ANDHRA PRADESH HIGH COURT

Jupudi Sesharatnam

Vs.

Gift Tax Officer

Writ Petns. Nos. 1281 and 1498 of 1958; 19, 46, 48, 56, 61, 82, 103, 106, 116, 125, 126, 136, 137, 153, 157, 170, 176, 177, 181, 214, 220, 221, 237, 283, 289, 291, 292, 297, 305, 322, 333, 335, 336, 338, 344, 359, 360, 364, 379, 383, 396, 406, 457, 458, 459, 464, 531, and 532 of 1959

(Chandra Reddy, C.J. and Mohd. Ahmed Ansari, J.)

15.09.1959

JUDGMENT

Chandra Reddy, C.J.

1. The principal question raised in all these petitions relate to the constitutionality of the Gift Tax Act (hereinafter referred to as the Act) in so far as it seeks to levy tax on gifts of agricultural land.

2. The Act was passed by the Parliament in the beginning of 1958 and received the assent of the President on 15-5-1958. The report of the Indian Taxation Enquiry Commission, 1953-54 to the Government of India considered the introduction of gift tax in India. The commission remarked that a gift tax though appeared in theory to be an attractive proposition, required considerable experience of the opinion of Estate duty before it could be introduced in this country. A year or two later Prof. Kaldor, Reader in Economics, University of Cambridge was invited by the Government of India to examine this question and he made his report to the Union Government in March 1956. His proposal was that a single integrated tax should be imposed on gifts of all kinds (including under this term accession to property through bequest and inheritance), which should replace the present estate duty as well as to bring into charge other gratuitous transfers of property which are not now taxable. The suggestion of Prof. Kaldor to abolish estate duty with the introduction of gift tax was evidently not accepted and today the Estate Duty Act and the Gift Tax Act exist side by side. The gift tax is a well known system of tax obtaining in several countries of the world such as the United States of America, Canada, Australia, Netherlands and New Zealand. Generally the purpose of the Gift Tax Act is to prevent the avoidance of estate duty and income-tax by reaching transactions which would otherwise escape taxation. In order to evade estate duty or tax on higher incomes, the tendency of the people will be to make gifts inter vivos and thereby split up large fortunes which will result in the diminution of sur taxes etc. The gift tax has been resorted to as a safeguard against these things.
3. The charging section in the Act is Section 3. That authorizes a levy of a tax on all gifts made by a person during the previous year at the rate or rates specified in the schedule annexed to the Act. 'Gift' is defined in Section 2 (xii) as

> "the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or moneys worth, and includes the transfer of any property deemed to be a gift under Section 4." "Taxable gifts" are defined as "gifts chargeable to Gift Tax under the Act." We will refer to the definition of 'previous year' in the appropriate context. The Act exempts certain gifts under Section 5. The Act also gives power to Gift Tax Officers to call upon donors to file return of gifts for the relevant year. It has set up a machinery for the enforcement of the provisions of the Act. Section 46 of the Act has conferred rule-making power upon the Central Board of Revenue for carrying out the purposes of this Act. Pursuant to this, rules were framed by the said Board. Standard rates were also prescribed in the schedule appearing at the end of the Act and forming an integral part of the Act.

4. The validity of the Act in so far as it affects agricultural land is attacked on the ground that it was beyond the competence of Parliament to make laws concerning agricultural land. The contention pressed upon us is that the power to make laws with respect to any of the matters enumerated in List II is exclusively vested in State Legislatures and consequently it is not competent for the Parliament to legislate on any subject within the domain of State legislatures. It is urged that entry 18 of list II mentions "land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization", that on the topic of and committed to the sphere of the State legislature, the power of the legislature is plenary and therefore the Indian Parliament is not empowered to pass an enactment imposing tax in respect of land. The argument is elaborated thus. The expression 'land' is used in a generic sense and the words that follow "that is to say etc." introduce a general concept and the following clauses 'rights in or over land etc.' are added only by way of explanation or illustration and do not introduce any limitation on the subjects included in the item. It should not be understood in a narrow or limited sense but should be interpreted as extending to all ancillary or subsidiary matters which can reasonably be said to be comprehended in it.

5. The learned counsel has drawn our attention to The *United Provinces v. Atiqa Begum*[1]. The passage called in aid on behalf of the petitioners occurs at page 77 (of Mad LJ) : (at page 25 of AIR) :

> "The subjects dealt with in the three legislative lists are not always set out with scientific definition. It would be practically impossible for example to define each item in the provincial list in such a way as to make it exclusive of every other item in that list, and Parliament seems to have been content to take a number of comprehensive categories and to describe such of them by a word of broad and general import. In the case of some of these categories, such as 'Local Government', 'Education'. 'Water', Agriculture and land, the general word is amplified and explained by a number of examples or illustrations, some of which would probably on any construction have been held to fall under the more general word, while the inclusion of others might not be so obvious.

Thus "Courts of Wards" and "treasure trove" might not ordinarily have been regarded as included under "Land", if they had not been specifically mentioned in item 21. I think however that none of the items in the lists is to be read in a narrow or restricted sense and that such general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

6. This dictum has been adopted by the Supreme Court in a number of rulings : See *Atma Ram v. State of Punjab*[1], No exception could be taken to the proposition as such. It is now well-settled that topics of legislation contained in the legislative lists ought to be understood in a broad and general sense and should not be interpreted in a narrow or pedantic sense. It is also indisputable that the power to legislate on general subjects extends to all ancillary matters which can be said to be fairly included in that power.

7. Does it mean that this extends to taxing measures; in other words, does the authority to make legislation on general subject involve the authority to make taxing laws? Is a power to enact a law for the imposition of taxes incidental or ancillary to the power to legislate on general topics? In our considered opinion, the two powers are distinct and there is no indication either in the main body of the Constitution or in any of the legislative lists that taxation is comprehended in the main subject. The Constitution has enumerated the subjects committed to the sphere of the respective legislatures, List I with reference to the topics falling under the appointed field of the Union List II with reference to those of the States and List III contains matters in regard to which both the Parliament and the State Legislatures have concurrent jurisdiction. At the same time lists I and II, which alone confer jurisdiction on the legislatures to undertake taxing legislations, have divided the powers into two groups, namely, those relating to the main subjects of legislation and those bearing on taxation. A scrutiny of list I reveals that entries 1 to 81 mention the various subjects over which the Parliament has power to make laws while items 82 to 92 set out the taxes, which could be levied by the laws of Parliament; for instance, item 30 of list I is carriage of passengers and goods by railway, sea or air or by national waterways in mechanically propelled vessels, while entry 89 empowers Parliament to make laws levying terminal taxes on goods or passengers, carried by railway, sea or air. This entry also includes taxes on railway fares and freights while entry 22 is railways. If really entries 22 and 30 imply a power to tax in regard to those topics, item 89 is redundant and serves no useful purpose. A comparison of items 41 and 83 leads to the same result. A careful analysis of the entries or that list establishes that the Constitution has treated the two powers separately for purposes of legislative competence.

8. Similarly, in list II items 1 to 44 constitute one group containing topics on which the State could make laws, while entries 45 to 63 deal with taxes. The intent of the

[1] AIR 1959 SC 519

Constituent Assembly in this behalf could also be gathered from Article 248 (1) and (2) and entry 97 of list I. Thus, the distinction between the two sets of entries is a well-marked one and has been brought out lucidly, if we may say so with respect, by the Supreme Court in *Sundararamier and Co. v. State of Andhra Pradesh*[2], A reference may also be made in this context to *S. and V. Firm v. East Godavari Coconut and Tobacco Market Committee*[2]

9. Alternatively, it was argued that entry 18 read with entry 49 discloses the intendment of the Constitution to authorize the State legislatures to legislate on all subjects in regard to lands including the imposition of taxes. Item 18 mentions also transfer of agricultural lands and entry

49 speaks of taxes on lands and buildings. A combined operation of the two entries brings taxes on transfer of agricultural lands within the jurisdiction of State Legislatures. Each of the entries in the two lists should receive the widest possible construction and should be interpreted as extending to every form of legislation on that subject and report to the residual powers contained in entry 97 of the Union list should be had only as a last refuge, continued the learned counsel.

10. We are unable to accede to this view. In this context we cannot ignore the facts that while the first part of the entry refers to land in general terms, the next two clauses specifically refer to only agricultural lands and have to be read with item 6 of list III. They both deal with the method of transfer or alienation of agricultural land but do not concern land itself. The alienation or transfer of agricultural land is subject to State legislation while lands other than agricultural lands lies within the sphere in which the provincial and the federal powers are concurrent. Thus, transfer and alienation of lands are distributed in Lists II and III assigning agricultural lands to List II and non-agricultural lands to list III. It is true 'Land' is a generic term and the words that follow i.e., up to 'collection of rent' are explanatory and illustrative. But the next clause deals with a different topic. Though it is an allied subject, it is not comprised in 'land'. If the word 'land' was intended to include transfer or alienation of agricultural land etc. the latter becomes redundant as that expression would have served the purpose. Further, transfer or alienation would not have been confined to agricultural lands. Again, item 6 of list III would conflict with item 18 if that interpretation were to be accepted. That being so, we find it difficult to import transfer and alienation of agricultural land into 'lands' in entry 49. The latter item concerns itself with an altogether different head of legislation, that is, tax on the ownership of property.
The object of this item is the levy of a tax on the ownership of property as such, while gift tax is a tax on a particular use of the property or the exercise of a single power subsidiary to ownership. The owner of a property may put it to several uses. A gift inter vivos is one of the several rights a person may have in a property. This form of tax attaches itself to a transfer of property, while the tax envisaged in entry 49 is incidental to the ownership irrespective of any use to which it may be put.

11. There is authority for this opinion of ours in *Bromley v. McCaughn*[4], There, the question was whether a Federal tax imposed upon transfers by gift violated constitutional provisions requiring the apportionment

[2]1958-9 STC 298
[3]1959-1 Andh WR 285 : AIR 1959 And Pra 398
[4](1929) 74 Law Ed 226 : 280 US 124

of direct taxes and uniformity in duties, imposts and excises throughout the United States and prohibited the taking of property without due process. This was answered in the negative by the Supreme Court of the United States of America in the view that it was not a tax upon property but it was a tax imposed on the exercise of a single one of the powers incidental to ownership, the power to give the property owned to another. In repelling the contention that such a tax was upon the essential right inherent in the property and, therefore, a direct tax, Stone J., who delivered the opinion of the Court observed :

> "It is true that in each of these cases the tax was imposed upon the exercise of one of the numerous rights of property, but each is clearly distinguishable from a tax which falls upon the owner merely because he is the owner, regardless of the use or disposition made of his property."

12. We may also cite another decision of the Supreme Court of the United States in *Graniteville Manufacturing Co. v. Query*[5], It was laid down that a stamp duty is a duty with respect to the creation of an instrument and as such is an excise tax and not a tax on property.

13. That being the position, the pronouncement of the Federal Court in *Manikkasundara v. R. S. Nayudu*[6], that the expression 'charity' in entry 34 of list II of Schedule VII to the Government of India Act was a term of wide significance taking in charitable institutions and charitable endowments or that of the Supreme Court in *Navinchandra Mafatlal v. Commissioner of Income Tax, Bombay*[7], that tax on income in entry 54 of list I embraces within its scope tax on capital gains do not carry the petitioners very far. These pronouncements only illustrate the principle that the entries in the legislative lists are heads of legislative power and should be construed liberally and should not be read in a restricted or pedantic sense and that the widest possible construction should be put upon them.

14. Nor does the decision in *Lahore Municipality v. Daulat Ram*[8], assist the parties. One of the points that arose for consideration there was whether the statute of a Provincial Legislature permitting the levy of octroi duty on salt was ultra vires the provincial legislature. It was ruled by the Federal Court that the salt being within the exclusive jurisdiction of the Central legislature, it is only this authority that could legislate either on the general subject or on any aspect of the taxation, that that power is not confined to imposing duties or taxes derivable under entries Nos. 44 and 45 of list I and that entry 49 in list II of schedule VII to the Government of India Act empowers provincial legislatures to make laws imposing cesses on goods other than salt. In understanding the ruling we have to bear in mind Section 140 of the Government of India Act which says :

> "Duties on salt, Federal duties of excise and export duties, shall be levied and collected by the Federation, but, if an Act of the Federal legislature so provides, there shall be paid out of the revenues of the Federation to the

[5](1931) 75 Law Ed 1126 : 283 US 376 [7] AIR 1955 SC 58
[6] AIR 1947 FC 1 [8] AIR 1942 FC 14

> provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act."

It was because of the expressions mentioned in the Section, namely, 'duties on salt' and 'federal duties of excise and export duties' that their Lordships thought that duties on salt were regarded as a category by themselves not comprised under the heading 'excise and export duties'. They also took into account the fact that unlike other goods, which may form the subject-matter of excise and export duties, salt was in a sense State monopoly and its manufacture, transport and sale were subject to State control.
We do not think that their Lordships intended to lay down a broad principle that 'salt' included taxes on salt. Thus, gift tax is easily distinguishable from a tax on persons because of the ownership of property and not because of a particular use of the property. A perusal of entries 46 to 49 of list II would clearly establish that the power of taxation committed to State legislatures

was confined to taxation in regard to particular aspects of agricultural lands.

15. Coming to the argument bearing on the applicability of residuary article, which is relied upon by the Government in support of the offending statute, we agree that before it is called in aid, all the categories involved in the three lists should be absolutely exhausted. But, in order to avoid falling back upon the residual powers, the Court will not be justified in straining the language of any of the entries. It is a cardinal principle of interpretation of statutes that the words of a statute should be read in their natural and grammatical meaning. When considering the scope or amplitude of the different entries in the respective lists, the scope and amplitude of one may have to be curtailed or enlarged to give effect to other entries and to avoid repugnancy, conflict or overlapping. See AIR 1955 Supreme Court 58. Each entry has to be understood with reference to another so that none of the entries may be so read as to make any of them meaningless or nugatory.

16. In this regard, wo have to bear in mind also some of the fundamental principles that govern the construction of statutes. There is always a presumption in favour of the constitutionality of an enactment and the onus is upon the person who challenges it to establish that there has been infringement of the constitutional principles. In order to sustain the presumption of constitutionality, the Court may take into consideration 'matters of common knowledge', 'matters of common report', the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation. See *Ramkrishna Dalmia v. S. R. Tendolkar*[9]*,*

17. We may here mention that entry 97 embodies the same concept as that underlying Article 248, which recites that Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent list or State list and that such power shall include the power of making any law imposing a tax not mentioned in either of those lists. It is plain that the Constitution makers were anxious to invest Parliament with exclusive power with regard to any subject which was not within the

[9]1959 SCJ 147

intendment of any of the lists. The argument of the counsel for the petitioner that at the time when the Constitution was framed, gift tax would not have been within the contemplation of the Constitution makers is devoid of force. It is precisely to cover cases, which were not within the contemplation of the Constituent Assembly, that this provision was conceived to enable Parliament to meet any contingency that might arise in future.

18. We cannot also give effect to the argument that gift tax would come within the purview of entry 47 of list II. It was contended that the words 'succession to agricultural land' in that entry would take in a gift of agricultural land because succession to property may be either by inheritance or by transfer inter vivos. This argument is sought to be sustained on *Santhamma v. Neelamma*[10]*,* In that case, the validity of certain provisions of the Madras Aliyasanthana Act, 1949, was challenged on the ground of lack of legislative competence of the Madras Legislative Assembly. The objection was that the provision, which permitted the partition of Kutumba property, was not mentioned in entry 7 of the Concurrent list of the VIIth schedule to the Government of India Act. The learned Judges thought that the constitutionality of the enactment could be upheld both on the ground that the expression 'inheritance' or 'succession' was not confined to cases of devolution in the strict sense of a passing of interest in the property from the dead to the living but it also extended to the adjustment of the rights and obligations that

subsisted between the parties governed by Hindu Law, coming within the purview of entry 7 of the Concurrent list and also for the reason that partition amounted to a transfer within the meaning of entry 8.
The conclusion as to the meaning of the words 'inheritance' and 'succession' was based upon the legislative practice bearing on the Hindu Law of partition. We are not here called upon to decide whether those words in that context could bear the meaning given to them but if it was meant to lay down as a general rule that the words 'inheritance' and 'succession' always include transfers inter vivos we express our respectful dissent.

19. Such an extended meaning is opposed to the connotation of the two expressions as also to the dictum laid down by the Federal Court in *In re Ref. under Section 213 of Government of India Act*[11], Chief Justice Spens observed that, even assuming that the word 'succession' is capable of wide significance, it was not capable of comprehending every kind of passing of property and that the expression succession of property was to be read in the light of other indications derivable from the lists in the VII schedule. His Lordship pointed out that the ordinary meaning of succession is transmission by law or by the will of man to one or more persons of the property and the transmissible rights, and obligations of a deceased person and that is the sense in which succession is used in the lists in schedule VII as indicated by the collocation of the words 'wills', 'intestacy' and 'succession' in entry 7 of list III.

20. We are also unable to agree that the opinion of the Federal Court on the special reference In the matter of Hindu Women's Rights to Property Act, 1937 AIR 1941 FC 72 is helpful to the petitioners. The passage, which is relied upon, is contained at page 78 :

[10] AIR 1956 Mad 642

[11]1935, AIR 1944 FC 73

> "It is equally important to remember that neither in their ordinary grammatical significance nor by a long continued use in a technical sense have the words 'devolution' and 'succession' acquired a connotation that would preclude their application to describe the operation of the rule of survivorship as above explained. Eminent text writers and Judges have used one or the other of these terms to include the accession of right which takes place on the death of one of the members of a Mitakshara joint family. Many enactments of Parliament and of the Indian Legislature have used the words 'inheritance', and 'succession' in juxtaposition, justifying the inference that succession is either another category from or a wider category than 'inheritance'."

21. It appears from these remarks that it is only when accession of right takes place on the death of a person, the expression 'devolution' or 'succession' would be appropriate. These words imply the passing of property to another on the death of a person and can have no application to transfers inter vivos. Thus, this dictum is in consonance with that of the Federal Court in AIR 1944 FC 73. It is also significant that the expression 'devolution' which finds a place in entry 21 of list II of the VIIth Schedule to the Government of India Act is omitted in entry 18. For these reasons, we hold that gifts do not fall within the import of entry 47. In considering whether the impugned legislation falls within one entry or other, we have to examine the pith and substance

and see whether that pith and substance falls substantially within one entry or other conferring legislative power.

22. Lastly, an attempt was made to bring tax on gift of agricultural lands under entry 63. It is argued that gift tax, which is a tax on transfer of lands, comes within the import of stamp duty in respect of documents. We cannot subscribe to this proposition. Entry 63 gives power to make a law in respect of rates of stamp duty on documents excluding those mentioned in entry 91 of list I. This entry does not limit the power of the State Legislature to documents relating to agricultural lands. It extends to all documents conveying immoveable property. The occasion for levy of the duty is the execution of a document and is unconnected with the actual transfer of property, whereas the impugned statute seeks to impose a tax on the transfer of both moveable and immoveable properties, whether by means of an instrument or not. While the one is confined to the creation of documents, the other is upon the exercise of one of the rights of ownership, namely, the transfer of property. This distinction is brought out by the Supreme Court of the United States of America in (1931) 75 Law Ed 1126 : 283 US 376. Therefore, this contention also is unsubstantial and has to be rejected.

23. The argument of the counsel for one of the petitioners that it was incompetent for the Indian Parliament to enact the statute now questioned because the field is occupied by the Madras Village Panchayats Act does not merit much of consideration. The submission made is that Section 63 of the Village Panchayats Act has empowered village panchayats to levy tax on transfers of properties and, therefore, that has deprived the Indian Parliament of authority to legislate, providing for the imposition of taxes on transfers of agricultural land. The question of occupied field is absolutely irrelevant in the context of the present enquiry since we are concerned here with lists I and II and not with the Concurrent List.

24. Further, we have to judge the vires of the Act with reference to the applicability of the entries in the respective lists. If it does not fall within the ambit of the State list, it would be saved by the residuary entry and its validity would be unaffected notwithstanding that a State legislative measure contains a similar provision. If, on the other hand, it comes within the purview of any of the entries in list II, it would not be protected by entry 97 irrespective of the non-existence of a State enactment for a similar purpose. Quite apart from that, Section 63 does not touch upon tax on gift of property. Sub-sec. (2) which is relevant, merely says that a duty shall also be levied in every village on certain transfers of property in accordance with the provisions of Section 67. Section 67 runs as follows :

> "1. The duty on transfers of property shall be levied -
> (a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899, as in force for the time being in the State of Madras, on every instrument of the description specified below which relates to immoveable property situated in the area under the jurisdiction of a panchayat; and
> (b) at such rate as may be fixed by the Government, not exceeding five per centum on the amount specified below against such instrument."
> .....it is plain that the right given to village panchayats is to collect additional stamp duty and not any portion of the tax on gifts of other kinds of transfer of property

25. We are not impressed, with the argument that the tax is leviable only on transfers effected after the coming into force of the Act. This construction is contrary to the very terms of Section 46 which contemplates the imposition of a tax on all transactions made in the previous year.

> 'Previous year' is defined in Section 2 (xx) thus :
> "Previous year" in relation to any assessment year -
> (a) in the case of an assessee having a source of income, profits or gains in respect of which there is no previous year under the Income-tax Act, means the twelve months ending on the 31st day of March immediately preceding the assessment year :
> (b) in the case of an assessee having different sources of income, profits or gains, means that pre-previous years under the Income-tax Act for different vious year of 12 months determined as the previous year under sub-Clause (a) of clause (ii) of Section 2 of the Income-tax Act or such period determined as the previous year under sub-Clause (b) of clause (ii) of that Section whichever expired last :
> (c) in the case of any other assessee, means the previous year as defined in clause (ii) Section 2 of the Income-tax Act if an assessment were to be made under that Act for that year."

Thus, the applicability of the Act is extended to all gifts made during the period prescribed in Section 2(xx) of the Act. It is, therefore, futile to contend that the Act comes into operation only with reference to gifts made after March 1958.

26. It was next urged by Sri Balaparameswara Rao for one of the petitioners that courts will not countenance retrospective operation of enactments which affect vested interests. But this is an argument of desperation because it is not for the Courts to pronounce upon the legislative policy. Surely it is open to the legislature to say whether an enactment is prospective or retrospective. It is never stale to say that a Court is concerned with the bounds of legal power and not with the bounds of wisdom in its exercise by the legislature. Hence, this submission is wholly untenable.
On this discussion, it follows that the Gift Tax Act is not open to challenge on any ground and is intra vires even in so far as it affected transfer of agricultural land.

27. There remains the question whether it is permissible for the Gift Tax Officer to aggregate all the gifts made by an assessee during a relevant year for the purpose of assessment. The point sought to be made was that each individual gift should form the basis of assessment and that the value of all the gifts made by an assessee could not be added so as to increase the rate of levy specified in the schedule in the absence of any provision authorising the aggregation of the gifts made on different dates during the whole year. It is submitted that whenever the Parliament intended that such an aggregation should take place, it employed language conferring specifically such a power and as supporting it our attention is drawn to Section 4(1) of the Indian Income-tax Act and Section 34 of the Estate Duty Act. It is further submitted that, if aggregation should be resorted to for determining the rates, it would lead to anomalies and hardships in that even a done of a gift of a small value has to bear the tax irrespective of whether at the time such gift was made the aggregate value of the gifts exceed the particular limits indicated in the schedule, when resort is to be had to the done for purposes of collection.

28. We are not inclined to accept this argument. This argument is inconsistent with the scheme of the Act. The charging section itself contemplates the aggregation of the gifts made during a particular year. This notion is communicated by each one of the relevant sections. Section 5 talks of a tax to be charged in respect of gifts made. That section exempts gifts if the totality of them do not exceed the taxable limit of Rs. 10,000. Similarly, Section 13 refers to a return of all the taxable gifts. Section 15 refers to the value of the taxable gifts. Again, Section 22, which confers a right of appeal, adverts to taxable gifts. There can be little doubt, on a study of the various sections of the Act, that, in computing the rates of tax the totality of the gifts made by an individual in the course of the relevant year should be taken into account. This idea is also emphasized in the schedule, which lays stress on the value of all taxable gifts for the purpose of fixing the rates of tax. That schedule specifically indicates that each of the slabs has to be calculated on the basis of all the taxable gifts. Therefore, the absence of the use of the word 'aggregation' or 'aggregate' does not in any way derogate from the power of the department to include all transactions occurring within one year. The expressions employed in the material provisions of the Act as also in the schedule convey the idea of aggregation. The Act throughout proceeds on the assumption that it is the totality of the gifts that determine the rate. There is no scope for the contention that each gift by itself should form the basis of assessment. It is the total value of the gifts and during a relevant year that should enter the calculation of the percentage of tax.

29. The hardship or the anomalies complained of also do not exist. Section 29 of the Act empowers the Revenue to collect the tax from the donee where it could not be collected from the donor. In such a case, the amount of tax to be recovered from the donee depends upon the value of the gift and the date of the gift. This is what the proviso to the section says :

> "Provided that the amount of the tax which may be recovered from the done shall not exceed that portion of the gift tax which is attributable to the value of the gift made to the done by the donor as at the date of the gift."

It appears from the section that where the tax is to be paid by the donee, it is to be paid on the taxable value of the gift as on the date on which the gift is made. To illustrate : if the total value of all the gifts does not exceed Rs. 10,000 at a given time, the donee will get the advantage of Section 5. But if the gift is made after that limit is exceeded but falls within Rs. 50,000 which forms the first slab, the gifts made during that period would be subject to a tax of 4 per cent and so on and so forth. Consequently, even this grievance is unfounded. In our considered judgment, it is within the power of the department to add all the gifts made by a person in the course of a year for the purpose of assessment and more they are bound to do it, as otherwise they would be violating the mandatory provisions of the Act. This point also fails and is negatived.

30. In W.P. No. 458 of 1959, it is argued that neither of the two gifts is subject to gift tax for the reason that one is not a transfer but only a partition of the family properties and the other does not exceed the limit imposed by Section 5 (2), being a gift in favour of the wife of the petitioner. If so, it is open to the petitioner to raise this point before the authorities concerned.

31. In W.P. No. 459 of 1959, the complaint is that the authorities concerned have arbitrarily fixed the value of the gift. This is also a matter to be considered by the department.

32. Any question, which is foreign to this enquiry can be gone into by the Revenue.

33. In the result, all the petitions are dismissed with costs. Advocate's fee Rs. 75/- in each.

Petitions dismissed.