
(1998) 09 MAD CK 0065

In the Madras High Court

Case No : Tax Case No. 490 of 1989 (Reference No. 282 of 1989)

K. Venugopal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-09-1998

Acts Referred:

Income Tax Act, 1961 — Section 64, 64(1)

Citation : (2001) 248 ITR 251

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Philip George, for the Appellant; C.V. Rajan, for the Respondent

Judgement

A. Subbulakshmy, J.—At the instance of the assessee, the following question of law has been referred to this court for opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the deed of settlement dated

April 1, 1981, was a deed of transfer and not a deed of family settlement ?

2. The deceased assessee was an individual. He filed returns of his income for the assessment year 1982-83 declaring his income at Rs. 20,450.

The Income Tax Officer added an amount of Rs. 34,550 to this income u/s 64(1)(v) of the Act as an amount of Rs. 3,40,000 was received by the

assessee's son under a family settlement dated April 1, 1981, and it amounts to transfer without consideration and consequently a gift and so, the

interest accrued on this amount gifted by the assessee to his minor son is liable to be added to the income of the assessee u/s 64(1)(v). The

assessee appealed to the Appellate Assistant Commissioner and contended that the settlement would not amount to transfer and adding of interest

accrued on this amount to the income of the assessee u/s 64(1)(v) is not justified. The Appellate Assistant Commissioner rejected the contention of the assessee and dismissed the appeal. On further appeal to the Tribunal, the Tribunal held that the transaction would amount to transfer and not a family arrangement and the properties were the absolute properties of the assessee and the deed of settlement was not a bona fide one as there was no dispute among the family members and so, this amount of Rs. 3,40,000 settled by the assessee on his minor son under the deed of settlement amounts to transfer. Accordingly, the Tribunal was of the view that the transfer is without consideration and it amounts to a gift to the minor son of the assessee and, consequently. The interest accrued on such gifts should be added to the income of the assessee u/s 64(1)(v) and accordingly dismissed the appeal.

3. Counsel for the assessee submitted that the assessee had executed the family settlement among the members of his family under the deed of settlement dated April 1, 1981, giving this sum of Rs. 3,40,000 in favour of his minor son. The recital in that document is that, it is hereby agreed that the party of the fourth part shall own and possess and enjoy as full and absolute owner of the monies amounting to Rs. 3,40,000 as described in the annexure and that nobody else has any claim . . .

4. This deed clearly provides that this amount of Rs. 3,40,000 is given to the minor son of the assessee. That document takes effect immediately.

5. Counsel for the assessee submitted that the family arrangement, of movable property even when reduced to writing, need not be registered. He relied upon the decision in Kale and Others Vs. Deputy Director of Consolidation and Others, , which lays down that the family settlement must be bona fide. In that decision, it is held that (headnote):

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. . . The family arrangement may be even oral in which case no registration is necessary. The registration would be necessary only if the terms of the family arrangement are reduced into writing.

6. In the instant case, the deed executed by the assessee relates to movable property. So, registration of the document does not arise. The

assessee has executed the deed giving this amount of Rs. 3,40,000 to his minor son. This amounts to transfer without consideration. The Tribunal

also found that, in fact, there is no existing dispute between the assessee and his minor son and other children with regard to the property which is

the subject-matter of settlement and in view of the minor son and other children of the assessee not having any right over the property and in the

absence of any dispute among the family members, it amounts only to a transfer without consideration. The amount involved was the absolute

property of the assessee. It is not the case of the assessee that there was any dispute among the family members and only due to rival claims, the

family settlement had to be necessarily executed for fair and equitable division of the properties among the various members of the family. The apex

court in Commissioner of Gift-tax Vs. S.N. Zaman and S.M. Elahi (legal heirs of late Rahim Buksh), , CIT v. Ponnammal [1987] 164 ITR 706 ,

Kale and Others Vs. Deputy Director of Consolidation and Others, Ram Charan Das Vs. Girjanandini Devi and Others, , has held that (headnote)

:

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property

amongst members of a family. In this context the word "family" is not to be understood in a narrow sense of being a group of persons whom the

law recognises as having a right of succession or having a claim to a share in the disputed property. The consideration for a family settlement is the

expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst the relations. That consideration having passed

by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be impeached thereafter.

7. In the case of CIT v. Ponnammal [1987] 164 ITR 706, it has been held that (headnote) :

...in the instant case, it was found as a fact that the family arrangement had been brought about by the intervention of the panchayatdars and this

clearly showed that the sons and daughters of the assessee were laying claims to the property which the assessee got under the will of her father

and it was not relevant at the time when the family arrangement was entered into to find out as to whether such claims if made in a court of law

would be sustained or not. If the assessee found it worthwhile to settle the dispute between herself, her sons and daughters by making the family arrangement, the said arrangement could not be ignored by a tax authority. In view of the finding of the Tribunal, the family arrangement dated December 17, 1971, had to be held to be a valid piece of document and, hence, the Tribunal was right in its view that no transfer of property was involved within the meaning of Section 2(xxiv) of the Gift-tax Act, and, hence, there was no liability to gift-tax either u/s 4(1)(a) or u/s 4(2) and consequently no question of inclusion of the income of the minor in the hands of the assessee would also arise.

8. In Commissioner of Gift-tax Vs. S.N. Zaman and S.M. Elahi (legal heirs of late Rahim Buksh), , it has been held that (headnote):

A family settlement is made just to avoid disputes to maintain the honour and dignity of a family. It is neither a partition nor an exchange. Dispute not only means existing dispute, but also a dispute which is possible or is likely to occur in future . . . and that the family settlement was valid. The provisions of Section 2(xxiv)(d) of the Gift-tax Act, 1958, were not applicable.

9. In the decision reported in CIT v. Ponnammal [1987] 164 ITR 706, it was found that the family arrangement was brought about by the

intervention of the panchayatdars and the sons and daughters of the assessee were laying claims over the property and so, the documents regarding

the family arrangement had to be executed and accordingly, it was held that there is no transfer of property. In the decision reported in

Commissioner of Gift-tax Vs. S.N. Zaman and S.M. Elahi (legal heirs of late Rahim Buksh), it was held that the family settlement was made just to

avoid disputes and to maintain the honour and dignity of the family and accordingly it was held that the family arrangement was valid and the

provisions of Section 2(xxiv)(d) of the Gift-tax Act, 1958, were not applicable.

10. The instant case does not fall under that category. There is an immediate transfer of Rs. 3,40,000 by the assessee in favour of his minor son.

There was also no existing dispute and rival claims. This settlement of Rs. 3,40,000 by the assessee on his minor son amounts to transfer without

consideration and it clearly amounts to a gift to the minor son by the assessee. So, the finding of the authorities below that the interest accrued on

this gift to the minor should be added to the income of the assessee u/s 64(1)(v)

of the Income Tax Act is perfectly justified and the order passed by the Tribunal does not warrant any interference.

11. We answer this question in the affirmative, in favour of the Revenue and against the assessee.