

(1969) 12 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 1115 of 1965

P.C. Balasanjanna

APPELLANT

Vs

Fourth Gift-tax Officer

RESPONDENT

Date of Decision : 16-12-1969

Acts Referred:

Gift Tax Act, 1958 — Section 16(1), 2, 26(1)

Citation : (1972) 86 ITR 748 : (1972) 85 LW 934

Hon'ble Judges : K. Veeraswami, C.J;Somasundaram, J;Natesan, J

Bench : Full Bench

Advocate : K.C. Rajappa, for K.C. Jacob, S.K.L. Ratan and M.X. Cardia, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Natesan, J.—The petition for the issue of a writ of prohibition or other appropriate writ prohibiting the respondent from further proceeding with his proposal to assess the petitioner to gift-tax pursuant to his notice u/s 16(1) of the Gift-tax Act was heard by us along with T. C. Nos. 272 of 1964, 10 of 1966, etc. The Commissioner of Gift Tax, Madras Vs. P. Rangasami Naidu, raising a common question of law. On February 8, 1965, the petitioner was called upon by the respondent to submit a return under the Gift-tax Act pointing out that the officer had reason to believe that a gift made by the petitioner was assessable to gift-tax for the assessment year 1962-63. Thereupon the petitioner represented to the respondent that all he had done was to throw into the hotchpot of his family his self-acquired property making a declaration to that effect, that there was no transfer of property within the meaning of the Gift-tax Act and that, therefore, no liability was incurred under the Act. In the absence of acceptance by the revenue of the stand taken by him to gift-tax the petitioner has applied for the issue of a writ of prohibition.

2. The petitioner's contention is that there is no gift within the meaning of the Gift-tax Act, when the father in a Hindu undivided family throws his separate property into the hotchpot of the joint family and impresses the property with

the character of joint family property. In the counter-affidavit filed for the revenue, a point is taken that the writ petition is premature and misconceived, and that the petitioner has rushed to this court refusing even to file return and without giving to the Gift-tax Officer an opportunity to enter his findings on the objection of the petitioner.

3. In the reference u/s 26(1) of the Gift-tax Act, T.C. Nos. 272 of 1964 and 10 of 1966 and connected writ petitions, we have just now pronounced judgment answering the references in favour of the assessee. We have held that, when a Hindu father by blending or throwing into the hotchpot of the family impresses his separate property with the character of a joint family property, there is no gift within the meaning of Section 2(xii) of the Gift-tax Act. But, in the present case, on the materials now placed before us, we cannot pronounce any opinion on the petitioner's case. What calls for determination in all these cases is whether under the personal law there is blending or conversion of the separate property of an individual into joint family property. In the instant case, the petitioner made a declaration on March 30, 1962, by a sworn statement that he, on the 1st April, 1961, threw into the hotchpot of his joint family a sum of Rs. 1,50,000 and that the said amount constituted the asset of the joint family from April 1, 1961. The declaration states that, of his six sons and five daughters, three daughters had been given away in marriage and two sons are associating with him in business as partners. It is said that these two sons are keeping their earnings to themselves. The material part of the declaration reads :

"All the other four sons and two daughters are minors and I hereby declare that myself and my wife and the said four minor sons and two minor daughters to constitute into a Hindu undivided family of which I am the karta. My own self-earnings are invested solely in the partnership business and out of the said investment, I have on the first day of April one thousand and nine hundred and sixty-one thrown into the hotchpot of the above joint family a sum of Rs. 1,50,000 (rupees one lakh and fifty thousand only). The said amount therefore constitutes the asset of the joint family from the said date April 1, 1961."

It is not quite clear from this declaration whether the two sons who are associating with the petitioner, their father, in the business as partners, had got themselves divided and were not joint with their father, when the father determined upon throwing his self-acquisition into the family hotchpot. The affidavit in support of the writ petition does not clarify the position. If the petitioner continued undivided with these two sons also, he cannot under the personal law form a sub-joint family with his four minor sons. The law in this regard has been declared" even in *Sudarsanam Maistri v. Narasimhulu Maistri*, ILR[1901] Mad. 149. Bhashyam Iyengar J. pointed out:

"But so long as a family remains an undivided unit, two or more members thereof--whether they be members of different branches or of one and the same branch of the family,--can have no legal existence as a separate independent unit; but if they comprise all the members of a branch, or of a sub-branch, they

can form a distinct and separate corporate unit within the larger corporate unit and hold property as such."

4. Hindu law recognises only the entire joint family or one or more branches of that family as an entity or entities, and property acquired by that entity in the manner recognised by law would be considered as joint family property. Some only of the members of a joint family cannot group themselves into an independent unit as a joint family within the larger unit. The Hindu undivided family, a corporate body with its heritage, is purely a creation of law and cannot be grouped by act of parties. Of course, some members may divide themselves off from the corporate body and leave the rest of the members of the corporate body united. All that is found in the declaration is that the two sons are keeping their earnings with themselves and the father is keeping his earnings to himself. There is no specific assertion or declaration that the other sons ceased to be members of the joint family before April 1, 1961. Without this position being cleared up, on the materials before the court, we cannot conclude whether there is blending according to law. In the circumstances, we feel that, having declared the law in the connected cases, we must leave the petitioner to make out his case on the merits before the appropriate authorities. With this reservation in favour of the petitioner, the writ petition is dismissed. There will be no order as to costs.