
(1983) 03 MAD CK 0017

In the Madras High Court

Case No : Tax Case No. 125 of 1977 (Reference No. 99 of 1977)

P. Ayya Naidu (Deceased)

APPELLANT

Vs

Commissioner of Gift-tax

RESPONDENT

Date of Decision : 29-03-1983

Acts Referred:

Transfer of Property Act, 1882 — Section 122

Citation : (1983) 03 MAD CK 0017

Hon'ble Judges : G. Ramanujam, J;Fakir Mohammed, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Fakkir Mohammed, J.—The reference has been made by the Income Tax Tribunal, Madras, at the instance of the assessee under s. 26 of

the G.T.Act, 1958. The question that is referred is as follows :

Whether the assessee had made a gift of the properties in favour of his daughter and grandchildren under the deed February 11, 1969 ?

2. The assessee executed a registered document on February 11, 1969, in favour of his wife, styling it as a settlement deed in respect of 18 items

of properties, which belonged to him. In the said document, he has granted a life estate without any power of alienation in favour of his wife jointly

with himself, and the latter shall enjoy the properties described therein, in the event of he pre-deceasing his wife. He has further provided in the

document that his grand-daughter, Priavathi, grandson, Jayaprakasan, and his daughter, Seethalakshmi Ammal, should take their respective items

of properties marked for them as their absolute properties after the lifetime of himself and his wife. Earlier to that, he had executed two gift deeds

on January 29, 1969 four gift deeds on January 30, 1969, two gift deeds on February 1, 1969, and two gift deeds on February 2, 1969, in

respect of his other immovable properties in favour of Bhavani Subbulakshmi, Janardhanan, Selvarani, Seethalakshmi and Devagi Ammal, who are

the grandchildren and daughters of the assessee.

3. Coming to know of the above gifts, the GTO issued a notice to the assessee requiring him to file a return of all the gift made by him during the

previous year relevant to the assessment year 1969-70. While filing the return disclosing the value of the gifts as Rs. 1,50,000, the assessee

claimed that the settlement deed dated February 11, 1969, in favour of his wife was exempt under s. 5(1)(viii) of the G.T. Act. The impugned

question relates to the interpretation of that registered document dated February 11, 1969. The GTO was of the view that the document is a gift

deed and not a will. The appeal filed by the assessee before the AAC challenging both the value of the properties and the interpretation of the

document dated February 11, 1969, when taken up for consideration, a report from an approved valuer dated January 8, 1972, valuing all the

properties at Rs. 2,49,865 was filed before the AAC. The AAC accepting the contention of the assessee that the document dated February 11,

1969 is not a gift deed, has struck down the assessment made by the GTO on the value of the properties comprised in the document dated

February 11, 1969. The AAC held that the vested interest created in favour of the daughters and grandchildren was of the value of Rs. 33,832

whereas the total value of the properties gifted under various documents was Rs. 2,31,337. Thereupon, the Tribunal took the view that there were

words in the document indicating the vesting of the present interest in the immovable properties in favour of the assessee's daughters and

grandchildren and that the assessee had undertaken not to either revoke or modify the disposition made in the document and hence the document

is a gift deed. On the said view, the Tribunal remanded the matter to the AAC to rehear the appeal on the question of valuation of the properties

alone. It is as against the said decision of the Tribunal, the present reference has been sought for to his court.

4. The contention of the Revenue with reference to the recitals contained in the document dated February 11, 1969, is that because the assessee

had declared in the document that he executed the settlement deed with the intention of avoiding future misunderstandings amongst his hires and creating good feelings amongst them and, because, the assessee has undertaken not to make any change or revoke the document, the document must be deemed to be settlement deed, as specifically mentioned in the title of the document. On the other hand, it is contended on the side of the assessee that there are no recitals with reference to the vesting of any interest in prescient in the properties described in the document in favour of the daughters or grandchildren of the assessee, that the said vesting of absolute interest has been specifically recreated as to take effect only after the lifetime of the assessee and his wife and that the creation of life interest in favour of the wife is exempt under s. 5(1)(viii) of the G.T. Act, and as such the document can be deemed to be only a will and not a gift deed.

5. On a careful reading of the document, it is clear that so far as the creation of the life interest in favour of the assessee and his wife is concerned, there is a creation of a present life interest in favour of the wife, who had prior to the document no manner of interest, since the assessee is the exclusive owner of the said properties. This position is not disputed by the Revenue.

6. Section 5(1)(viii) and (x) of the I.T. Act provides as follows :

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

(viii) to his or her spouse, subject to a maximum of Rs. 50,000 in value in aggregate in one or more previous years, the expression "spouse" in this clause, where there are more wives than one, meaning all the wives together.

(x) under a will.

7. A combined reading of cls. (viii) and (x) of s. 5(1) will clearly indicate that if a gift is made by any person in favour of the spouse under a gift

deed or will, the said gift is not taxable with the difference that the gift made under the gift deed is restricted to a maximum of Rs. 50,000, whereas

for a gift made under a will, there is no such restriction in the value. Thus, under s. 5(1)(viii) and (x), even assuming that the gift is made under a gift

deed in favour of the spouse subject to the maximum of Rs. 50,000 in value in the aggregate, the gift is not taxable and the gift made under a will to

any person is also not taxable.

8. Annexure E dated January 8, 1972, is the valuation report of the valuer. In the said valuation report, the total value of the life interest created in favour of the wife has been given as Rs. 57,360. Annexure E was relied on by the AAC, who has treated the document dated February 11, 1969, as a will, and has held that the gifts made by the assessee are not taxable. But the GTO, who has held the document to be a gift deed, has given the value of the life interest granted in favour of the wife of the assessee in annexure C as Rs. 25,793, since he has valued the entire properties comprised in the document as Rs. 87,630. Therefore, the life interest granted in favour of the wife according to the calculations of the GTO is completely exempt from gift-tax.

9. Now, we will take up the contention advanced before us on the side of the Revenue for interpreting the document as a gift deed. The first contention of the Revenue is in relation to the recitals contained in the document, which are said to have effected the present creation of interest, which are as follows :

Even a casual reading of the above recitals will clearly show that there are absolutely no words to indicate the present vesting of any interest in favour of the daughter and grandchildren of the vested remainder after the life interest of the assessee and his wife. On the other hand, the following specific recitals will clearly indicate that the assessee intended that the vested remainder granted in favour of the daughters and grandchildren should take effect only after the lifetime of his wife and himself :

Thus, there is specific recital that the vesting of the remainder interest should take effect after the lifetime of the spouse and on the next day of the death of the settlor. Hence, it is futile on the part of the Revenue to contend that the document contains recitals expressing the intention of the donor that the vested remainder should take effect from the date of the document.

10. The next contention of the Revenue that because the donor has undertaken not to change or revoke the document, the document amounts to a gift deed cannot be correct in law, when it is found that the transfer of interest is directed to take effect only after the lifetime of the executant, as the executant has not deprived himself of his interest in the property during the interval, since it is open to him to dispose of any property before the

vesting date. it is because of such a situation, the document can be treated only as a will and not as a gift deed. If the document is a gift deed, there

should be a present vesting of interest though the entering into possession and enjoyment of the property may be postponed to a later date.

11. In an identical case that came up before a Division Bench of this court and reported in Commissioner of Gift-tax Vs. C. Thiruvengkata

Mudaliar, , it was held that where a document styled and registered as a settlement deed containing similar recital of devolution of interest in the

properties to vest in the sons on the death of the settlor after the lifetime of the settlor is only a will and not a gift deed. It was held by the Division

bench that the nomenclature given by the parties to the transaction in question is not decisive and that there being no provision in the document for

transferring any interest in the immovable proprieties in prescient notwithstanding the fact that it was styled as a settlement deed and the settlor had

provided that the document was irrevocable, the dispositions contained in the document were only testamentary in character and not inter vivos

and, therefore, cannot constitute a gift attracting the provisions of the G.T. Act, 1958. The present document dated February 11, 1969, is not inter

vivos between the assessee and his spouse in whose favour a life interest in created. Therefore, the transfer of absolute interest in favour of the

daughters and grandchildren to take effect only after the lifetime of the assessee and his wife without the vesting of such interest of the remainder

will not make the document a settlement deed, even though the nomenclature chosen by the assessee is settlement deed.

12. The following observations have been made at pages 669 and 670 of the judgment reported in Commissioner of Gift-tax Vs. C. Thiruvengkata

Mudaliar, .

Having set out the facts thus, the court proceeded to state :

"Sri K. B. Krishnamurthy, the learned counsel for the assessee, contended that the transfer of interest in the settled property in so far as the son in

concerned does not amount to ""gift"" within the meaning of the Act, as there was no right to the donees to enjoy the same till the lifetime of the

father and mother, the beneficiaries."

It is this contention, which was rejected by the Andhra Pradesh High Court and

we are of the opinion that that decision is not of any assistance

whatsoever for the present case, because the decision has not given the recitals contained in the document which the Andhra Pradesh High Court

assumes to be a settlement. Therefore, no reliance can be placed on that judgment on behalf of the department.

13. In the case cited by the Revenue, viz., the case reported in Vadulla Venkata Rao Vs. Commissioner of Gift Tax, , the Andhra Pradesh High

Court has held that where an interest in the property has vested in the son, the donee, on the same day when the document was executed, though

his right to possess and enjoy the property was postponed to a later date, will not make the document a will, since the transfer of the interest in

favour of his son amounts to a gift taxable under the Act. In the document which came up for consideration before the Andhra Pradesh High

Court, the document had been styled as a settlement deed, a life interest was created for the lifetime of the assessee and there was a gift of vested

remainder in favour of the assessee's son. The document has been inter vivos in favour of the son. But in the present document dated February 11,

1969, the document is executed only in favour of the spouse and not in favour of the daughter and grandchildren as observed at page 251 of the

case reported in Vadulla Venkata Rao Vs. Commissioner of Gift Tax, , in which s. 122 of the Transfer of Property Act is extracted as follows :

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the

donor, to another, called the donee, and accepted by or on behalf of the donee.

14. The impugned document is executed in favour of the spouse as the donee and the spouse alone could have accepted the gift of life interest

made in the document. the daughters and grandchildren of the assessee have not been mentioned as the donees and the very recitals would indicate

that there was no occasion or circumstance for them to accept any gift under the said document. The Revenue has not proceeded on the footing

that any gift was accepted by the daughter and grandchildren of the assessee under the document dated February 11, 1969. Therefore, for the

alleged gift in so far as the vested remainder in favour of the daughter and grandchildren on some future date is concerned, the provision of s. 122

of the Transfer of Property Act is not attracted. Eventually, the Revenue is not

correct in treating the document as a settlement deed in favour of the daughters and grandchildren and there was only a wagering disposition, which may or may not be changed by the assessee at any time during his lifetime, in which case the document will be only a will and not a gift deed. Therefore, the case cited by the Revenue is not applicable to this case. Whatever it is, we do not find any material for departing from the decision of this court rendered in Commissioner of Gift-tax Vs. C.

Thiruvengkata Mudaliar, .

15. To sum up, where a document, though styled as a gift deed, which is not inter vivos in favour of the alleged donee so in whose favour a future vesting of the vested remainder is sought to take effect on a future date after the gift of life interest in favour of the present donee is created, the document can only be a will and not a gift deed, so far as such donees in whose favour such future vesting of the vested interest is created, since they have no opportunity to accept such gift and the donor has got every right to change or revoke the future vesting of such vested remainder interest, even though there may be a clause restricting the change or revocation of the gift of such future interest of the remainder, as the provision of s. 122 of the Transfer of Property Act is not attracted. Accordingly, the document dated February 11, 1969, is treated only as a will so far as the daughters and grandchildren of the assessee are concerned and the life interest created in favour of the wife being less than the maximum prescribed under s. 5(1)(viii) of the G.T. Act, the assessee is held not liable to gift-tax.

16. In the circumstances and facts of the case, we answer the question in the affirmative and against the Revenue. The Revenue will pay the costs of the assessee, which are fixed at Rs. 500.