**(1983) 03 MP CK 0004**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Civil Case No. 68 of 1980

Poonam Chand APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 16-03-1983

**Acts Referred:**
Income Tax Act, 1961 — Section 256(1), 64(1)

**Citation :** (1983) 03 MP CK 0004

**Hon'ble Judges :** K.N. Shukla, J;G.G. Sohani, J

**Bench :** Division Bench

**Advocate :** A.K. Chitale, for the Appellant; R.C. Mukati, for the Respondent

## Judgement

G.G. Sohani, J.—By this reference u/s 256(1) of the income tax Act, 1961 (''the Act''), the Tribunal, Indore Bench, has referred the following question of law to this Court for its opinion : Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the provisions of clauses (v) and (v) of section 64(1) of the income tax Act, 1961, were applicable to the gifts made by Shri Chandanmal and Poonamchand?

The material facts giving rise to this reference, briefly are as follows:

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Rs.

10,000

:Smt. Pukhrajbai, wife of Shri Poonamchand

-

Rs.

8,000

:Smt. Shardabai, wife of Parasmal, son of Poonamchand

 

-

Rs.

3,500

:Kumari Angurbala, daughter of Shri Poonamchand

-

Rs.

3,500

:Kumari Madhubala, daughter of Poonamchand

Rs.

25,000

During the course of assessment proceedings in the case of Shri Chandanmal and his brother Poonamchand, the ITO found that Shri Chandanmal had made a gift of Rs. 25,000 on 6-8-1978 as under:

The ITO also found that on 7-10-1978 Shri Poonamchand had made a gift of equal amount, that is to say, Rs. 25,000 as under:

Rs.

10,000

:

Smt. Motanbai, wife of Chandanmal

Rs.

5,000

:

Shri.Rajendrakumar (minor), son of Chandanmal

Rs.

10,000

:

Shri.Ramanlal (minor), son of Chandanmal

Rs.

25,000

In view of these facts, the ITO concluded that there were cross-gifts to the extent of Rs. 17,000 (excluding the gift of Rs. 8,000 by Shri Chandanmal to Smt.

Shardabai) and, hence, he invoked the provisions of clauses (iv) and (v) of the Act and included in the total income of Shri Chandanmal, a sum of Rs. 2,033 being the income by way of interest of Smt. Motanbai, Shri Rajendra Kumar and Shri Ramanlal, Similarly, the ITO included in the total income of Shri Poonamchand Rs. 2,040, the income by way of interest to Smt. Pukhrajbai, Kumari Angurbala and Kumari Madhubala. Aggrieved by these orders, the assessee preferred an appeal before the AAC. The AAC upheld the orders passed by the ITO. On further appeal, the Tribunal held as follows:

It is clear from the two sets of transactions of gifts in these cases that Shri Chandanmal gifted certain amounts of money to the wife and minor children of Shri Poonamchand, while Shri Poonamchand, in turn, gifted equivalent amount to the wife and minor children of Shri Chandanmal within a period of two months. The intention of the donors in these gifts can be nothing but to evade the implications of clauses (iv) and (v) of section 64(1) of the income tax Act.

The Tribunal, relying on the decision of the Supreme Court in Commissioner of Income Tax, Bombay City II Vs. Keshavji Morarji and Another, and Commissioner of Income Tax, Madras Vs. C.M. Kothari, Madras (Dead), and after him his Legal Representative, upheld the order passed by the ITO. Aggrieved by the order passed by the Tribunal, the assessees have sought a reference and it is at the instance of the assessees that the aforesaid question of law has been referred to this Court for its opinion.

2. Having heard the learned counsel for the parties, we have come to the conclusion that the question has to be answered in the affirmative and in favour of the department. The Tribunal has found on the basis of the material on record that the two transfers by Poonamchand and Chandanmal, the two assessees, were so inter-connected as would justify the finding that they were parts of the same transaction. It is, thus, clear that a circuitous method was adopted by the assessees to evade the implications of clauses (iv) and (v) of section 64(1) of the Act. In view of the finding, no question of law really arises for our consideration. The Tribunal, in our opinion, was right in holding that the provisions of clauses (iv) and (v) of section 64(1) were applicable to the gifts made by the assessee. Our answer to the question is, therefore, in the affirmative and in favour of the department. In the circumstances, the parties shall bear their own costs of this reference.

 