

Commissioner of Gift Tax, Madras

Vs

N. S. Getty Chettiar

Civil Appeals Nos. 128 of 1969 and 1341 of 1971

(K.S. Hegde, A.N. Grover JJ)

16.09.1971

JUDGMENT

HEGDE, J. -

1. Both these appeals by the Commissioner of Gift Tax arise from the same judgment. The former one is by certificate and the latter by special leave. Civil Appeal No. 1341 of 1971, came to be filed because the certificate given by the High Court not being supported by any reason, the appeal brought on the strength of that certificate (Civil Appeal No. 128 of 1969) became unsubtainable. That is why instead of one appeal, there are two appeals before us in respect of the same decision.

2. The decision appealed against was rendered by the High Court of Madras in its advisory jurisdiction, in a reference under Section 26(1) of the Gift Tax Act, 1958 (to be hereinafter referred to as the Act). The Income Tax Appellate Tribunal, Madras Bench referred the question :

"Whether there was gift by N. S. Getti Chettiar of Rs. 2,46,377/- on which he is liable to pay gift-tax" to the High Court seeking its opinion. The High Court answered that question in the negative. The Commissioner of Gift Tax not being satisfied with that decision has brought these appeals.

3. The facts of the case are not many though the question of law arising for decision is by no means easy. The respondent, N. S. Getti Chettiar (who will hereinafter be referred to as the assessee) was the karta of his undivided Hindu family consisting of himself, his son Govindaraju Chettiar and six sons of the said Govindaraju Chettiar. There was a partition of the immovable properties of the family through a registered deed executed on January 17, 1958 and the movable properties were divided don April 13, 1958, on which date the necessary entries in the account books were made. The assessee claimed recognition of that partition under Section 25-A of the Act. That was granted by the Department on November 29, 1958. The total value of the properties so divided was Rs. 8,51,440/-, but under that partition the assessee took properties worth only Rs. 1,78,343. The remaining properties were allotted to his son and grandsons.

4. The Gift Tax Officer overruling the objection of the assessee, came to the conclusion that the assessee, by allotting greater share to the other members of the coparcenary than to which they were entitled, must be held to have made a 'gift' of a portion of his share of the property to the other members and hence was liable to be taxed under the Act. He opined that the partition in question is a transaction entered into between the assessee and the members of his family with intent thereby to diminish the value of the assessee's own property and increase the value of the property of his son and grandsons.

5. Aggrieved by that order, the assessee went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that as no member of an undivided Hindu family had a definite share in the family assets, on partition, when the joint enjoyment came to an end, there was no need to have arithmetical equality between the shares of the various coparceners. He accordingly held that the assessee was not liable to pay any gift tax in respect of the properties that fell to the shares of his son and grandsons. The Department appealed against this decision to the Tribunal. It was contended before the Tribunal that the transactions in question came within Section 2(xii) and section 3(xxiv), in particular it came within clause (d) of Section 2(xxiv), as property included any interest in property and partition constituted a transaction; the assessee had, by relinquishing a portion of what was his due, transferred such interest and properties in favour of the other members of the family for no consideration and consequently the Gift Tax was properly leviable. This contention was not accepted by the Tribunal. It held that the interest that the assessee had in his Hindu undivided family property was not definable, and therefore, Section 2(xxiv) was not attracted to the facts of the case.

6. The High Court agreed with the conclusions reached by the Assistant Appellate Commissioner and the Tribunal. It came to the conclusion that the partition in the family of the assessee did not come within the mischief either of Section 2(xii) or Section 2(xxiv). It also opined that under the partition, there was no deemed 'gift' as contemplated by Section 4 of the Act.

7. Mr. Solicitor-General appearing for the Commissioner of Gift Tax did not place any reliance before us on Section 4 of the Act. Therefore we need not consider the scope of Section 4 of the Act. All that Mr. Solicitor-General contended was that the case came either under Section 2(xii) or under Section 2(xxiv). He built up his arguments thus :

A partition in a H.U.F. invariably involves two steps, first there is a division of status and thereafter there is a division by metes and bonds. A coparcener's share is fixed according to law as soon as there is a division of status. Therefore, if at the time of division by metes and bounds he chooses to take a share less than to which he is entitled to under law, then the same would amount to a 'gift' of the balance of property to which he was entitled, to the other coparceners. We are unable to agree with Mr. Solicitor-General that in every case of partition in a H.U.F. there should first be a division of a status and thereafter a division by metes and bounds. There are innumerable cases where a partition takes place without there being earlier any division of status. Coming to the facts of the case, there is no material before us to show that there was any division of status before the properties were actually divided. The Tribunal has not found that there was any division of status amongst the members of the family before they divided the properties. The partition deed is not before us nor are the account-books showing the division of the movable properties before us. It is not known whether under the registered partition deed, there was only a partial partition of a complete disruption of the family. That being so, we have to proceed on the basis of the facts as found by the Tribunal and apply the law to the facts so found. The argument that there was first a division of status and the same was followed up by a division by metes and bounds does not appear to have been urged before the Tribunal. Under these circumstances, it is not necessary for us to consider what would be the position in law if there was first a division of status in a H.U.F. and the same was followed up by division by metes and bounds in which division one of the coparceners takes properties less than to what he is entitled to under law.

8. Before proceeding to examine the relevant provisions of the Act, it is necessary to mention that according to the true notion of an undivided Hindu family, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular

member, has certain definite share namely a third or a fourth. All the coparceners in a Hindu joint family are the joint owners of the properties of the family. So long as the family remains joint, no coparcener can predicate what his share in the joint family is. His share gets determined only when there is a division of status or a division by metes and bounds. Therefore, it is not correct to assume that a coparcener in Hindu joint family has any definite share in the family property, before its division. Having stated that much, let us now proceed to consider the relevant provisions of the Act.

9. Section 3 of the Act is the charging section. It says :

"Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April, 1958, a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before the 1st day of April, 1947), at the rate or rates specified in the Schedule."

10. 'Gifts' is defined in Section 2(xii). That sub-clause says :

" 'Gift' means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be a gift under Section 4."

11. The expression 'transfer of property' is defined in Section 2(xxiv). That provision reads :

" '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) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(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."

12. We shall first examine whether the partition with which we are concerned in these appeals can be considered as transfer of property under the general law. Thereafter we shall proceed to consider whether it comes within the extended meaning given to that expression in Section 2(xxiv).

13. It is now settled by the decision of this Court in Commissioner of Income-tax, Gujarat v. Keshavlal Lallubhai Patel, (55 ITR 637) that a partition of joint Hindu family property cannot be considered as transfer in the strict sense - the sense in which all legal expressions are understood and more particularly in tax laws. In the course of that judgment, Sikri, J. (as he then was) speaking for the Court, observed :

"But, is a partition of joint Hindu family property a transfer in the strict sense ? We are of the opinion that it is not. This was so held in Gutta Radhakrishnayya v. Gutta Sarasamma, (ILR 1951 Mad 607) Subba Rao, J. (then a judge of the Madras High Court) after examining several authorities, came to the conclusion that "partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severally. Each one of the shares had an antecedent title and, therefore, no conveyance is involved in the process, as a conferment of a new title is not necessary". The Madras High Court again examined the question in M. K. Stremann v. Commissioner of Income-tax, ((1961) 41 ITR 297 (HC)) with reference to section 16(3)(a)(iv). It observed that "obviously no question of transfer of assets can arise when all that happens is separation in status, though the result of such severance in status is that the property hitherto held by the coparcenary is held thereafter by the separated members as tenants-in-common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the tenants-in-common to each of such tenants-in-common".

The Punjab High Court come to the same conclusion in Jagan Nath v. State of Punjab.((1962) 64 PLR 22) Agreeing with these authorities, we hold that when the joint Hindu family property was partitioned, there was no transfer of assets within Section 16(3)(a) (iii) and (iv) to the wife or the minor son."

14. We are bound by the ratio of that decision and if we may say so, we respectfully agree with the statement of the law quoted above. Hence we hold that the partition in the family of the assessee did not effect any transfer as generally understood in law.

15. This takes us to section 2(xxiv). The opening words of the provision refer to 'transfer of property'. That clause enumerates several types of transfers and not to any other transactions. It is also necessary to attach significance to the words "or other alienation of property" immediately after setting out the various types of transfers. If we read the clause as a whole, it is clear that it deals with transfer of properties in various ways.

16. As observed in Craies on Statute Law (6th Edn., p. 213), that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinary be applicable.

17. Bearing in mind these principles, let us now examine the scope of Section 2(xxiv). That provision speaks of "disposition", "conveyance", "assignment", "settlement", "delivery" "payment" or "other alienation of property."

18. A reading of this section clearly goes to show that the words "disposition", "conveyance", "assignment", "settlement", "delivery" and "payment" are used as some of the modes of transfer of property. The dictionary gives various meanings for those words but those meanings do not help us. We have to understand the meaning of those words in the context in which they are used. Words in the section of a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose that they are intended to

serve. If so understood, it is clear that the word "disposition" in the context means giving away or giving up by a person of something which was his own, "conveyance" means transfer of ownership, "assignment" means the transfer of the claim, right or property to another, "settlement" means settling the property, right or claim - conveyance or disposition of property for the benefit of another, "delivery" contemplated therein is the delivery of one's property to another for no consideration and "payment" implies gift of money by someone to another. We do not think that a partition in a H.U.F. can be considered either as "disposition" or "conveyance" or "assignment" or "settlement" or "delivery" or "payment" or "alienation" within the meaning of those words in Section 2(xxiv).

19. This leaves us with clause (d) of section 2(xxiv) which speaks of a 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 another person. A member of a H.U.F. who, as mentioned earlier, has no definite share in the family property before division, cannot be said to diminish directly or indirectly the value of his property or to increase the value of the property of any other coparcener by agreeing to take a share lesser than what he would have got if he had gone to Court to enforce his claim. Till partition his share in the family property is indeterminate. He becomes entitled to a share in the family property only after the partition. Therefore there is no question of his either diminishing directly or indirectly the value of his own property or of increasing the value of the property of anyone else. The "transaction" referred to in clause (d) of Section 2(xxiv) takes its colour from the main clause, viz., it must be a transfer of property in some way. This conclusion of ours gets support from sub-clauses (a) to (c) of clause (xxiv) of Section 2, each of which deals with one or the other mode of transfer. If the Parliament intended to bring within the scope of that provision partitions of the type with which we are concerned, nothing was easier than to say so. In interpreting tax laws, Courts merely look at the words of the section. If a case clearly comes within the section, the subject is taxed and not otherwise.

20. For these reasons, we agree with the view taken by the High Court of Madras, the Tribunal and the Assistant Appellate Commissioner that the assessee made no "gift" under the partition deed in question.

21. In the result these appeals fail. Civil Appeal No. 1341 of 1971, is dismissed on merits and Civil Appeal No. 128 of 1969, is dismissed as being not maintainable. The assessee is entitled to his costs - fee one set.

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