SUPREME COURT OF INDIA

Commissioner Of Gift-Tax

Vs.

B.S. Apparao

(S.P. Bharucha, D.P. Mohapatra and S.N. Phukan JJ.)

16.11.2000

ORDER

1. The Revenue questions the correctness of the decision of a Division Bench of the High Court at Hyderabad to answer in the negative and in favour of the assessee the following question:

"Whether, on the facts and in the circumstances of the case, the settlement of lands made by the assessee to his three minor daughters fell within the meaning of taxable gift under the Gift-tax Act, 1958 ?"

2. The assessment year with which we are concerned is 1970-71. During the course of the year, that is, on March 26, 1970, the assessee gifted in favour of his three minor daughters, aged five, three and one, respectively, land worth rupees one lakh each. The gift deeds, one of which is produced before us and which, it would appear, was before the authorities and the Tribunal states that the gifts were made because it was the assessee's bounden duty according to the law to look after the daughters' education, livelihood, marriage and other expenses. Before the Gift-tax Officer the assessee's plea that this was not a gift but a transfer of property to meet his obligation under law met with no success. However, the Appellate Assistant Commissioner, the Tribunal and the High Court accepted the assessee's contention.

3. Learned counsel for the Revenue drew our attention to the provisions of Section 5(1)(vii) of the Gift-tax Act. By reason thereof, gift-tax is not chargeable in respect of gifts made by any person "to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative, subject to a maximum of rupees ten thousand in value in respect of the marriage of each such relative". [That is how the provision read at that time ; the limit is now rupees one hundred thousand.] It was submitted by learned counsel that, therefore, the gift was exempt only in respect of the sum of rupees ten thousand for each daughter and that the balance was exigible to gift-tax.

4. On the other hand, reliance was placed upon Section 20 of the Hindu Adoptions and Maintenance Act, 1956. By reason of Section 20 thereof, a Hindu is bound during his lifetime to maintain his daughter and his obligation extends to the extent that she cannot maintain herself out of her own earnings or other property. "Maintenance" is defined under Section 3(b) of this Act to include provision for food, clothing, residence, education and medical attendance and treatment ; in the case of an unmarried daughter, it extends also to reasonable expenses incidental to her marriage. Attention is drawn to the fact that the gift deed expressly provides that the gift is made in satisfaction of the assessee's obligation under law to maintain his daughters.

5. We think, in the circumstances, that the view taken by the Tribunal and the High Court deserves to be affirmed. The transfer to meet the obligation under law cannot be regarded as a gift within the meaning of the Gift-tax Act.

6. Accordingly, the civil appeal is dismissed.

7. No order as to costs.