ANDHRA PRADESH HIGH COURT

Commissioner of Gift-Tax

Vs

C. Satyanarayanamurthy

(P. Chandra Reddy C.J.)

27.03.1964

JUDGMENT

P. Chandra Reddy C.J.

1. This reference involves the proper interpretation of clauses (xii) and (xxiv) of section 2 read with sections 3 and 4 of the Gift-tax Act, 1958 (hereinafter referred to as the Act). The question we are required to answer in this reference is formulated in these words :

> "Whether the declaration by which Sri C. Malakondaiah has impressed the character of a joint Hindu family property on the self-acquired properties owned by him amounts to a transfer so as to attract the provisions of the Gift-tax Act ?"

The facts giving rise to this reference lie in short compass and may be stated as follows : One Sri C. Malakondaiah, who was the manager of a joint Hindu family consisting of himself and his five sons, thought of throwing his self-acquisitions into the common stock. This result he wanted to achieve by a declaration executed on the 1st day of May, 1957. It reads as follows :

> "Having intended and resolved to convert all the properties owned by me into joint family properties of myself and my five undivided sons, I hereby give effect to my intention and resolution by declaring that from now all my properties of myself and my five undivided sons, Satyanarayanamurthy, Raghaviah, Durga Prasad, Gopal Krishnamurthy and Sankar, each of us having a 1/6 (one-sixth) share."

Undoubtedly, by this declaration Shri Malakondaiah, who seems to have acquired large properties as an advocate, impressed them with the character of coparcenary property. Malakondaiah seems to have died in March, 1958. Subsequently, the property which formed the subject-matter of the declaration mentioned above was sought to be brought to tax under the Act for the assessment year 1958-59, on the ground that Malakondaiah transferred his self-acquired properties to the Hindu undivided family of which he was a member and had "converted his sole

ownership rights in the properties for a share as a coparcener."This was resisted by the assessee on the plea that the transaction covered by the statement extracted above did not constitute a gift, since even subsequently Shri Malakondaiah had a right to dispose of the property as the karta of the joint Hindu family.The Gift-tax Officer rejected the contention of the assessee and taxed the difference between the value of the property so converted and the value of the share which remained in the hands of Malakondaiah. This view of the Gift-tax Officer was affirmed by the Appellate Assistant Commissioner on appeal by the aggrieved assessee.But the Income-tax Appellate Tribunal came to a contrary conclusion on the effect of the declaration referred to above. The Tribunal expressed the opinion that "in the eye of law, such an exchange of the conditions does not, in any way, amount to transfer." The Tribunal sought support for its conclusion from a judgment of the Madras High Court in M. K. Stremann v. Commissioner of Income-tax. In the result, it accepted the appeal and directed the department to exclude this property from the purview of the assessment under the Act. However, at the request of the department, it referred the question set out above under section 26(1) of the Act. The view of the Tribunal is impugned before us in this reference.The answer to this question mainly turns upon clauses (xii) and (xxiv) of section 2 of the Act. It is, therefore, profitable to read those clauses as also sections 3 and 4 in so far as they are relevant :

"2. In this Act, unless the context otherwise requires, -...

(xii) gift means 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...

(xxiv) 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 - ...

(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."

Section 3 of the Act postulates :

> "Subject to the other provisions contained in this Act, there shall be charged for every financial 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, 1957) at the rate or rates specified in the Schedule."

Section 4 is in the following words :

"4. Gifts to include certain transfers. - For the purposes of this Act, -

(a) Where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor."As the other sub-sections are not quite relevant in the context of this inquiry, we shall omit them here.Indisputably, there is no consideration for the conversion of the self-acquisitions of Malakondaiah into joint family properties. So, section 4 would be attracted to this transaction if it would amount to a transfer within the contemplation of clause (xxiv) of section 2 of the Act.Before, we deal with the import of clause (xxiv), we will do well to refer to the judgment of the Madras High Court in M. K. Stremann v. Commissioner of Income-tax, which is called in aid by the Tribunal and which formed the corner-stone of the argument of Messrs. Siva Rao and Rama Sarma. That dealt with section 16(3), clause (a)(iv), of the Indian Income-tax Act. The controversy arose in the following circumstances : The assessee, a Hindu governed by the Mitakshara law, acquired some property with the income from his ancestral properties and income from properties which he earned as an agent of Messrs. Muller & Phipps (India) Ltd. He blended his separate properties with the coparcenary property and shortly thereafter there was a division of all the joint family properties between himself and his sons. Notwithstanding this, the income-tax department wanted to treat the income from all the properties as assessable in the hands of the father under section 16(3)(a)(iv), which permits the inclusion of income from assets transferred directly or indirectly to the minor child, not being a married daughter, by the father to the manager of the family in the total income of the transferor. It may be mentioned here that, at the time of the partition, the sons of the assessee were minors. The question that presented itself before the Madras High Court on a reference under section 66(1) of the Indian Income-tax Act was whether section 16(3)(a)(iv) would govern that case.The learned judges answered it in the negative on the ground that the partition effected between the assessee and his sons did not amount to a transfer of assets by the father to his sons. They said that the partition of joint Hindu family properties did not bring about any transfer of the assets of the family to any member thereof, since the partition was only a mode of reducing the joint possession into separate possession.It must be stated here that it was found that the blending of the separate properties with the joint family properties preceded the partition. It is further to be noted that the conversion was to benefit the whole of the joint Hindu family and not the wife and the minor children of the assessee. In such a situation, they held that the partition did not fall within the ambit of clause (a)(iv) of section 16 (3). In the course of the judgment, this was what the learned judges observed :

> "The real question we have to decide is, was there a transfer of assets within the meaning of section 16(3)(a)(iv) when the father, the assessee, pooled his self-acquired properties

with the ancestral joint family property for subsequent division between the members of the coparcenary. If there was a transfer at all, the transferee could only be the coparcenary of which the father was the karta, and not the minor sons, who at that time were still undivided in status. It should be remembered that the pooling or blending of the self-acquired properties with the joint family property preceded in status and the partition of the properties on December 19, 1952. Where the self-acquired properties of a coparcener - in this case the coparcener was the father of the other coparceners and the karta of the coparcenary are pooled with the joint family property and partitioned, there are three distinct stages. First the self-acquired property of the coparcener is impressed with the character of the joint family property of the coparcenary. The next stage is the disruption of the coparcenary. The members thereafter become divided in status. The next stage after that is the actual division between the dividend members of what had been the property of the joint family. Each of these stages may be separated from the succeeding one by an interval of time, considerable or otherwise. The length of the interval, however, does not affect the principle in deciding the question, was there a transfer of property at any stage. 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 dividend 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."

It is thus seen that the question which the learned judges were called upon to decide was whether the division of the properties amounted to a transfer within the scope of clause (a)(iv) of section 16(3). It was not necessary for them to consider whether the antecedent blending of the self-acquisitions with the joint family property would constitute a transfer for purposes of that clause. However, the learned judges made passing observations that neither division, nor the prior investing of the self-acquisitions with the character of joint family properties would amount to a transfer of property from one juristic entity to another.

Said the learned judges :

"A transfer is essentially a contract, a bilateral transaction. The transaction by which a property ceases to be the property of a coparcener and becomes impressed with the character of coparcenary property does not itself amount to a transfer."These observations, even if correct, would have helped the assessee if the present question concerned itself with the construction of section 16(3)(a)(iv) of the Indian Income-tax Act.Sri Kondaiah, learned counsel for the department, invites us to hold that these observations did not represent sound law and they are in fact opposed to the principle enunciated in a later Madras case and also a decision by the Gujarat

High Court, as well as a ruling of the Bombay High Court. We think the subsequent Madras decision and that of the Bombay High Court do not render any assistance in this case.The Madras decision, Natesan v. Commissioner of Income-tax, had to determine whether a decision of assets exclusively belonging to the karta of the family, between himself and his minor sons and wife, would be governed by section 16(3)(a)(iv) of the Income-tax Act or not. It was decided that clause (a)(iv) was attracted to that case, in that the coparcener had distributed his own properties amongst his wife and children in the guise of a partition. The learned judges said :

> "In our opinion, a separate property of a coparcener cannot be fragmented into shares and disposed of by allotment to shares under the guise of a partition without the element of transfer of property. Unless and until the separate property becomes invested with the character of a joint family property, there cannot be a partition in the real sense of the term because partition would not comprehend in its scope a transference of right from one member to another. An assignment of separate property is essentially a transfer and is not the less so because the parties choose to call it a partition."

They were not concerned with the question similar to the one posed itself in Stremanns case. In fact they referred to that ruling and distinguished it on the ground that the separate property becomes invested with the character of a joint family property before the partition was effected. It cannot, therefore, be posited that Natesan v. Commissioner of Income-tax dissented from the view of the earlier Bench as regards the effect of conversion of self-acquisitions into joint family properties.Keshavlal Lallubhai Patel v. Commissioner of Income-tax, had also to interpret section 16(3)(a)(iv). There an individual voluntarily threw his self-acquired properties into the hotchpot to convert his separate property into joint family property. Later on there was a division of this property amongst the members of the family by metes and bounds. In such a position, the Division Bench ruled that the latter transaction could not be regarded as a transfer by that individual to his wife or minor child so as to be covered by section 16(3)(a)(iv). They observed that the two transactions, viz., throwing the separate property into the common till and partitioning the joint family properties, were separate, genuine and independent transactions. They had also no occasion to deal with the question as to whether the blending could be described as a transfer within contemplation of section 16(3)(a)(iv). But they accepted the argument of the learned Advocate-General, who was appearing for the department, that the effect of the action of the assessee in throwing his separate property into the common stock and declaring unequivocally his intent to convert some of his properties into joint family properties was to bring about a transfer of the said properties within the meaning of section 16(3), in preference to the contention of the counsel for the assessee, inter alia, that the transaction by which the property ceased to be the property of a coparcener and became impressed with the character of coparcenary property did not itself amount to a transfer and that no transfer need

precede the change. The Bench, consisting of Chief Justice Desai and Justice Bhagwati, said that they were inclined to accept the plea urged by the learned Advocate-General that by reason of the operation of law, a transfer of property takes place when a member of a joint family throws his separate property into the hotchpot of the joint family. It is thus seen that this statement of law is opposed to that contained in the observations in Stremanns case.The Bombay decision cited by the learned counsel for the department does not throw any light on this enquiry. It is not, therefore, necessary to refer to it.Although we are more inclined to agree with the law as stated by the Gujarat High Court, we do not think it necessary to express any final opinion on this aspect of the matter as this reference can be disposed of on the interpretation of clause (xxiv)(d) of section 2 of the Act.This definition is of wider import that that contained in the Transfer of Property Act. The only requirement of this clause is that the transaction, which seeks to accomplish certain results, should have the effect of diminishing directly or indirectly the value of his own property and to enhance the value of the property of any other person. Incontestably, by the declaration made by Shri Malakondiah by the conversion of his self-acquired properties into joint family properties, there was a decrease in the value of the property of Shri Malakondiah and it enhanced the value of the property of the joint family. That joint Hindu family answers the description of any other person is seen by clause (xviii) of section 2 which says that a person includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not. Since the conversion in this case has the effect of diminishing the value of the declarants property and raising the value of the property of the joint Hindu family, it falls within the purview of clause (d). The transfer contemplated by this clause is a transfer as a result of which the income accrues to the joint family from the properties, the subject-matter of the declaration. There can be little doubt that by this transaction the owner of the property had divested himself of it and vested it completely in the joint Hindu family. He has thus effected a change of ownership of the property. If it is a transfer of property within the terms of clause (xxiv)(d) it is a gift as envisaged in clause (xii) and section 4(a).For these reasons, we are unable to agree with the conclusion of the Tribunal that the conversion of the self-acquired property of an individual into joint family properties cannot be regarded as a gift for the purposes of the Act.We, therefore, answer the reference in favour of the department and against the assessee. The department will get its costs of this reference from the assessee. Advocates fee Rs. 150.