(1971) 11 KL CK 0015

In the High Court Of Kerala

Case No : Income-tax Reference No. 67 of 1969

Mrs. Kunjharam Joseph APPELLANT

Vs

Commissioner of Gift-tax RESPONDENT

Date of Decision : 26-11-1971

Acts Referred:
Gift Tax Act, 1958 — Section 26(1)

Citation : (1973) 88 ITR 207

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J;P. Govindan Nair, J

Bench : Division Bench

Advocate : M. Abraham, P.P. Devassy and M. Rajasekharan Nair, for the Appellant; P.A. Francis and P.K. Ravindranatha Menon, for the Respondent

Judgement

Krishnamoorthy Iyer, J.—In this reference u/s 26(1) of the Gift-tax Act, 1958, at the instance of the. assessee, the following questions have been referred :

"(i) Whether, under the will dated October JO, 1953, of Cheruvathoor Ittoop Joseph, the assessee is an executrix by implication or by tenor of the will ?

(ii) Whether, on the facts and in the circumstances of the case, the transfer of the said stationery business by the assessee to Kuriappan amounts to a valid gift for the lifetime of the assessee ? If the gift is valid for the lifetime of the assessee, what is the nature of the interest gifted and how is it to be valued ? "

2. The reference relates co the assessment year 1964-65. On April 1, 1963, the assessee transferred without any consideration a stationery business called M/s. C. M. Joseph and Sons, Trichur, with all its assets and liabilities including the goodwill to her son, C. I. Kuriappan called Baby. The Gift-tax Officer estimated the value of the business at Rs. 72,446 and the value of goodwill at Rs. 13,070. He assessed to gift-tax a total value of Rs. 85,516. The plea of the assessee was that under the terms of the gift, what was transferred to the donee, Kuriappan, was only the property bequeathed to him by her late husband, C.M. Joseph, to whom the business originally belonged and that the assessee was acting only as

an executrix under the will when she executed the document in favour of Kuriappan and since the assessee was not the owner of the property comprised in the gift deed, there was no valid transfer by way of gift and no gift-tax is attracted. The contention was rejected by the Gift-tax Officer which view was confirmed by the Appellate Assistant Commissioner, who took the view that the donor had absolute rights in the property gifted. In the second appeal, the Tribunal took the view that the assessee was not an executrix under the will, but had a life-interest in the properties comprised therein and what was conveyed under the gift deed in favour of Kuriappan by the assessee was only the donor''s life-interest.

3. The plea before us was that the assessee was an executrix under the will. The will is produced as annexure "C" and is dated October 10, 1953. It is admitted that the properties comprised in the gift deed are included in annexure " C ". Since there was no contention before us based on the interpretation of the gift deed, we do not think it necessary to call for a further statement of the case as the gift deed does not form part of the records in the case. In our view, the view of the Tribunal that the assessee is not an executrix under annexure " C " will is right and we confirm the same.

4. Even if the assessee is an executrix under the will, the question arises whether any interest in her favour has been created by the testator in the properties comprised in the will. The operative portion of the will is extracted in the order of the Tribunal, annexure " D ", as follows :

" In the event of my death, my wife, Kunjharam, daughter of Pora-thoor Ittiachan, is to keep possession of all the above said assets, business etc., and to run the same herself or through others, but without the right to encumber or alienate the assets and with the income she is to meet the family expenses. On the death of my wife, Kunjharam, if Baby alias Kuriappan is a major, he is to be given properties worth Rs. 16,000 out of the assets and if he is not married properties worth Rs. 3,000 has also to be further given to him. The remaining assets are to be divided between my three sons equally."

5. The above disposition shows that during the lifetime of the assessee, she was given a beneficial interest in the properties, and it is only after her death that the donee, Kuriappan, and the other sons of the testator are entitled to have the properties given to them in accordance with the terms of the will. The right to take the income of the properties is given to the assessee and she is not liable to render accounts of the income of the properties during her lifetime to any other person. In these circumstances, we agree with the Tribunal in holding that the assessee had a life interest in the properties comprised in the will.

6. The next submission of counsel for the assessee was that the valuation of the properties comprised in the gift deed was on the basts that the assessee had an absolute interest therein, and in view of the finding of the Tribunal only the life interest of the assessee in the properties comprised in the gift deed is liable to

taxation. Counsel for the department contended that the nature of the valuation of the properties comprised in the gift deed was not raised before the Tribunal and, therefore, it is not a matter arising out of the order of the Tribunal and we cannot u/s 26(1) answer the same. It does not appear from the order of the Tribunal that this question was specifically raised before the same by the assessee. According to the decision in Commissioner of Income Tax v. Scindia Steam Navigation Co. Ltd. it is only a question that has been raised or decided by the Tribunal that could be held to arise out of its order. But, when the Tribunal has found that only life interest of the assessee in the properties is comprised in the gift deed, the valuation of the same is an aspect of that question. In the light of the decision in Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., it is open to us to consider the same. We, therefore, hold that the gift-tax to be levied should be on the value of the life interest of the assessee in the properties comprised in the gift deed. We, therefore, answer question No. (i) in the negative, that is, against the assessee and in favour of the department. We answer the first part of question No. (ii) by holding that the assessee has by the gift conveyed her life interest in the properties comprised in the gift and in favour of Kuriappan and the second part of question No. (ii) by holding that the donee has secured only the life interest of the assessee in the properties gifted and the life interest of the assessee in the properties in the gift deed has alone to be valued for assessment to gift-tax. We make no order as to costs.

7. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.

