(1987) 04 BOM CK 0022

In the Bombay High Court

Case No : Gift-tax Reference No. 1 of 1975

K.M. Sheth APPELLANT

Vs

Commissioner of Gift-tax RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:
Gift Tax Act, 1958 — Section 5(1)

Citation : (1987) 89 BOMLR 647 : (1987) 66 CTR 129 : (1988) 170 ITR 406

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—Three questions of law have been referred to this court by the Tribunal in this reference at the instance of the assessee. The questions read as under :

"(1) Whether, on the facts and in the circumstances of the case, the claim of the applicant that the settlement dated March 30, 1960, executed by the applicant in favour of his minor son, Bharat, in discharge of his legal obligation u/s 20 of the Hindu Adoptions and Maintenance Act, 1956, to maintain his son was not a gift u/s 2(xii) of the Gift-tax Act, 1958, was rightly rejected ?

(2) Whether, on the facts and in the circumstances of the case, the claim of the applicant that the settlement executed by the applicant in favour of his son was a transfer for adequate consideration and, therefore, not a gift within the meaning of the Gift-tax Act, 1958, was rightly rejected ?

(3) Whether, on the facts and in the circumstances of the case, the claim of the applicant that the gift, if any, of 1,500 shares of Changdeo Sugar Mills Limited made under a settlement was exempt u/s 5(1)(xii) of the Gift-tax Act, 1958, was rightly rejected ?"

2. Shri Mehta, learned counsel for the assessee, has fairly admitted that the first two questions are covered by this court''s decisions in the assessee''s own cases - K.M. Sheth Vs. Commissioner of Income Tax/wealth-tax, and Commissioner of Income Tax Vs. K.M. Sheth, . Accordingly, we answer the first two questions in

the affirmative and in favour of the Revenue.

3. This takes us to the third question. The assessee had settled on trust 1,500 equity shares of Shree Changdeo Sugar Mills Ltd. by a deed of trust dated March 30, 1960, for the benefit of his minor son, Bharat, aged 2 years at the material time, to absolve himself of his legal obligation to provide food, clothing, residence, education, medical attendance and treatment and marriage expenses. It is submitted by Shri Mehta that section 5(1)(xii) of the Gift-tax Act, 1958, which reads thus :

"5. (1) Gift-tax shall not be charged under this Act in respect of gifts made by any person - ...

(xii) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case;" makes the gift exempt to the extent the property gifted is referable to the education of the children. In order to show that in the case of a gift made for the benefit of the children for a number of purposes, including education, the amount of gift can be bifurcated and the amount referable to their education can be held exempt, Shri Mehta has relied on the Patna High Court decision in the case of Commissioner of Gift Tax Vs. M.S. Rao, . Further, Shri Mehta stated that provision for education does not necessarily mean education for a particular year. It means and includes the expenditure on education as and when necessary.

4. It is true that section 5(1)(xii) of the Gift-tax Act, 1958, quoted above exempts gift for the education of children to the extent it is proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case. However, the case before us does not fall within the meaning and scope of this clause. In the first instance, the settlement in this case is not specifically for the education of the child. It is for a number of purposes such as food, clothing, residence, education, medical attendance and treatment and marriage expenses. Besides, it is difficult to conceive of any expenditure that would be incurred on a child of 2 years on education. Moreover, the word " education" as used in clause (xii) does not mean education in the ordinary sense which a father is obliged to arrange for. It means higher or specialised education, whether in India or abroad. The circular of the Department on which Shri Mehta placed reliance by referring to Gulanikar''s Treatise on Law and Practice of Gift-tax and Wealth-tax, 1984 edition, at page 3.114, clearly indicates that for exemption u/s 5(1)(xii), the provision has to be for higher education in India or abroad.

5. The exemption is thus available to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case. On the facts and material on record, it is not possible to agree with Shri Metha that any portion of the gift is in fact for the education of the child. Accordingly, on the facts before us, we answer the third question of law

also in the affirmative and in favour of the Revenue.

6. No order as to costs.