ALLAHABAD HIGH COURT

Commissioner of Gift Tax, Lucknow

Vs.

Jagdish Saran

Gift Tax Reference No. 344 of 1963
(V.G. Oak, C.J., and T.P. Mukerjee, J.)

03.10.1969

JUDGMENT

Oak, C.J.

1. The question for consideration in this gift tax reference is whether conversion of self-acquired property into joint family property constitutes a 'gift' under the Gift Tax Act, 1958, hereafter referred to as the Act Sri Jagdish Saran is the assessee. He carried on contract business and some brick kiln business at Saharanpur. Till the assessment year 1957-58 he was assessed as an individual. He possessed certain self-acquired property. In his account books there was an entry dated 31-3-1957 to the effect that in future the business of brick kiln would be the property of himself and his sons, that is to say, the Hindu undivided family. It was also noted that the money invested in the brick kiln to the extent of Rs. 69,174/14/3, shall be the property of the joint family from that date. On 2-4-57 an agreement was entered into between Sri Jagdish Saran, his sons and his wife. It was stated in the agreement that the family shall carry on the business of brick kiln and income arising there from shall be exclusive property of the joint Hindu family. The Gift Tax Officer took the view that this transaction constituted a gift, Sri Jagdish Saran was, therefore, assessed to gift tax. This view was upheld in appeal by the Appellate Assistant Commissioner. But the assessee succeeded before the Appellate Tribunal. The Tribunal held that there was no gift involved in the transaction. The appeal was allowed; and assessment of gift tax was cancelled.

2. At the request of the Commissioner of Gift Tax, Lucknow the Appellate Tribunal has referred the following question of law to this Court :-

> "Whether on the facts and in the circumstances of the case, conversion of the self-acquired property into joint family property amounted to a transfer so as to come within the scope of the definition of gift under Section 2 (xii) of the Gift Tax Act?"

3. Mr. Banarsi Das appearing for the assessee contended before us that the property in question was joint family property even before 31-3-1967. We find from the appellate order of the

Tribunal dated 29-6-1962 that it was the assessee's contention that his self-acquired property had been converted into joint family property. The Tribunal's conclusion was :

> "We are, therefore, of the opinion that the transaction in question by which the assessee impressed upon his self-acquired property the character of the joint family property, did not constitute in law a transfer and a gift."

It means that according to the Tribunal's finding, the property involved was the self-acquired property of the assessee. It was on that footing that the question of law has been referred to the Court. We cannot, therefore, permit the assessee to take up the position that the property involved was joint family property even before 31-3-1957. We have merely to investigate the effect of conversion of self-acquired property into joint family property.

4. In '*R. Subramania Iyer v. Commissioner of Income Tax, Madras*'[1]. it was pointed out by Madras High Court that no formalities are necessary in order to impress upon self-acquired property the character of joint family property.

5. In *Commissioner of Income Tax, Gujarat v. Keshav Lal Lallubhai Patel*[2], it was held that partition of joint Hindu family property is not a transfer in the strict sense. That question came before the Supreme Court in a reference under the Income Tax Act. The connected question whether the act of throwing self-acquired property into the hotch-pot is a transfer or not was left open.

6. In *Commr. of Gift Tax, Madras v. N. S. Getti Chettiar*[3], there was a partition between members of a Hindu joint family. One member agreed to accept a share much less than his due share in the joint family property. It was held that the transaction did not amount to a gift, as it did not involve a transfer of property. In the present case we are not concerned with any partition of joint family property.

7. In *Shyam Sunder Chowdhary v. Gift Tax Officer, Allahabad*[4]. it was observed by this Court on P. 23 :-

> "After going into the matter deeply it was open to him to treat it as a gift but the condition precedent in doing so was that he must be bona fide satisfied that it was a deed of gift and not a deed of relinquishment."

8. The facts of the case are not clear from the judgment. Apparently, the Department sought to bring the case under Clause (c) of Section 4 of the Act. In the present case, there is no question of bringing the case under Clause (c) of Section 4 of the Act.

9. In *V. N. Sarin v. Ajit Kumar*[5], it was held that partition of joint family property does not

constitute a transfer. As already mentioned, we are not concerned in the present case with any partition of joint family property.

[1] *28 ITR 352: AIR 1955 Mad 623* [3] *(1965) 60 ITR 454 (Mad)* [5] *AIR 1966 SC 432*
[2] *AIR 1965 SC 866* [4] *AIR 1967 All 19*

10. In *Smt. Laxmibai Narayana Rao Nerlekar v. Commr. of Gift Tax*[6].

(Mys), it was held by Mysore High Court that throwing self-acquired property into the common stock or blending it with other joint family property does not involve any transfer in the same way as partition does not involve transfer, and cannot amount to a gift within the meaning of Gift Tax Act.

11. In *P. K. Subramania Iyer v. Commr. of Gift Tax. Kerala*[7], it was held that where a coparcener of a Hindu undivided family throws his self-acquisitions into the hotch-pot of a joint family he does not enter into any transaction. Such a unilateral act cannot amount to a gift within meaning of Section 2 (xii) read with section 2 (xxiv) (d) of the Gift Tax Act, 1958. That case was decided by Kerala High Court with reference to sub-clause (d) of clause (xxiv) of Section 2 of the Act. The High Court declined to permit the Department to press into service the entire definition contained in the Act.

12. In *Commissioner of Gift Tax v. C. Satyanarayanamurthy*[8], it was explained by Andhra Pradesh High Court that the definition of transfer in the Gift Tax Act is of wider import than the definition contained in the Transfer of Property Act, 1882. It was, therefore, held that where an individual converts his self-acquired property into joint family property, there is a decrease in the value of the individual's property and enhancement of the value of the property of the Hindu undivided family, which is a different person. Such a transaction falls within the purview of Section 2 (xxiv) (d), and constitutes gift.

13. Similarly in *G. V. Krishna Rao v. First Addl. Gift Tax Officer, Guntur*[9], it was held by Andhra Pradesh High Court that throwing self-acquired property into joint family property amounts to transfer of property, and does not cease to be a transaction within the meaning of Section 2 (xxiv) (d) of the Gift Tax Act.

14. Section 2 of the Act contains a number of definitions. The term "gift" has been defined in clause (xii) of Section 2 of the Act as follows :-

> "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."

15. The word "person" has been defined in clause (xxviii) of Section 2 of the Act :-

"'Person' includes the Hindu undivided family or a company....."

16. The expression "transfer of property" has been defined in Clause (xxiv) of Section 2 of the Act :-

[6](1967) 65 ITR 19 [8]56 ITR 353: AIR 1965 And Pra 95
[7]67 ITR 612: AIR 1968 Ker 190 [9]70 ITR 812: AIR 1970 And Pra 126

> "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."

17. In some of the cases cited above, there is a discussion as to whether conversion of self-acquired property into joint family property constitutes a transaction as contemplated by sub-clause (d) of Clause (xxiv) of Section 2 of the Act. In that connection the question has been raised whether it is possible to have a unilateral transaction. It is possible to dispose of the question before us without entering into the question of applicability of sub-clause (d) of Clause (xxiv) of Section 2 of the Act. According to the main definition contained in Clause (xxiv) of Section 2 of the Act, transfer of property means any disposition of property. When Sri Jagdish Saran converted his self-acquired property into joint family property, he certainly disposed of his property. There is, therefore, no difficulty in describing this process as 'transfer of property' as defined in Clause (xxiv) of Section 2 of the Act.

18. The definition of gift has already been quoted. The definition has got several elements. The first element is that there must be transfer by one person to another. We have already explained that the transaction under consideration involved transfer of property. This was a transfer by Sri Jagdish Saran to the joint Hindu family. According to Clause (xviii) of Section 2 of the Act, a Hindu undivided family is a person. We are, therefore, dealing with a transfer by one person to another. The second element is that the transaction must involve movable or immovable property. That test is satisfied in the instant case. The gift must be voluntary. There is no suggestion that the conversion of the self-acquired property into joint family property by Sri Jagdish Saran was not voluntary. The last element is that the transfer must be without consideration in money or money's worth. There is no suggestion that the joint Hindu family passed any consideration to Sri Jagdish Saran to persuade him to convert his self-acquired property into joint family property. Thus, all the elements of 'gift' given in Clause (xii) of Section 2 of the Act are satisfied in the instant case. The transaction constitutes a 'gift' under Section 2

(xii) of the Gift Tax Act.

19. We answer the question referred to this Court in the affirmative, and against the assessee. The assessee shall pay the Commissioner of Gift Tax, Lucknow Rs. 200/- (Rupees two hundred) as costs of this reference.

Answered accordingly.