(1999) 09 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 11242 of 1987 30 September 1999

THULASIMANI AMMAL APPELLANT

Vs

COMMISSIONER OF INCOME TAX and Another RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Gift Tax Act, 1958 — Section 24
Registration Act, 1908 — Section 47
Transfer of Property Act, 1882 — Section 123

Citation : (2000) 158 CTR 5

Hon'ble Judges : N.V. Balasubramanian, J;N. V. Balasubramaiain, J

Bench : Division Bench

Advocate : P.P.S. Janarthanaraja, for the Petitioner and C. V. Rajan,s, for the appearing parties;

Judgement

N. V. Balasubramaiain, J.

The writ petition is filed challenging the order of the Commissioner, Coimbatore rejecting the revision petition filed by the petitioner u/s 24 of the

Gift Tax Act, 1958.

2. The facts leading to the filling of the writ petition are that the petitioner on 8-6-1970 had made a settlement of some of her lands in favour of her

daughter and as per the guideline value maintained by the Registration department of the State of Tamil Nadu, the value of the land was taken to be

Rs. 1,20,180 for the purpose of registration of the deed. The petitioner filed a return of gift for the assessment year 1970-71 on the ground that the

settlement deed was executed on 12-2-1970 and the donee was also put in possession of the land thereafter and the donee was rightly in the

possession of the land since the date of execution of the deed of settlement. The case of the petitioner was that since the gift was made during the financial year 1969-70, the relevant assessment for levy of tax would be 1970-71 and there was no obligation on her part to file the return of gift

for the assessment year 1971-72. The Gift Tax Officer has not accepted the submission of the petitioner and held that the registration of the dead

of settlement settling the immovable property took place on 8-6-1970, and the gift was properly chargeable under the Gift Tax Act for the

assessment year 1971-72. In this view, he determined the value of the property gifted at Rs. 1,30,000 and made an assessment of the gift made

for the assessment year 1971-72.

3. The petitioner preferred a revision petition before the Commissioner challenging the order of assessment. The Commissioner was of the opinion

that the ownership of the immovable property would pass after the deed of settlement is registered by the appropriate authority and the fact that

the donee was put in possession on 12-2-1970 is not material and the ownership over the gifted property would pass only on 8-6-1970, when the

settlement deed was registered, which fell during the financial year 1970-71 relating to the assessment year 1971-72. He, therefore, held that the

Gift Tax Officer was justified in levying gift-tax for the assessment year 1971-72. The Commissioner was also of the opinion that the value fixed by

the Gift Tax Officer was not correct. He also held that the value of the property as claimed by the petitioner at Rs. 83,330 cannot be accepted in

the absence of any evidence and he determined the market value of the property at Rs. 1, 20, 180, on the basis of the guideline value of the

Registration department and allowed the petition in part. It is against this order, the present writ petition is filed on the ground that by virtue of

section 47 of the Registration Act, 1908, once registration of the document is effected, the title would relate back to the date of execution of the

deed and the transaction would become complete when the document was registered. According to the petitioner, it is stated that the registered

document would operate from the date of execution as it has retrospective effect to the date of execution of the deed. It is, therefore. stated that

the order of the Commissioner holding that the ownership would only pass after the registration of the deed of conveyance is not sustainable in law.

It is also stated that the Gift Tax Act is a complete code and it is not necessary to look into the provisions of other Acts, when the gift is complete under the Gift Tax Act. It is stated that as per the valuation report filed by the petitioner, the value of the land was fixed and there are no grounds

to discard the valuation report and the order of the Commissioner holding that no evidence was produced by the petitioner as regards the valuation

of the land was not correct. It is further stated that the petitioner is entitled to the relief u/s 18A of the Gift Tax Act.

4. Mr. P.P.S. Janarthana Raja, learned counsel for the petitioner submitted that when a gift of an immovable property takes effect, what has to be

seen is whether there was a gift under the provisions of the Gift Tax Act, and it is not open to the Gift Tax Officer or the revisional authority to take

note of other Acts to determine the question when the gift would become complete. According to the learned counsel for the petitioner, under the

provisions of the Gift Tax Act, the gift would become complete when it was executed and the property was handed over to the donee. In this

connection, learned counsel referred to the amendment made to the definition ""gift"" u/s 2(xii) of the Gift Tax Act and submitted that though the

Explanation was introduced by the Finance (No. 2) Act, 1987, with effect from 1-4-1988, it gives a clue that under the Gift Tax Act, the word,

gift"" is widely defined and it is not open to the respondents to look into other Acts to find out when the gift becomes complete. Learned counsel

for the petitioner relied upon the decision of Rajasthan High Court in the case of Sirehmal Nawalkha Vs. Commissioner of Income Tax, . The

second submission of the learned counsel for the petitioner was that u/s 47 of the Registration Act, if a document is registered, it would relate back

to the date of execution of the document and, therefore, the deed of settlement, though registered on 8-6-1970, would take effect from 12-2-

1970, and the gift would be chargeable to tax under the Gift Tax Act for the assessment year 1970-71. In this connection, learned counsel relied

upon the decision of the Gujarat High Court in Arundhati Balkrishna Vs. Commissioner of Income Tax, Gujarat, , the decisions of the Supreme

Court in Hamda Ammal Vs. Avadiappa Pathar and Others, and Thakur Kishan Singh (dead) Vs. Arvind Kumar, . Learned counsel also submitted

that the value determined by the Gift Tax Officer was arrived at without any material and the Commissioner in the revision also was not correct in

placing reliance on the guideline value of the Registration department. Learned counsel submitted that the CIT was not correct in stating that no evidence was produced in support of the valuation of the land as the petitioner has filed the report of the valuer and in the absence of any contra

evidence the report of the valuer should have been accepted. Finally, learned counsel submitted that the relief u/s 18A of the Gift Tax Act should

have been granted to the petitioner.

5. Mr. C.V. Rajan, learned standing counsel for the Income Tax department, on the other hand, submitted that for a valid gift of an immovable

property to be made, it is essential that all requirements u/s 123 of the Transfer of Property Act should be satisfied and the mere handing over of

the document or handing over the possession of the immovable property would not be sufficient for the transfer of the property in favour of the

donee. Learned counsel in this connection relied upon the decision of this Court in K. Madhavakrishnan Vs. Commissioner of Gift-tax, . He also

submitted that the gift would become complete only when the deed was registered and insofar as third parties are concerned, the document would

become complete only from the date of the registration and according to him, the gift has become complete only on the date of the registration,

though it may have effect between the parties to the document from the date of execution of the deed. Learned counsel submitted that the report of

the valuer would only constitute his opinion and in the absence of any material, the Commissioner was quite justified in relying upon the guideline

value. Learned counsel also submitted that the petitioner had not prayed any relief u/s 18A of the Gift Tax Act, and hence the petitioner is not

entitled to that relief.

6. I have carefully considered the submissions of the learned counsel for the parties. Insofar as the first submission made by the learned counsel for

the petitioner is concerned, the decision of the Rajasthan High Court in Sirehmal Nawalkha v. CIT (supra) no doubt, supports the case of the

petitioner. The Rajasthan High Court has held that the Gift Tax Act is a self-contained enactment and in view of the wide definition of the term.

gift"", many acts and transactions which may not amount to gift under the Transfer of Property Act, would be regarded as a gift under the Gift Tax

Act. The Rajasthan High Court noticed the decision of the Andhra Pradesh High Court in G. Krishna Rao and Others Vs. The First Additional Gift

Tax Officer, Guntur, and held that considerations arising from the definition of gift in the Transfer of Property Act cannot be imported while

construing the provisions of the Gift Tax Act and the Rajasthan High Court held as under :

The Gift Tax Act is a self-contained code in itself Thus, it is obvious that the legislature did not adopt the definition of gift from the Transfer of

Property Act as has been done in other cases mentioned above. From the above, it is clear that gift u/s 2(xii) includes certain transfers detailed in

section 4(1) and (2) of the Gift Tax Act also. Many acts and transactions which shall not amount to gifts under the Transfer of Property Act shall

amount to gift under the Gift Tax Act. The concept of gift under the Gift Tax Act is much wider. The Gift Tax Act includes many transactions and

acts in its net though ordinarily they may not be necessarily covered within the definition of gift given in the Transfer of Property Act. ""Gift"" has

been defined under the Transfer of Property Act .... "".

However, I am unable to agree with the reasonings of the Rajasthan High Court, as this court in K. Madhavakrishnan v. CGT (supra) has held that

the mere delivery of immovable property would not satisfy the requirements of section 123 of the Transfer of Property Act, and there would be no

gift under the Gift Tax Act -by the mere delivery of immovable property. This court has held as under :

Section 123 of the Transfer of Property Act provides that for the purpose of making a gift of immovable property the transfer must be effected by

a registered instrument signed by or on behalf of the donor, and attested by at least two withnesses. The Gift Tax Act does not enact any exception

to the general law as found in section 123 of the Transfer of Property Act. Therefore, in order to effectuate a valid gift, the requirements of section

123 of the Transfer of Property Act should have been complied with section 123 of the Transfer of Property Act requires a registered instrument.

8. The Gauhati High Court in the case of Smt. Satyabati Goswami v. CGT (1978) 113 ITR 228 has also taken the same view that tile requirement

of section 123 of the Transfer of Property Act should be satisfied to make a gift of immovable property and the court held as under :

To make a gift of immovable property, the property must be transferred and that transfer must be effected by registered instrument as provided

u/s 123 of the Transfer of Property Act. Admittedly, there was no registered deed of gift with respect to the land purported to be gifted in 1952.

But registered deeds of gift were executed on 11-6-1959. So the transfer by gifts in the instant case became effective in law only on 11-6-1959.

No transfer by gift can be said to have taken place in respect of the lands in question prior to 1st day of April, 1957, in the absence of the

registered deed of gift.

In view of the decision of this court, I hold that the mere delivery of immovable property to the donee without fulfilling the requirements of section

123 of the Transfer of Property Act is not sufficient to regard the transaction as a gift within the meaning of the Gift Tax Act.

9. u/s 2(xii) of the Gift Tax Act, for a valid gift to be made there must be a transfer by one person to another of any existing movable or immovable

property and, therefore, unless there is a valid transfer of the property in the eye of law, there is no gift for levy of gift-tax under the Gift Tax Act.

The definition of the expression, ""transfer of property"" enlarging the meaning of transfer for the purpose of the Gift Tax Act also does not in anyway

dispense with the requirement of registration of the deed of settlement settling an immovable property favouring a donee. It is well established that

section 2(xxiv) of the Gift Tax Act also contemplates a bilateral transfer and unless the document transferring immovable property is validly

registered, there is no gift under the Gift Tax Act.

10. Learned counsel for the petitioner also referred to the ExpIn. to section 2(xii) of the Gift Tax Act and submitted that transfers made by a

person in possession of the property in part-performance of the contract or by a person who is regarded as the owner u/s 27(iiia) or 27(iiib) of the

Income Tax Act are also regarded as a gift, and, therefore, he submitted that the handing over of document would be sufficient to constitute a gift. I

am unable to accept the submission of the learned counsel for the petitioner. Firstly, the Expln. to section 2(xii) was introduced with effect from 1-

4-1988, and it has no application to the facts of the case. Secondly, the Explanation, in my view, does not in any way militate against the fulfilment

of the requirements of section 123 of the Transfer of Property Act for a valid gift to be made by those persons mentioned in section 27(iiia) or

27(iiib) of the Income Tax Act. The persons mentioned in section 27(iii), 27(iiia) or 27(iiib) of the Income Tax Act are not normally regarded as owners, but any transfer made by them is also regarded as a gift within the meaning of the Gift Tax Act, but the Expln. to section 2(xii) of the Gift

Tax Act merely expands the categories of persons to be regarded as donors, but it does not dispense with the requirements of fulfilment of

conditions of section 123 of the Transfer of Property Act and the requirement of registration for a valid gift of immovable property to take effect.

Moreover, if the contention of the petitioner is accepted, it will be open to an assessee to evade the tax as it will be within his powers to declare

that the possession of the immovable property was handed over during a period which the officer may not be able to reach at all. Hence, the first

submission of the learned counsel for the petitioner that the mere handing over of the document and the handing over of the possession of the

immovable property would constitute a valid gift of an immovable property is not well-founded and is rejected.

11. Insofar as the second submission of the learned counsel for the petitioner is concerned, learned counsel relied upon the decision of the Gujarat

High Court in the case of Arundhati Balkrishna v. CIT (supra) wherein the Gujarat High Court after considering the decisions of the Supreme

Court in Ram Saran Lall and Others Vs. Mst. Domini Kuer and Others, , K.J. Nathan Vs. S.V. Maruty Reddy and Others, and Hiralal Agrawal

etc. Vs. Rampadarath Singh and Others, etc., and also the decisions of the Privy Council in AIR 1927 42 (Privy Council) and Venkat Subba

Srinivas Hegde v. Subba Rama Hegde AIR 1928 PC 86 held that a gift would become complete when the deed was executed and the instrument

of gift was handed over by the donor to the donee and the gift would become effective from the date of execution since registration of the

document does not depend upon the consent of the donor, but it is the act of an officer appointed by law for that purpose and the transaction of

the gift would become complete on the date on which the document was executed and not on the date on which it was subsequently registered.

The Gujarat High Court in the above case has held as under :

.... the transaction of gift is complete if the other formalities are completed and the document of gift is executed and that the donor cannot

resile from his action before the document is registered. The ratio of both the decisions of the Privy Council is to the effect that a transaction of gift by a document which is subsequently registered becomes operative from the date on which the document of gift was executed.

12. Learned counsel referred to the decision of the Supreme Court in the case of Hamda Ammal v. Avadiappa Pathar (supra) wherein the

appellant before the Supreme Court purchased a property from the respondents/ vendors by a sale deed executed in her favour in September,

1970, and the sale deed was registered on 26-10-1970, but before the registration of the sale deed, the respondent Avadiappa Pathar filed a suit

for recovery of money against the vendors of Hamda Ammal and obtained an order of attachment before judgment on 17-9-1970, and the suit

was also decreed in favour of Avadiappa Pathar, and the question that arose before the Supreme Court was whether the appellant Hamda Ammal

was entitled to the property sold in her favour by virtue of the sale deed dt. 9-9-1970, and registered subsequently or the respondent Avadiappa

Pathar had a better claim over the property on the basis of the order of attachment obtained by him in between the date of execution and the date

of registration of the sale deed. The Supreme Court held that once the registration takes place, it takes effect from the date of execution and since

the sale deed was executed prior to the attachment before judgment, the sale deed would prevail over the attachment before judgment. The

Supreme Court distinguished the two earlier cases of the Apex Court in Ram Saran Lall v. Mst. Domini Kuer (supra) and Hiralal Agrawal v.

Rampadarath Singh (supra).

13. Learned counsel also relied upon the decision of the Supreme Court in the case of Thakur Kishan Singh v. Arvind Kumar (supra) wherein the

Supreme Court held as under :

Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no

registration thereof had been required or made and not from the time of its registration.

14. I am of the view that the above decisions are authorities for the proposition that u/s 47 of the Registration Act, the document registered would

take effect from the date of execution of the document, but the question remains when the transfer would become complete in the eye of law. The

scope of section 47 of the Registration Act as considered by the Supreme Court in Ram Saran v. Domini Kuer (supra) and the Supreme Court has

held that the completion of the sale takes place when the property is registered and section 47 of the Registration Act does not say when a sale

would be deemed to be complete. The ratio of the Supreme Court on the scope of section 47 of the Registration Act reads as under:

A sale which is admittedly not completed until the registration of the instrument of sale is completed cannot be said to have been completed earlier

because by virtue of section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.

15. The scope of section 47 of the Registration Act was again the subject-matter of consideration before the Supreme Court in Hiralal Agrawal v.

Rampadarath Singh (supra) and the Supreme Court reiterated the position that sale would become complete only when the registration of the sale

deed takes place and not before.

16. The Gujarat High Court in the case of Darbar Shivrajkumar Vs. Commissioner of Gift-tax, Gujarat-IV, following the above two decisions of

the Supreme Court held that transaction of a gift of immovable property would be complete only on registration of the document and prior to the

registration of the document, the transaction is not complete and there is no gift in the eye of law. The court held as under :

Since on a combined reading of sections 122 and 123 it is evident that the transaction of gift would be complete provided and only provided a

registered document is executed and other conditions are fulfilled, it cannot be said that the transaction was complete and a gift in the eye of law

came to be made by the donor to the donee prior to the registration of the document by which the gift was made.

17. The Calcutta High Court in the case of Commissioner of Gift Tax Vs. Smt. Aloka Lata Sett and Others, has also taken the same view and held

that though the registered document may take effect from a date anterior to the date of registration as between the transferor and transferee of

immovable property, but in the case of third parties the point of time at which the transfer would become complete is when it is registered.

18. I am of the view that though the transaction of the gift may be regarded as valid in between the donor and the donee from the date of execution

of the settlement deed, but if the document is required to be registered, the transfer of immovable property would become complete by registration

of the document. Though by virtue of section 47 of the Registration Act, it would relate back to the date of execution, in such cases, I hold that

only by registration of the document transferring the immovable property, the transfer would become complete though it may have effect from a

date anterior to the date of registration and insofar as third parties, particularly, the tax authorities are concerned, the relevant date for the levy of

tax is the date of registration of the document.

19. Learned authors Chaturvedi & Pithisaria in Income Tax Law (1993-94 Edn. Vol. 9) at p. 1557 also noticed the conflict of views expressed by

various High Courts. I hold that a gift of immovable property would become complete only when the document is registered and section 47 of the

Registration Act does not deal with the concept of the completion of the transaction and it provides for an effective date for a document. Though

the document may become effective as between the parties to the document from the date of execution and unless the transaction is complete in

the eye of law, there is no gift within the meaning of law. The definition of the expression, ''gift'' in section 2(xii) of the Gift Tax Act does not in any

way help the petitioner as there was no transfer as contemplated under the law before the registration of the said document. Therefore, I am unable

to agree with the view of the Gujarat High Court expressed in Arundhati Balkrishna v. CIT (supra) but I agree with the earlier decision of the

Gujarat High Court in Darbar Shivrajkumar v. CGT (supra) and the decision of the Calcutta High Court. in CGT v. Smt. Aloka Lata Sett (supra).

20. The next question that arises is that the determination of market value by the Commissioner is correct. I find some force in the submission of

the learned counsel for the petitioner. The Commissioner has found that the value of the property was determined at Rs. 1,30,000 by the Gift Tax

Officer without any basis. The Commissioner however determined the value of the property gifted at Rs. 1,20,180 on the basis of the guideline

value of the Registration department. It is well settled that guideline value regarding valuation of the property has evidentiary value and they are only

intended to give information or instruction to the registering authorities but the guidelines, as such would not establish the market value of the land.

In the decision of this court in M. Ponnusamy & Ors. v. District Collector, Erode &

Ors. 1999 (2) L. W 231, E. Padmanabhan, J. after referring

to earlier cases on the topic has held that the guideline value cannot be regarded as a conclusive evidence regarding market value of a land.

21. The Supreme Court in Ramesh Chand Bansal and Others Vs. District Magistrate/Collector Ghaziabad and Others, , following the earlier

decision in State of Punjab and Others Vs. Mohabir Singh etc. etc., has held that the circle rate fixed by the Collector is not final but it is only a

prima facie determination of the rate of the area concerned to give guidance to the registering authority to test prima facie whether the instrument

has properly described the value of the property and the circle rate under the U.P. Stamp Rules is not final. The Supreme Court has also held that

the circle rate has a limited application and it does not take away any right of the such person to show that the property in question was correctly

valued as he gets an opportunity in case of undervaluation to prove it before the Collector after reference is made.

22. Here, the Commissioner has not conducted any independent investigation on the question of determination of the market value of the property

gifted by collecting necessary materials for the determination of the same, de hors the guideline value. Since the determination of the market value

of the property by the Commissioner is not based on relevant materials and the Commissioner has overlooked the material produced by the

petitioner, the matter may have to be remitted to the Commissioner for fresh determination of the market value of the property. However,

considering the fact that the assessment is of the year 1971-72 and the order of the Gift Tax Officer was made as early as 8-8-1979, I am of the

view that instead of remitting the matter to the Commissioner the market value shown by the petitioner, which is based on the valuer''s report, viz.,

a sum of Rs. 83,330 can be taken as the market value of the property so that further proceedings on the determination of the market value can be

avoided. Further, the value shown by the petitioner is based on the report of the approved valuer and there are no justifiable reasons to discard the

same. Accordingly, I direct that the market value of the property settled should be taken as Rs. 83,330 as its value.

23. Insofar as the credit for the stamp duty paid is concerned, though the petitioner has not made any claim for stamp duty before the assessing

officer, the petitioner would be entitled to the said relief u/s 18A of the Gift Tax Act as then existing during the relevant assessment year in question.

Though the petitioner has not claimed the same before the Gift Tax Officer the relief u/s 18A of the Gift Tax Act is a statutory relief under the

provisions of the statute and, therefore, irrespective of the question whether a specific claim was made by the petitioner or not for the credit for the

stamp duty paid on the instrument of gift, the petitioner would be entitled to the relief available u/s 18A of the Gift Tax Act. The second respondent

is directed to pass orders in conformity with the judgment.

24. Subject to the modifications indicated earlier, the writ petition is disposed of. However, in the circumstances, there will be no order as to costs.

