
(2004) 04 MAD CK 0171
In the Madras High Court
Case No : Tax Case No. 77 of 2002

Dr. V. Srinivasan

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Gift Tax Act, 1958 — Section 2, 3, 4, 4(1)
Income Tax Act, 1961 — Section 27
Registration Act, 1908 — Section 47, 61
Transfer of Property Act, 1882 — Section 122, 123

Citation : (2004) 192 CTR 371 : (2004) 270 ITR 97 : (2004) 3 MLJ 499

Hon'ble Judges : P.K. Misra, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : C.V. Rajan, for Kala Ramesh, for the Appellant; T. Ravikumar, Junior Standing Council, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Venkatachalamoorthy, J.—The assessee is an individual and owned a house-site, measuring 4012 sq. ft. in S. No.B-35, Thillai Nagar, Trichy. In 1981, he agreed to sell the said land for a consideration of Rs.55,000/- to Iyyappa Family Trust (Trust created by the assessee's father-in-law for the benefit of assessee's two children). In fact, according to him, even in 1978, the property was delivered to the Trust. The Trust passed a Resolution on 31.3.1984, resolving to deliver the machinery and furniture belonging to it at book value to the assessee and the same is to be adjusted against the sale consideration of the said plot. The assessee's claim is that the sale consideration was received on 31.3.1984 itself by way of book adjustment. On 10.04.1984, another agreement was entered into between the assessee and the Trust recording payment of full consideration and agreeing that the assessee would effect registration of the sale deed whenever required by the Trust and at any rate before 31.3.1989 to the beneficiaries jointly. The sale deed, as such, was executed on 22.11.1989 by the assessee in favour of the Trust, which mentioned the sale consideration as Rs.55,000/-,

however, the stamp duty was paid on the market value of Rs.1,68,000/-. But, the Sub-Registrar adopted the guideline value at Rs.2,80,000/- for stamp duty purposes.

The Gift Tax Officer, invoking the provisions of Section 4(1)(a) of the Gift Tax Act, 1958, treated the amount of Rs.2,25,000/- as deemed gift (the difference between the guideline value adopted by the Sub-Registrar at Rs.2,80,000/- minus the consideration of Rs.50,000/-) and passed the assessment order dated 28.9.1992, levying gift tax at Rs.61,500/-.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals), who accepted the assessee's contention that the transfer of land took place even before the registration of sale deed on 22.11.1989, and allowed the appeal by an order dated 16.7.1993.

The Revenue moved the Income Tax Appellate Tribunal by filing an appeal in GTA No.38/93. By an order dated 4.2.1999, the Accountant Member of the Tribunal took the view that mere agreement to sell the property on 13.4.1981 and delivery of the same would not constitute any gift and that the transfer of property took place only when the sale deed was registered, and held that the Assessing Officer was justified in assessing the value of the deemed gift u/s 4(1) (a) of the Gift Tax Act.

However, the Judicial Member differed from the view taken by the Accountant Member, by holding that the transfer of property as defined u/s 2(xxiv) of the Gift Tax Act was effected as early in 1984 when possession was taken and the consideration was paid and that if at all there was any gift, it can be taken only on the date of transfer on 31.3.1984 for the purpose of Section 4(1)(a) of the Gift Tax Act. Therefore, it cannot be said that the relevant date for assessing the gift, if any, arises only in the assessment year 1990-91 and that the registration of the deed is not relevant.

The matter was referred to a third member, who, by his order dated 28.3.2001, concurred with the Accountant Member that the transfer took place only on the registration of the sale deed on 28.11.1989. The Tribunal passed final orders on 29.01.2002, allowing the appeal filed by the Department in view of the majority decision.

Being aggrieved by the order of the Tribunal, the assessee has now filed the above appeal.

2. The question for consideration is, as to whether the transfer of property was completed on 22.11.1989, when the document was executed and registered or earlier?

3. Section 122 of the Transfer of Property Act defines the term "gift" and Section- 123 lays down as to how a gift can be effected.

Section 123 is to the effect that transfer must be effected by a registered

instrument signed by or on behalf of the donor and attested by at least two witnesses.

4. The relevant provision in the Gift Tax Act is Section- 2(xii), which explains the term "gift". The Section reads as under:-

" In this Act, unless the context otherwise requires,--

"gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and [includes the transfer or conversion of any property referred to in Section 4, deemed to be a gift under that section]."

[Explanation.-- A transfer of any building or part thereof referred to in clause (iii), clause (iiia) or clause (iiib) of Section 27 of the Income Tax Act by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money's worth, shall be deemed to be a gift made by such person;]

5. The next provision to be referred to is Section 2(xxiv) of the Gift Tax Act, which explains the terms "transfer of property" as under:-

" In this Act, unless the context otherwise requires,--

"transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property"

6. Section 3 of the Gift Tax Act is to the effect that in respect of the gifts made by a person, tax would be levied.

Section 4(1)(a) of the Gift Tax Act is to the following effect:-

" For the purpose of this Act,--

(a) where property is transferred otherwise than for adequate consideration, the amount by which the [value of the property as on the date of the transfer and determined in the manner laid down in Schedule II,] exceeds the value of the consideration shall be deemed to be a gift made by the transferor:

[Provided that nothing contained in this clause shall apply in any case where the property is transferred to the Government or where the value of the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India]."

7. Section- 47 of the Indian Registration Act is to the effect that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.

8. A Constitution Bench of the Supreme court, in the ruling reported in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , ruled that the

registration under the Registration Act is not complete till the document to be registered has been copied out in the records of the Registration Office as provided in Section 61 of the Act and that Section 47 of the Registration Act has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. The Court also ruled that a sale which is admittedly not completed until the registration of the instrument of sale is completed cannot be said to have been completed earlier because by virtue of Section 47, the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.

9. The Supreme Court again, in another ruling reported in Smt. Gomtibai (dead) through LRs. and others Vs. Mattulal (dead) through LRs., , held that in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred. Or in other words, the gift is not complete in the eye of law. Hence, the settled legal position is that in the eye of law, the transaction is complete only when the registration formalities are completed.

[Also see:- (i) Hiralal Agrawal etc. Vs. Rampadarath Singh and Others, etc.,

(ii) Darbar Shivraj Kumar Vs. Commissioner of Gift-tax, Gujarat-IV,

10. Learned counsel for the assessee, drawing the attention of this Court to the provisions of section 2(xii) and Section 2(xxiv) of the Gift Tax Act and also the ruling of the Supreme Court reported in Hamda Ammal Vs. Avadiappa Pathar and Others, , contended that the agreement to sell and delivery of the property (in the case on hand, the assessee claims, the delivery was in 1978 and the agreement was in 1981) itself is sufficient to say that transfer of property has taken place and that once the document is registered, it will relate back to the date of agreement.

11. We have already extracted Sections 2(xii), 2(xxiv) and 4(1)(a) of the Gift Tax Act in the earlier part of this Judgment. Section 2(xxiv) of the Gift Tax Act explains what is meant by transfer of property. According to the said Section, not only conveyance or settlement but even delivery would amount to transfer of property. Section 4(1)(a) of the Act deals with cases where property is transferred for inadequate consideration and what should follow thereon. Taking advantage of the fact that even delivery would amount to transfer of property (Section 2(xxiv)), it cannot be said that gift was complete in this case, in the year, prior to 1989 ((ie) in 1981 or 1984). What is to be noted is that the definition of the expression "transfer of property" enlarging the meaning of transfer for the purpose of the Act also does not in any way dispense with the requirement of registration of the deed of settlement, settling an immovable property favouring a donee. Section 2(xxiv) of the Act also contemplates a bilateral transfer and unless the document transferring immovable property is validly registered, there is no gift under the Act.

12. Now we proceed to consider some rulings on the point in issue:-

(a) Commissioner of Gift Tax Vs. Smt. Aloka Lata Sett and Others, . In that case, the assessee filed his gift tax return for the assessment year 1974-75. The Gift Tax Officer found that the gifts made by the assessee under a deed registered on July 13, 1973, had not been included in the gifts returned by the assessee. He, therefore, included the amount of that gift. The assessee contended that the gift deed, though registered on July 13, 1973, was executed on April 13, 1973. The Tribunal held that the date of execution of the gift being April 13, 1973, which fell within the previous year relevant to the assessment year 1973-74 according to the Bengali calendar, such gift could not be included in the assessment for the assessment year 1974-75 and on a reference, the High Court held that the value of the immovable properties gifted by the assessee by a deed executed on April 13, 1973, but registered on July 13, 1973 was includible in the total taxable gift of the assessee for the assessment year 1974-75.

In the course of the judgment, the court observed as under:

" The Gift Tax Act does not enact any exception to the general law as contained in Section 123 of the Transfer of Property Act. Therefore, in order to effectuate a valid gift, the requirements of Section 123 of the Transfer of Property Act must be complied with. Section 123 of the Transfer of Property Act requires a registered instrument for a valid gift.

Under Section 47, a registered document operates from the date of its execution and not from the date of its registration. The result is that if two registered documents are executed by the same person in respect of the same property to two different persons at different times, the one which was executed first has priority over the other, although the former was registered subsequent to the latter. In other words, registration of a document relates to the date of its execution. This is so between the parties to the document. But, as regards third parties, it is effective from the date of registration.

It may be that, as between the donor and the donee, the registered document may take effect from the date of execution but, as regards a third party, the point of time at which the deed becomes effective is when it is registered. If the registered document is held to be effective against the Revenue which is not a party to the deed from the date of execution, it will entail great hardship, because the Revenue will have no knowledge of the date of execution of the document, and the document can only be effective against the Revenue from the date of registration."

(b) Thulasimani Ammal vs. Commissioner of Income Tax (2000) 108 Taxman 426 . In that case, the petitioner made a settlement of some of her lands in favour of her daughter on 8.6.1970 and as per the guideline value maintained by the Registration Department, the value of the land was taken as Rs.1,20,180/- for the purpose of registration of the deed. The petitioner, on the ground that the deed was executed on 12.2.1970, filed a return of gift for the assessment year 1970-71. The case of the petitioner was since the gift was made during the

financial year 1969-70, the relevant assessment year for levy of tax, would be 1970-71 and there was no obligation on her part to file the return of gift for the assessment year 1971-72. The court rejected the plea of the petitioner and ruled as follows:

" I am of the view that the transaction of the gift may be regarded as valid between the donor and the donee from the date of execution of the settlement deed. But, if the document is required to be registered, the transfer of immovable property would become complete by registration of the document. Though by virtue of Section 47 of the Indian Registration Act, it would relate back to the date of execution, in such cases, I hold that it would be only by registration of the document transferring the immovable property, the transfer would become complete though it may have effect from a date interior to the date of registration and insofar as third parties, particularly, the tax authorities are concerned, the relevant date for the levy of tax is the date of registration of the document."

(c) In 2001 VII AD 464 (SC) , the Supreme Court was dealing with a case, where the respondent was owner of immovable property and by declaration dated 10.10.1966, he sought to give a gift of certain out-houses attached to a building to his wife. The declaration, however, was not registered. The Gift Tax Officer rejected the respondent's claim that a valid gift had been made as, according to him, there had not been any compliance with the Provisions of Section 123 of the Transfer of Property Act. Though the Commissioner and the Tribunal took the same view, the High Court came to a different conclusion that the definition of the word "gift" under the Gift-tax Act was wider than the definition of "gift" in the Transfer of Property Act and many acts and transactions which may not amount to gift under the Transfer of Property Act shall still amount to a gift under the Gift-tax Act especially by virtue of the provisions of Section 4 of the Gift-tax Act. Consequently, it came to the conclusion that it was not necessary that a document should be registered in order that there should be a valid gift. The Supreme Court, in those circumstances, held as under:-

" As we have already observed, there may be certain transactions of transfer which may not amount to a gift within the meaning of section 122 of the Transfer of Property Act but would be regarded as gifts for the purpose of subjecting such transfers to the levy of gift-tax. In this behalf, reference may usefully be made to Commissioner of Gift Tax, Kerala Vs. R. Valsala Amma, wherein this court at page 830 observed that: "The Gift-tax Act did not change the general law relating to the rights of property". The general law would take into its ambit not only the provisions of the Transfer of property Act but would also require application of the provisions of the Registration Act. It is not necessary for us to refer to the decisions of the High Courts in this behalf except to note that the consistent view of the High Courts has been that for effecting a transfer the provisions of the Transfer of Property Act and/or the Registration Act have to be complied with. (See Padma Lal Chand Mirchandani Vs. The Commissioner of Income Tax

(Delhi), ; Commissioner of Gift-tax, Bombay-III Vs. Matilda Ferreira, ; K. Madhavakrishnan Vs. Commissioner of Gift-tax, and Darbar Shivraj Kumar Vs. Commissioner of Gift-tax, Gujarat-IV,).

In the instant case, the High Court did not even refer to the provisions of the Registration Act and, therefore, fell in error in coming to the conclusion that the case fell within the provisions of Section 4 of the Gift-tax Act and, therefore, as it was a deemed gift it was not necessary that the document had to be registered. In our view, the general law did not stand abrogated and the requirement of complying with the provisions of the Transfer of Property Act and the Registration Act had to be fulfilled. The High Court, therefore, erred in answering the question of law in the negative and against the Revenue."

13. From the foregoing discussion, it has to be held that the Tribunal is perfectly right in its view that there is a deemed gift only on 22.11.1989 when the sale deed was executed by the appellant in favour of the Trust.

14. In the result, the appeal stands dismissed.