

(1971) 03 DEL CK 0033

In the Delhi High Court

Case No : Gift Tax Reference Appeal No. 3 of 1969

The Commissioner of Gift Tax

APPELLANT

Vs

Munshi Lal

RESPONDENT

Date of Decision : 18-03-1971

Acts Referred:

Citation : (1971) ILR Delhi 517 : (1972) 85 ITR 129

Hon'ble Judges : H.R. Khanna, C.J.; V.D. Misra, J

Bench : Division Bench

Advocate : G.C. Sharma, V. Kumaria, Randhir Chawla and M.B. Lal, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) The following question has been referred to this Court u/s 26(1) of the Gift Tax Act, 1958 :-

"WHETHER on the facts and in the circumstances of the case, the act of throwing self acquired property by the asses- sees into common hotchpotch of the Hindu undivided family with the intention of abandoning their rights in that property amounted to a gift within the meaning of the term "gifts" as defined in the Gift-tax Act, 1958 ?"

(2) The case relates to two assesseds Shrimati Sharbati Devi and Munshi Lal. The assessment yr concerned is 1965-66 corresponding to the previous year which ended on March 31, 1965. The two assesseds held one-half share each in a building situated in Ram Nagar, Delhi. During the previous year, each of the two assesseds impressed his or her share in the said property with the character of joint family property. Question arose whether the assesseds were liable to pay gift tax because of their impressing their shares in the property with the character of joint family property. The Gift Tax Office? and the Appellate Assistant Commissioner decided the matter against the assesseds and held that they were liable to pay gift tax. On further appeal to the Appellate Tribunal the Tribunal held

that the assesseds were not liable to pay gift tax as the act of the assesseds in throwing their individual share in the joint family hotchpotch did not amount to gift within the meaning of the Gift Tax Act. The question reproduced above was thereafter referred to this Court at the instance of the Commissioner of Gift Tax.

(3) We have heard Mr. Sharma on behalf of the Revenue and Mr. Mohan Bihari Lal on behalf of the assesseds, and are of the opinion that the question referred to this Court should be answered in the negative and in favor of the assesseds. The matter is concluded by the decision of the Supreme Court in the case of Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, Hedge. J , speaking for the Court in that case, observed :

(4) It must be remembered that a Hindu family is not a creature of a contract. As observed by this court Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others, , the doctrine of throwing into the common stock inevitably postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock his selfacquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be separate property and acquires the characteristics of joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property in the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it as a property of the family. No longer he declares his intention to treat his self-acquired property as that of the joint family property, the property assumes the character of joint family property. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara school of Hindu law. When a coparcener throws his separate property into the common stock, he makes no gift under Chapter Vii of the Transfer of Property Act. In such a case there is no donor or donee. Further, no question of acceptance of the property thrown into the common stock arises".

(5) The above-cited case was followed by their Lordships of the Supreme Court in the case of H.H. Maharana Rajasaheb Shri Pratapsinhji Saheb of Wankaner Vs. Commissioner of Gift Tax, Gujarat, and it was held that the act of assessed in throwing his self-acquired property into common stock of the Hindu undivided family did not constitute a gift as defined in the Gift Tax Act.

(6) Mr. Sharma concedes that the above decision would apply to the Act of Munshi Lal assessed in impressing his share in the property with the character of joint family property. It is, however, urged that so far as Shrimati Sharbati Devi

is concerned she could only be a member of the joint Hindu family but not a coparcener. As such, her act in impressing her share in the property with the character of joint family property would not bring the case within the ambit of the decision of the Supreme Court in Goli Eswariah's(1) case. According to Mr. Sharma, the act of Shrimati Sharbati Devi in throwing her one-half share in the common hotchpotch would be tantamount to transfer of property as contemplated by section 2(xxiv)(d) of the Gift-Tax Act. According to that definition, "transfer of property" means any disposition, conveyance assignment, settlement, delivery, payment or other alienation of property and without limiting the generality of the foregoing, includes-

(A)..... . (b) (c) (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person; In order to invoke sub-clause (d) of clause (xxiv) of section 2 it has to be shown that there was a transaction entered into by one person with another. The above clause cannot apply to a unilateral act. When a member of a Hindu undivided family throws property into the common hotchpotch. It cannot be said that he enters into a transaction with his family. This aspect of the matter was considered in Goli Eswariah's case(1) and it was observed as under :- "Clause (d) of section 2(xxiv) contemplates a "transaction entered into" by one person with another. It cannot apply to a unilateral act. It must be an act to "which two or more persons are parties. It is true that, for the purpose of the Act, a Hindu undivided family can be considered as a "person. But the assessed family. Therefore, we are unable to agree with the High Court that the act of the assessee fell within the scope of section 2(xxiv)(d) of the Act."

(7) The above observations clearly apply to this case. In our opinion, it would make no difference in principle so far as the applicability of the Gift Tax Act is concerned, whether the separate property is impressed with the character of joint family property by a male member of the family or by a female member of the family.

(8) Reference was also made by Mr. Sharma to a Bench decision of this Court in the case of Commissioner of Income Tax v. Pushpa Devi, 1970 19 Itr (4) decided on January 18, 1971. The question which arose for determination in that case was whether the Tribunal rightly held on the circumstances of the case that certain income was the individual income of the assessed Shrimati Pushpa Devi or whether it was the income of her Hindu undivided family. No question of any gift tax arose in that case and, in our opinion, the said judgment cannot be of much avail to the Revenue. We accordingly decide the question referred to this Court in the negative and in favor of the assesseds. In the circumstances, we make no order as to costs.