word "gift" under the Gift-tax Act. "Gift" is defined it include the transfer of property deemed to be a gift u/s 4. "Transfer of property" is defined in section 2(xxiv) as follows :

17. Transfer of property means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes -

- (a) the creation of a trust in property;
- (b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;
- (c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

18. Learned counsel for the revenue submitted that, whatever may be the nature of a partition, the transaction by which the value of the share of a coparcener is reduced and that of another coparcener is increased would fall within the extended meaning of "transfer of property" as defined in section 2(xxiv). Sub-clause (b) brings the transaction entered into by any person, by which the value of his property is diminished and that of another person increased, within the meaning of the term "transfer of property". The contention is that under this extended meaning of the term "transfer of property" a transaction by which a coparcener after division in status relinquishes a portion of his ascertained share would be a gift. The construction of clause (xxiv) of section 2 is not free from difficulty. The meaning of the term "transfer of property" is given as disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property. It is further stated that the definition will include the transactions mentioned in the four sub-clauses, sub-clauses (a) to (d), without limiting the generality of the transactions mentioned in clause (xxiv) if section 2. The

questions that arise for consideration are whether the word "includes" would have the effect of extending the meaning of the term "transfer of property" and whether the phrase "without limiting the generality of the foregoing" would have the effect if including the transactions, which do not generally fall within the various heads mentioned in the main clause. In other words should the phrase "without limiting the generality of the foregoing" mean "in addition to; the generality of the foregoing". The effect of using the word "includes" in a definitive clause has been considered. In Craies on Statute Law (6th edition), at page 212, it is stated that where the word defined is declared of "include" so and so, the definition is extensive. Therefore, the meaning of the term "transfer of property" is extended to include the transactions in the four sub-clauses. But the question is whether the phrase "without limiting the generality of the foregoing" would make any difference.

19. Learned counsel for the revenue relied on a decision reported as *Grimwade v. Federal Commissioner of Taxation* for the interpretation of this phrase. Section 4 of the Gift Duty Assessment Act, 1941-42, is the same as section 2(xxiv) of the Gift-tax Act. The phrase "without limiting the generality of the foregoing" is used in section 4 of the Gift Duty Assessment Act. The case cited, *Grimwade v. Federal Commissioner of Taxation*, was disposed of on the ground that the assessee did not enter into a transaction constituting disposition of property within the meaning of paragraph (f) (similar to sub-clause (d) of clause (xxiv) of section 2) and, therefore, there was no gift upon which duty became chargeable. The effect of the phrase in question was not considered by the Full Court on appeal. But *Williams J.*, whose decision was appealed against, at page 208, made the following observation :

It appears to me that paragraphs (a) to (f) were included in the definition of disposition of property for the purpose of including in the definition transactions which might otherwise not be held to fall within the ordinary meaning of a disposition or other alienation of property and that each paragraph is complete in itself.

20. The learned judge has not specifically considered the effect of the phrase "without limiting the generality of the foregoing". But both the courts proceeded on the basis that the effect of the section would be inclusion of paragraphs (a) to (f) within the definition of disposition of property, which might not have been otherwise included. The phrase "without limiting the generality of the foregoing" would not have the effect of restricting the extended meaning of the term "transfer of property" including sub-clauses (a) to (d) of clause (xxiv) of section 2. The effect would be that the different clauses, which are included, will not by any implication have the effect of limiting the generality of the words used, and by construction of any or of all the sub-clauses (a) to (d), it cannot be contended that the general meaning of the words used is restricted. The result, in our opinion, is that the extended meaning of the term "transfer of property" by addition of sub-clauses (a) to (d) is validly given. Having held that sub-clause (d)

of clause (xxiv) of section 2 is valid and so included within the extended meaning of the term "transfer of property", we will proceed to examine its import.

21. The word "property" is defined as including any interest in the property, and the contention of the learned counsel for the revenue is that a transaction, which would diminish the value of a property, that is, a share in the joint family property, and increase the value of the property of another would come within the ambit of this clause. The ingredients of this sub-clause (d) are : (1) that the transactions must be entered into by a person, (2) that it must be with the intention to diminish the value of his own property, and (3) that it must also be with the intention to increase the value of the property of another. The effect of the transaction in question is to diminish the value of the property of the assessee and increase the value of the other members of the family. The intention cannot also be denied. But the question is whether the allotment of a greater share in the course of a partition by metes and bounds would be a transaction entered into by a person resulting in the diminishing of the value of his own property. In *Grimwade v. Federal Commissioner of Taxation*, while considering clause (f) of section 4 of the Gift Duty Assessment Act, 1941-42, which is similar to sub-clause (d) of clause (xxiv) of section 2 of the Gift-tax Act, the purport of the words "entering into transaction" was dealt with. In the case cited, E. M. Grimwade voted for a resolution of a company, which had the effect of reducing the value of his shares and increasing the value of the other sharers, who happened to be his sons. Rich J., after referring to the dictionary meaning of the word "transaction", viz., "negotiation : dealing between man and man, management : affairs, things managed", observed as follows :

Whatever may be the precise meaning of the word in section 4(f), it should, in my opinion, be construed as meaning some act, doing, negotiation or dealing by a donor in favour of a donee, whether by direct or indirect method.

22. Latham C.J. and Webb J. observed as follows :

When a shareholder makes up his mind to vote in a particular way and casts his vote accordingly, he cannot be said to be entering into a transaction. A transaction by a person must be a transaction with some other person... If a preference shareholder in a company voted in favour of reducing the rate of dividend upon preference share in order to allow the company to pay some dividends to ordinary shareholders, it would be an unreal description of what took place to say that that fact showed that the preference shareholder had entered into a transaction.

23. The learned judges pointed out that one could not disregard the proposition that a company was an independent legal entity distinct from its members. The purport of the clause, as understood by the learned judges, is that there should be a dealing by a donor in favour of a donee. This conception does not fit in with the process of division by metes and bounds of joint family property. There is strictly no donor-donee relationship. All the sharers have some sort of title to the

entire property. The sharers by acknowledgment and relinquishment become entitled to specific properties. In the process each of the sharers relinquishes his right to the other property excepting that allotted to him in return for the other sharers relinquishing their right to the property allotted to him. A division by metes and bounds of a joint family property is different, in that all sharers have some antecedent title to all the properties and there is mutual acknowledgment and relinquishment. The process of division cannot, therefore, be termed as "a transaction entered into by any person." This view is strengthened by the use of the words "his own property" in sub-clause (d). If a transaction concerning properties, to which both the parties had title, was intended to be included, it is unnecessary to use the word "own". The intention could only have been cover cases in which a person may by a transaction diminishing the value of his property in favour of another, who had no right to that property. In this connection it has to be noted that for the purpose of the Gift-tax Act the joint family is deemed to continue until there has been a partition by metes and bounds and recognition by the tax authorities. If the joint family continued till the division by metes and bounds was complete, there could not be any transactions by a sharer diminishing the value of his own property. We will advert to this aspect again a little later.

24. In construing a taxing statute, which professes to impose a charge upon a subject, the intention must be shown by clear and unambiguous language. A tax should not be imposed without a plain declaration of the legislature to impose it. It has been held that if a provision is capable of two alternative meanings, the courts will prefer the meaning more favorable to the subject. If a particular case does not fall within the words of the statute, the words cannot be construed benevolently in favour of the State. It is well established in law that the process of division by metes and bounds is not a transfer of property. If it is intended to alter the well-established position of law, a distinct and positive legislative enactment is necessary. In the absence of the express declaration, there can be no presumption that any alteration of law was intended. The words in sub-clause (d) of clause (xxiv) of section 2 are by no means clear and unambiguous in their intention either to alter the existing law or to impose a tax on transactions like the present one, with which we are now concerned.

25. Mr. V. Balasubrahmanyam, learned counsel for the revenue, relied on a decision reported as *Commissioner of Gift-tax v. C. Satyanarayanamurthy*, where the Andhra Pradesh High Court held that the transaction in the question was a transfer of property within the terms of section 2 (xxiv)(d) and amounted to a gift as envisaged in section 2(xii) and section 4(a) of the Gift-tax Act. In the case cited, the manager of a joint Hindu family threw his self-acquisitions into the common stock. The question arose whether the throwing of these self-acquisitions into the common stock is a transfer so as to attract the provisions of the Gift-tax Act. The court held that by the conversion of the self-acquired property into a joint family property, there was a decrease in the value of the property of the manager, while it enhanced the value of the property of the joint family, and

that, as the Hindu joint family answered the description of any other person contemplated under the Act, the transaction fell within the purview of sub-clause (d) of clause (xxiv) of section 2. This decision is not helpful in deciding the question whether subsequent to a separation in state the proses of division by metes and bounds is transfer of property. Section 4 of the Gift-tax Act includes certain transfer of property, which are deemed to be gift u/s 4. Section 4(a) provides that when a property is transferred for an inadequate consideration, the amount by which the market value of the properties exceeds the value of the considerations is deemed to be a gift. Under clause (b) of the section 4, when a property is transferred for consideration, which has not passed either in full or in part, the amount of the consideration, which has not passed, is deemed to be a gift. Under clause (c) of section 4, when 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 bound to the satisfaction of the Gift-tax Officer to have been bona fide, is deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture of abandonment. Clause (d) of section 4 provides that, when a person absolutely entitled to the property causes the same to the vested in himself and any other person jointly without adequate consideration and when such other person makes an appropriation out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift. Clauses (c) and (d) can have no application. Clause (c) relates to a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, and the value of such transactions, which is found to the satisfaction of the Gift-tax Officer to be not bona fide, shall be deemed to be a gift. The transaction as such are not taxable but only to the extent to which it has been found to be not bona fide. In this case, it is not disputed that the partition is bona fide, and, even if the transaction is considered to be a release or abandonment of interest in the property, as there is no lack of bona fides, the transaction is not liable to tax. The transaction, therefore, will not fall under this clause. Clause (d) relates to a person, who is absolutely entitled to the property, vesting in himself and another person jointly without adequate consideration and such other person making an appropriation of it. The transaction cannot fall under this clause either.

26. The transaction cannot also fall under clauses (a) and (b) without involving the add of the extended meaning given to the term "transfer of property" u/s 2(xxiv)(d) of the Gift-tax Act. Class of transfer contemplated u/s 4(a) and (b), without invoking the extended definition would comprise transfer otherwise than for an adequate consideration and transfer where consideration has not passed or not intended to pass either in full or in part.

27. We have already held that sub-clause (d) of clause (xxiv) of section 2 would not include the transaction in dispute. Even if, for arguments sake, it is taken

that section 2(xxiv)(d) would include the transaction in question, it would require considerable straining of the language to bring it within sub-sections (a) and (b) of section 4. The word "gift" is defined to include transfer of any property deemed to be a gift u/s 4. Thus, an extended meaning is given to the word "gift" and the transactions covered by sub-sections (a) to (d) of section 4 are also deemed to be gifts. A wider meaning is also given to the term "transfer of property" u/s 2(xxiv). Craies on Statute Law (6th edition), at page 213, points out :

An interpretation clause, which extends the meaning of a word, does not take away its ordinary meaning..... An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some thing to which it would not ordinarily be applicable.

28. Blackburn J. in *Lindsay v. Cundy* observed :

An interpretation clause is a modern innovation and frequently it does a great deal of harm, because it gives a non-natural sense to words which are afterwards used in a natural sense, without noticing the distinction.

29. The interpretation clause should be used for the purpose of interpreting the words which are ambiguous or equivocal, and not to disturb the meaning of such as are plain or as to prevent the opinion of a word in its primary and obvious sense. To read the term "transfer of property" to include the transaction in question does not appear to be natural. Subsection (a) of section 4 deals with transfer of property without adequate consideration, and sub-section (b) deals with transfer of property for consideration which is not passed or not intended to pass either in full or in full or in part. Obviously even if the transaction in question is held to be transfer, it cannot be read into section 4(a) or section 4(b) without straining the language considerably. This fact also supports our view that the transaction in question was not intended to be brought within the ambit of the section 2(xxiv)(d).

30. The intention of exacting section 20 of the Gift-tax Act is to enable the collection of the tax on gifts made by the joint family after the joint family had ceased to exist. The Gift-tax Officer is required to record on an order that there had been a partition between the various members in definite portions. Until he is so satisfied and a record is made to the effect for the purpose of the Act, the joint family is deemed to continue. The fact that the Gift-tax Officer has not made a declaration that the family shall be deemed for the purpose of the Act to continue will not make any difference, for a partition is not recognised, unless it is divided in definite portions among the members and recorded by the officer.

31. Section 25A of the Income Tax Act, 1922, is more or less analogous to section 2 of the Gift-tax Act. Section 25A enables the Income Tax Officer to make an enquiry when it is claimed that a partition had taken place in the a Hindu

family. If he is satisfied that the family property had been partitioned among the various members in definite proportions, he shall record an order to that effect. Sub-section (3) of section 25A provides that, when an order has not been passed by the Income Tax Officer regarding partition in a Hindu family u/s 25A(1), such family shall be deemed for the purpose of the Act to continue to be a Hindu undivided family. It has been held u/s 25A of the Income Tax Act, that, though a joint family has come to an end in law, if a physical division of the family property, though possible, has not been effected and consequently no finding is given u/s 25A(1), the family would be deemed for the purpose of the Income Tax Act to continue to be a joint family and taxed as such. Even if there is a total partition and division of properties, when no claim is made before the Income Tax Officer or when a claim is made and no finding regarding partition is made by the officer, the family should be deemed to continue to be a Hindu undivided family. The purpose of this section as well as section 20 of the Gift-tax Act is to enable the collection of the tax due from the joint family in spite of the fact that subsequently the joint family ceased to exist. The device adopted is to deem the family to continue to be joint in spite of a division in status, until the properties are physically divided and the officer makes a record as to the fact of partition. An attempt was made to distinguish section 20 of the Gift-tax Act from section 25A of the Income Tax Act on the ground that there is no provision corresponding to section 25A(3). It was submitted that a declaration by the Gift-tax Officer u/s 20(2) is necessary to continue the Hindu undivided family for the purpose of the Gift-tax Act. Though the wording is slightly different, it does not make any difference, for it is the duty of the Gift-tax Officer to record a partition if he is satisfied. If no such record is made, merely because the Gift-tax Officer failed to make a declaration u/s 20(2) of the Gift-tax Act, the assessment on the joint family as such cannot be avoided. By a fiction the joint family is continued under both the sections, section 25A of the Income Tax Act and section 20 of the Gift-tax Act, even though there had been a partition, till the family properties are divided and a record is made to that effect. It is hardly consistent for the revenue to contend that while partition will not be recognised till the joint family properties are partitioned in definite portions and the fact recorded by an officer, the family should be treated as divided the moment there is severance in status and the transaction by any of the shares during the process of division by metes and bounds as transaction by the shares and not by the family. Though section 20 is not intended only to cover tax on gifts made by the family in the event of a subsequent partition, provision is made for the officer to satisfy himself and record the fact of a partition after division in definite portions. Subsection (2) enables the officer to treat the family, even after division in status, as a joint family for the purpose of this Act. It could not have been the intention of the legislature to treat the joint family before division by metes and bounds as divided in different circumstances. In our view, whatever may be the position under the Hindu law, for the purpose of the Gift-tax Act, the joint family is deemed to continue till there is a partition by metes and bounds and the same recorded by the officer. As the joint family continues having a distinct entity,

there cannot be any "transaction by a shares as a person diminishing the value of his own property". We are satisfied that the transaction in question is not a gift liable to pay tax under the Gift-tax Act. We answer the reference in favour of the assessee with costs. Counsels fee Rs. 250.

32. Question answered in favour of the assessee.