CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Ashok Glass Works

(Sabyasachi Mukharji and Pyne, JJ.)

19.12.1974

JUDGMENT

Sabyasachi Mukharji, J.

1. This is a reference under Section 66(1) of the Indian Income-tax Act, 1922, We are concerned in this reference with the assessment year 1958-59. The assessee is a registered firm carrying on business of manufacture of glass and money-lending. The accounts of the glass business were maintained for the Ram Navami year, i.e., the year ending 12th April, 1958. The money-lending books were closed on June 29, 1957. Two partners were Ramnivas Jhunjhunwalla and Birmadutt Jhunjhunwalla. They claimed to have made gifts of Rs. 3,75,000 to their respective nephews, and also other gifts by them. In the case of another partner, Murarilal, there were also certain gifts. We need not refer in detail to the actual amounts of gifts made. In all the cases, respective gifts were only by debiting the accounts of the respective donors and crediting the accounts of the respective donees, who were all minors. Before these gifts in June, 1955, Ramnivas had to his credit with the firm Rs. 7,12,914 and Birmadutt Rs. 6,37,368. The capital accounts of the partners stood at Rs. 18,43,000 in 1952 and Rs. 11,07,835 in June, 1955. There were loans taken from other parties amounting to Rs. 13,00,000. Thus, the working funds of the firm came to nearly Rs. 32,00,000 (sic). All the entries relating to the gifts had been made contemporaneously. The Appellate Assistant Commissioner in this case had found that the entries were made at a later date and suggested thereby that the entries had been made with ulterior motive after the introduction of the Gift-tax Act, 1958. The Tribunal has categorically found that the entries were made contemporaneously meaning thereby at the time when the gifts were made. The firm was carrying on money-lending business on a substantial scale. The amount of interest earned on the transaction in the year under reference came to Rs. 1,64,141. The assessee claimed the interest earned in the last column as mentioned in the table annexed to the statement of claim as deductions. We need not mention the different amounts. It was not disputed that cash available as on the dates of gifts was enough to meet the respective gifts. The Income-tax Officer considered

that the gifts by Ramnivas and Birmadutt to their nephews being cross-gifts were not valid. He further held that no cash was actually handed over to the donees and the gifts were by adjustment entries and according to the Transfer of Property Act where possession of movable property was not transferred or where transfer of movable property was not effected by registered instrument, it would not be valid. According to the officer, the said gifts were not valid. He disallowed the claim for interest and held the same to be payments to the respective donor partners. There was an appeal before the Appellate Assistant Commissioner who took the view that the amounts to the credit of the capital account of partners were actionable claim within the meaning of Section 3 of the Transfer of Property Act, and under Section 130 of the said Act transfer could only be made by an instrument in writing. The Appellate Assistant Commissioner distinguished the cases cited before him and came to the conclusion that there was no gift or a valid transfer and the moneys credited in the accounts of the minors remained the property of the partners, who effected the alleged transfer and the interest credited by the firm was held to be interest paid to the partners. There was further appeal to the Tribunal. The assessee contended that the amount lying to the credit of a partner of a firm was not an actionable claim and the cross-gifts were not invalid and the gifts could be made by making proper entries in the books. The departmental representative controverted these contentions. The Tribunal held that it was not proper to characterise the amount due to a partner as an actionable claim so as to attract the provisions of Section 130 of the Transfer of Property Act. The Tribunal further held that cross-gifts were not invalid and the gifts were valid and the firm could, if necessary, have paid the amount and was carrying on money-lending business. The Tribunal further held that the question as to how far the interest was assessable in partner's hands would be discussed in the case of partners.

2. In the aforesaid circumstances, under Section 66(1) of the Indian Income-tax Act, 1922, the following question has been referred to this court :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the gifts made by Ramnivas, Birmadutt and Muralilal as described above were valid gifts and accordingly the interest paid by the assessee in respect of the accounts standing in the name of the respective donees was allowable as a deduction in the hands of the assessee-firm ?"

3. The question how the gifts of money or movable property like the money should be judged and what are the necessary ingredients of constituting such gifts have come up for consideration in several decisions.

4. We may refer to the decisions in the case of *P. A. C. Ratnaswamy Nadar & Sons v. Commissioner of Income-tax*[1], in the case of *Commissioner of Income-tax v. Smt. Shyamo Bibi*[2], in the case of *Balimal Nawal Kishore v. Commissioner of Income-tax*[3], in the case of *Bhau Ram*

Jawaharmal v. Commissioner of Income-tax[4], in the case *of Controller of Estate Duty v. C. R. Ramachandra, Gounder, and in the case of Commissioner of Income-tax & Controller of Estate Duty v. N. R. Ramarathnam,* . The principles that emerge from several decisions appear to us to be as follows : (i) There must be some evidence of transfer of property in question from the donor to the donee, (ii) There must be evidence also indicating the acceptance of the gift by the donee. The entries in the books of account of a partnership firm and other books of account can be relevant entries corroborating the fact of gift, provided there is other evidence to support the same, (iii) There is nothing irregular or improper to make a gift by debiting the partnership firm's account in the name of a donee, provided there is evidence that the gift was a valid one and was accepted by the donee. Bearing the aforesaid principles in mind we have to examine the facts of this case. Counsel for the revenue contended that in this case the donees were all minors and there was no evidence of the acceptance of the gift by the donees as such and, furthermore, contended that merely debiting the partnership-firm's account was not sufficient evidence to constitute a valid gift in this case. On the other hand, it was pointed out on behalf of the assessee that the Tribunal had categorically found that the entries in the partnership-firm's account were contemporaneously made. This finding, in our opinion, is vital because if there was evidence to show or there was anything to suggest that the entries had not been made contemporaneously, that would suggest that the transactions were not genuine. The Appellate Assistant Commissioner in the instant case had come to the conclusion that the entries had been made at a later date but this Conclusion of the Appellate Assistant Commissioner had been negatived by the Tribunal. Furthermore, we have the evidence that the partners had sufficient amount of money to make the gift in their capital account. We have also evidence in this case that the firm as such had sufficient amount of money to be credited in the name of the donees. There is also evidence that this firm used to carry on substantial money-lending business as indicated in the interest income earned by it. There is also evidence and finding that interest was paid to the donees. It is true as counsel for the revenue suggested that interest was paid to the donees by crediting the books of account of the partnership-firm. The books are not the personal books of the partners but are the books of account of the firm doing money-lending business. Therefore, unless there was evidence to suggest that the entries in these books of the firm were fictitious or not genuine or not properly made, the books of that firm carrying on money-lending business in our opinion would be a good piece of evidence to be considered in conjunction with other evidence to determine the validity of the gifts. There is no suggestion that the interests which were credited in the account of the minor donees were fictitious entries and these interests were not paid to the minors or were not credited in their account. It is true that the donees were all minors and as such their accounts had to be operated on their behalf by their guardians. But that does not militate in the background of the facts and circumstances of the case against the validity of the gifts. In this background if the Tribunal came to the conclusion that the gifts were valid, it

is not possible to say that the Tribunal took an erroneous view of the law. In the aforesaid view of the matter we are of the opinion that the Tribunal was right in the view taken and the question referred to this court must be answered in the affirmative and in favour of the assessee. Each party will pay and bear its own costs.

Pyne, J.

5. I agree.

Cases Referred.

1[1962] 46 ITR 1148 (Mad)
2[1966] 59 ITR I (All)
3[1966] 62 ITR 669 (Punj)
4[1971] 82 ITR 772 (All)