

The Commissioner of Gift Tax, Kerala

Vs

Dr. George Kuruvilla

Civil Appeal No. 764 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

24.04.1970

JUDGMENT

SHAH, J. -

1. By our order, dated January 1, 1969, we directed the Income-tax Appellate Tribunal to submit a supplementary statement of the case together with a copy of the deed of gift, dated February 3, 1960 executed by the respondent. The Tribunal has submitted the supplementary statement of the case together with a copy of the deed of gift executed by the respondent on February 3, 1960.

2. The respondent is a medical practitioner. By the deed, dated February 3, 1960 he has given to his son Thomas four items of property : (1) one-fifth share in cardamom estate valued at Rs. 3,030.80; (2) 1.38 cents of garden land valued at Rs. 4,500/-; (3) G.K. Hospital Building erected on the garden land valued at Rs. 17,250/-; and (4) Othi rights valued at Rs. 6,000/-.

3. In response to a notice under Section 13(2) of the Gift Tax Act 18 of 1958 the assessee filed a return for the assessment year 1960-61 disclosing taxable gifts of property valued at Rs. 27,251/-. But he claimed exemption in respect of item No. (2), i.e., the garden land. In the course of the hearing the respondent claimed that the G.K. Hospital Building item No. (3), was also exempt from liability to gift-tax because of Section 5(1) (xiv) of the Gift Tax Act. It was the case of the respondent that his son Thomas had graduated in the medical science at an examination held in December 1959, and had joined the respondent's profession as a House-Surgeon in July 1960, and on that account the gifts in respect of items (2) and (3) were exempt from liability to tax. The Gift-tax Officer rejected the claim. The Appellate Assistant Commissioner confirmed the order of the Gift Tax Officer. The Appellate Tribunal held that the respondent was entitled to exemption in respect of items (2) and (3).

At the instance of the Commissioner of Gift Tax, the Tribunal referred the following question to the High Court of Kerala for opinion;

"Whether on the facts and in the circumstances of the case, the assessee was entitled to the exemption in respect of G.K. Hospital and the adjoining land of 1.38 cents under Section 5(1) (xiv) of the Gift Tax Act ?"

The High Court answered the question in the affirmative. The Commissioner of Gift Tax, Kerala, has appealed to this Court.

4. Section 5 of the Gift Tax Act provides for exemption in respect of certain gifts : insofar as it is

relevant it provides :

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

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(xiv) in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift Tax Officer to have been made bona fide for the purpose of such business, profession or vocation."

The respondent practises the profession of medicine. A few months after the deed of gift his son Thomas also qualified to be a medical practitioner. But there is nothing in the deed of gift which even remotely suggests that the gift was made by the respondent in the course of his profession and bona fide for the purpose of carrying on his profession as a practitioner in medicine. The recitals in the deed are clear : it is recited in the deed that the gift was made "out of love and affection". There was no evidence before the taxing authorities that the gift was made to the donee Thomas in the course of carrying on the business by the donor or for the purpose of such business, profession or vocation. The Tribunal observed in Paragraph 7 of the judgment :

"There is no finding that the assessee has ceased to carry on his profession as a doctor. Therefore it will be clear that the gift had been made in the course of the carrying on the profession. Now the next condition is that it should have been made for the purpose of the profession. It is not the case of the Department that the gift property had been used for any purpose other than what it had been put to while it was with the donor X X X X."

The High Court observed :

"We feel it difficult to resist the conclusion that in the background and circumstances, the gift could well be regarded as having been made for the better ordering of the business of the assessee. X X X it would be enough to show that the gift was made on grounds of commercial expediency and in order to directly or indirectly facilitate the carrying on of the business, profession or vocation."

5. We are unable to agree with the views so expressed. The donor is exempt under Section 5(1)(xiv) from liability to pay tax only if the gift is in the course of carrying on a business, profession or vocation and is made bona fide for the purpose of such business, profession or vocation. The clause does not enact that a gift made by a person carrying on any business is exempt from tax, nor does it provide that a gift is exempt from tax merely because the property is used for the purpose for which it was used by the donor. Without deciding whether the test of "commercial expediency" is strictly appropriate to the claim for exemption under Section 5(1)(xiv), we are of the view that there is no evidence on the record to prove that the gift to Thomas was "in the course of carrying on the business" of the donor, and "for the purpose of the business".

6. The appeal is allowed and the order passed by the High Court is set aside. The Commissioner of Gift Tax will get his costs in this Court and the High Court.

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