

# CALCUTTA HIGH COURT

Commissioner of Gift-Tax

Vs

Tarachand Meghraj

(S Deb, C.J. Dipak Kumar Sen, J.)

24.06.1976

## JUDGMENT

**Dipak Kumar Sen, J.**

1. This is a reference under Section 26(1) of the Gift-tax Act, 1958. The assessment year involved is 1958-59. The applicant in this reference is Commissioner of Gift-tax, West Bengal III, Calcutta. The question referred is as follows :

"Whether, on the facts and in the circumstances of the case, there was a valid gift on March 28, 1957, of the two sums of Rs. 1,00,000 and Rs. 50, 000 in favour of Bai Kamala and Bai Indu ?"

2. The facts which are found or admitted as appearing in the statement of the case and the annexures thereto are briefly as follows :The assessee, M/s. Tara Chand Meghraj of Calcutta, is a Hindu undivided family governed by the Mitakshara. At the material time one Surajmall Baid was the karta of the said Hindu undivided family. On the 28th March, 1957, a document recording a family arrangement was executed by the members of the said Hindu undivided family, viz., the karta, Surajmall Baid, his wife, Hira Kumari Baid, and his unmarried daughters, Kamala Kumari and Indu Kumari, who were at the relevant time respectively aged 20 years and 18 years. The other children of Surajmall Baid, viz., one daughter and two sons, members of the Hindu undivided family, were at the relevant time minors.

3. The said document dated the 28th March, 1957, contained, inter alia, the following recitals :

(a) That negotiations for the marriage of Kamala Kumari and Indu Kumari were going on and were likely to materialise at any moment;

(b) Kamala Kumari had a keen and special interest for learning and higher education in foreign countries;

(c) Celebration of the marriages of the said daughters and performance of all rituals connected therewith were the legal, moral and social obligations of the family.

4. The said deed further recorded the following :

(a) being desirous of exonerating himself of the said obligation and for making suitable provisions for the said three daughters, viz., Kamala Kumari, Indu Kumari and Manju Kumari for higher studies Surajmall Baid as the karta of the said Hindu undivided family has parted with and given away absolutely and for ever Rs. 1,00,000 and Rs. 50,000 to the said Kamala Kumari and Indu Kumari by debiting the amount of Rs. 1,50,000 to the family account and crediting the respective sums of Rs. 1,00,000 and Rs. 50,000 to the separate account of the said Kamala Kumari and Indu Kumari in the books of account of the joint family firm of M/s. Tarachand Meghraj.

(b) The said money given away as aforesaid was since the date of the document the absolute and exclusive property of Kamala Kumari and Indu Kumari without any reservation or limitation.

(c) With a view to keep the said money given away to Kamala Kumari and Indu Kumari safe till their marriage and also to make suitable provision for the third daughter the following arrangement is made :

5. That the money withdrawn from the family capital and credited to the respective accounts of Kamala Kumari and Indu Kumari as aforesaid in the books of account of the said joint family firm shall carry interest at the rate of 3% per annum up to the date of the respective marriages of Kamala Kumari and Indu Kumari and thereafter the rate of interest may be varied with mutual agreement.

6. Pursuant to this document a sum of Rs. 1,00,000 was credited in the name of Kamala Kumari and Rs. 50,000 was credited in the name of Indu Kumari in the books of account of the business of Tarachand Meghraj. On the same day, i.e., 28th March, 1957, both Kamala Kumari and Indu Kumari executed identical letters requesting the said, amount to be kept in. the business of Tarachand Meghraj. It was further stated in the said letters that Kamala Kumari and Indu Kumari Would withdraw the amounts as and when necessary and that the interest offered at the rate of 3% was acceptable to them.

7. On the day the entries were made the opening balance of the business in the books of account was only Rs. 6,344-8-3. But the said sums of Rs. 1,00,000 and Rs. 50,000 were withdrawn by Kamala Kumari and Indu Kumari respectively from the said business of Tarachand Meghraj on the 23rd November, 1957, and 16th February, 1958, with interest. It is also found as a fact that both Kamala Kumari and Indu Kumari were married subsequently.

8. The Gift-tax Officer, in his assessment, held that on the 28th March, 1957, funds were not sufficient to enable the assessee to make the gifts. Accordingly, he held that the book entries made on the 28th March, 1957, did not result in gifts. According to him the gifts took place on the 23rd November, 1957, and on the 16th February, 1958, when the amounts were withdrawn from the business by the donees. Accordingly, he charged the said aggregate withdrawal of Rs, 1,50,150 to gift-tax.

9. Being aggrieved, the assessee appealed to the Appellate Assistant Commissioner and contended that the gifts took place on the 28th March 1957, prior to the year under reference, the Gift-tax Act having come into force on the 1st April, 1957, The Appellate Assistant Commissioner came to the conclusion that mete book entries and the family arrangements did not make the two gifts effective before 1st April, 1957, and that, the said gifts were complete and were taxable under the Gift-tax Act for the assessment year in question because delivery of possession was given on the 24th November, 1957, and the 16th February, 1958, both falling within the relevant assessment year.

10. Being aggrieved by the order of the Appellate Assistant Commissioner the assessee preferred a further appeal therefrom to the" Tribunal. Before the Tribunal it was contended on behalf of the assessee that the said gifts were made under the family arrangement recorded in writing-and executed before a Notary Public. The letters of Kamala Kumari and Indu Kumari of the same date were relied on to show that the donees had accepted the amounts, and had agreed to keep the same in the family business. It was contended that physical delivery was not necessary and the total assets of the business was more than enough to cover the amounts of gift.

11. It was submitted on behalf of the revenue, that as laid down in [1966] 59 ITR 1 (All) in the case of Shyamo Bibi by the Allahabad High Court, the delivery of possession could be made only in the year under consideration and, therefore, the gift became taxable in that year.

12. The Tribunal distinguished the facts which were before the Allahabad High Court from the facts before it on the following points. It noted that in this case there were deposits by the donees on the same date as that of the gifts by letters and the donees agreed to keep the amounts in the business carrying interest and, secondly, the assessee had accepted the said deposits so that, in a way, it was acting as a banker. The Tribunal took into account the contemporaneous conduct of the donees and held that the gifts were proved to have been made on the 28th March, 1957, and not on the subsequent dates of withdrawals. The Tribunal concluded that the gifts being effective prior to the date of the coming into force of the Gift-tax Act they were not assessable to tax.

13. Before we deal with the respective contentions of the learned counsel on behalf of the parties it will be convenient to refer to the relevant statutory provisions. The first to be noted is the

definition of the expression "gift" as in the Gift-tax Act. In Section 2(xii) of the Gift-tax Act, gift has been defined 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 or conversion of any property referred to in Section 4 deemed to be a gift under that section."

14. In the same Act " transfer of property " has been defined in Section 2(xxiv) as follows:

" '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) the creation of a trust in property ;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property ;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power ; and

(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."

15. The Transfer of Property Act defines " gift " in Section 122 as follows :

" ' Gift' is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.--Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void." Section 123 of the Transfer of Property Act deals with transfer and provides as follows:

"Transfer how effected.--For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be

delivered."

16. Section 130 of the Transfer of Property Act provides for transfer of actionable claims as follows ;

"Transfer of actionable claim.--(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not. Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto."

17. Section 33 of the Sale of Goods Act, 1930, deals with the delivery of goods sold. This section provides as follows :

"Delivery.--Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf."

18. At the hearing Mr. Suhas Sen, learned counsel for the revenue, contended that in the instant case it must be held that there was no valid transfer of the amounts in question on the 28th March, 1957. On that day only certain book entries were made in the books of the business, Tarachand Meghraj, and there was no payment. This did not result in transfer of the property in the amounts in question. According to him transfer to be effective must be either by registered instrument as provided in Section 123 of the Transfer of Property Act or it should be by delivery. In this case there was neither any registered instrument nor any delivery.

19. Dr. Debi Pal, appearing on behalf of the assessee, contended on the other hand that in the instant case facts have been found which establish conclusively that there was a valid and effective transfer of property in the said amounts in favour of the donees. He contended that all

that could be done to transfer the said amounts in law were done and delivery was effective as contemplated under Section 33 of the Sale of Goods Act.

20. In support of their respective contentions various decisions were cited from the Bar. I propose to deal with these decisions in their chronological order.

21. The first is the decision in the case of *Ida L. Chambers v. K. H. Chambers* AIR 1941 Mad 154. The facts in this case were that in the years 1917 and 1919 certain entries were made in the books of a company crediting the donees with certain sums which were debited to the capital account of the donor. Separate accounts in the names of the transferees were opened and credited in the books accordingly. There were subsequent credit entries in the said separate accounts, inter alia, by way of interest. The question arose whether a particular sum of Rs. 2,00,000, so credited by an entry at the direction of the donor on the 25th July, 1919, was a valid and completed gift.

22. A Division Bench of the Madras High Court held on these facts that a gift of movable property unless it was effected by registered deed could only be completed by delivery of the property to the donee. In that case, the donor was not in a position to make the gift in cash though he had large assets, consisting of land, building and stock-in-trade. What the donor purported to give was a share in such assets. This could be done so far as land and buildings were concerned by a duly registered deed. So far as the stock-in-trade was concerned the same could be given away by actual delivery or by registered deed. There being no registered deed and no delivery there was no completed gift.

23. The next decision is that of the Bombay High Court in the case of *Chimanbhai Lalbhai v. Commissioner of Income-tax*<sup>1</sup>. The facts before the Bombay High Court were that the assessee had made gifts of Rs. 5 lakhs to his son and Rs. 2 lakhs to his daughter on the 17th November, 1952. Necessary entries were made in his account books on that date. On the 8th November, 1953, he instructed the joint family firm, which acted as his banker and with which he had an account, to debit him with the said sums and interest earned up to that date and credit the accounts of his son and his daughter. Such instructions were carried out.

24. The firm issued a voucher recording the transaction which was signed by the assessee. The Tribunal found that though the transaction was bona fide the gift was not effectuated as there was no transfer of possession and as neither the assessee had sufficient credit nor the firm sufficient cash at the material date, i.e., the 8th November, 1953. On these facts, the Bombay High Court held that the gift was complete by the issue of the directions by the assessee to the firm. It was not necessary that the assessee should have sufficient credit balance or the sufficient amounts. The transfers in the firm's books were in accord with the normal banking practice. It was held that the gift was valid and the interest on the amounts transferred could not be included in the

income of the assessee.

25. The next decision is also that of the Bombay High Court in the case of *Commissioner of Income-tax v. New Digvijaysinhji Tin Factory* Here<sup>2</sup>, the assessee was a registered firm of two partners being the father and the son. The father executed a writing on the 2nd February, 1946, stating that out of his half share in the profits of the partnership he would give one-fourth to the wife of his son and one-fourth to his grandson retaining to himself the balance. On the 12th November, 1947, entries were made in the books of the firm debiting the account of the father and crediting the account of the daughter-in-law and the grandsons and granddaughters. The question arose whether by reason of these entries there were complete and legally valid gifts. It was held by the Bombay High Court that although mere book entries could not result in a valid gift or trust but in the facts of this case the gifts had been accepted by the donees and the firm, the latter had paid interest on the amounts gifted and had allowed the donee to withdraw moneys. The court found that there were ample materials to satisfy the legal requirements of a completed and valid gift. It was also held that the fact that there was not sufficient cash in hand when the gifts were made did not affect the validity of the gifts. The interest paid by the firm to the donees were accordingly held to be an allowable deduction under Section 10(2)(iii) of the Indian Income-tax Act, 1922.

26. The next cited decision is in the case of *Commissioner of Income-tax v. Smt. Shyamo Bibi*<sup>3</sup> This decision was also cited before the Tribunal in the instant case as noted earlier.

27. The, facts here were that the assessee intending to make a gift of Rs. 1,00,000 to her only grandson caused transfer entries to be made in her account books crediting the said sum in favour of the donee and debiting her own account correspondingly. A memorandum was also signed by her and her grandson, reciting that the said gift of Rs. 1,00,00 had been orally made and that the said amount had been delivered by entries made in the accounts whereby the donee was placed in possession and control of the gift amount. It was also recorded that the donee had accepted the gift and had taken possession and control of the money. On the date of the gift there was a cash balance of only Rs. 15-10-0 in the account of the donor according to her books. On these facts, the Allahabad High Court held that there was no valid gift as there was no delivery of possession of the gift amount. The High Court held further that mere execution of the memorandum and making entries in the account books did not have the effect of putting the money in the possession of the donee, as such books themselves were in the possession, dominion and control of the donor. Neither the recitals in the memorandum nor the transfer entries in the account books amounted to constructive delivery, particularly when the amount was not available in the accounts. The Allahabad High Court distinguished the decision of the *Bombay High Court in the case of Chimanbhai Lalbhai*<sup>5</sup> and disapproved the decision in the case of *New Digvijaysinhji Tin*

Factory [1959] 36 ITR 72 (Bom).

28. The next decision was of *Virji Devshi v. Commissioner of Income-tax*<sup>5</sup> The facts were that the assessee was a partner of a firm. His accounts in the firm were debited by an amount of Rs. 3 lakhs and on the same day the said amount was credited in a new account opened in the books in the name of his minor son. Subsequently, the assessee made a declaration before the Presidency Magistrate that he had made a gift of the amount to his minor sons in the manner as aforesaid and the other partner of the firm would act as the trustee and guardian of the minor in respect thereof. The interest on the amount was credited in the account annually. The question arose whether such interest paid was deductible under Section 10(2)(iii) of the Indian Income-tax Act, 1922.

29. On these facts, the Bombay High Court held that mere debit and credit entries in the respective accounts would constitute neither a gift of movable property nor acceptance thereof by the donee and that there was no valid gift.

30. The next decision was in the case of *R. Subba Naidu v. Commissioner of Gift-tax*<sup>6</sup> Here the assessee made a gift of some shares in a limited company absolutely to his daughter under two deeds, of settlement but the transfer was not registered and the shares continued to stand in his name in the books of the company and the dividends thereon were continued to be assessed in his hands. Subsequently, the daughter died but the shares were not treated as part of her estate for estate duty. However, the shares were sought to be assessed to gift-tax for the assessment year 1959-60 in the hands of the assessee and the question arose whether there was a valid gift in favour of the daughter. It was contended by the assessee that there was no actual transfer of the shares inasmuch as the assessee had neither accepted the gift in the deed of transfer nor has made any request to the company to effect the transfer of the shares in her name. The shares continued to stand in the name of the assessee who was enjoying the dividends and paying tax thereon. On these facts, the Madras High Court held that there was a completed gift of the shares though vis-a-vis the company, the assessee continued to be the holder of the shares in the absence of the registration of transfer.

31. The next case cited was that of *New India Colour Co. v. Commissioner of Income-tax* . Here a father and his son were the two partners in the assessee-firm having twelve annas and four annas shares respectively. On the 31st January, 1958, the cash balance of the firm was only Rs. 3,429, but the capital account of the father in the firm had a credit balance of Rs. 1,03,963. The father instructed the firm in writing to debit a sum of Rs. 69,000 in his account and to credit certain amounts aggregating Rs. 69,000 in favour of his sons and daughters including the son who was his partner. It was recorded in the same instructions that gifts of the said amounts has been made and the same was signed by the donees in token of their acceptance of the gifts. Entries were made in the books of the assessee accordingly. On these facts, the Delhi High Court

held that the gifts were not valid. As a partner the father was not free to claim or exercise any exclusive right over the property which he had brought in as trading assets of the partnership and make gifts therefrom. Moreover, the gifts could not be considered to have been completed by any symbolic delivery and the transaction amounted to mere book entries. The assessee-firm was not liable to make payment of any interest to the donees and the interest credited to the account of the donees were not allowable deductions.

32. Next was a decision of the Supreme Court in the case of *Goli Eswariak v. Commissioner of Gift-tax*. In this case a coparcener had thrown his self-acquired property into the common stock of the Hindu undivided family and the question arose whether this amounted to a gift. The Supreme Court held that this was in effect the unilateral declaration of a Hindu coparcener, whereby he threw his self-acquired property into the common stock of joint family property. The Hindu undivided family was not a creature of contract and, by throwing into the common stock, the owner of the separate property, a coparcener, merely expressed his desire to blend his separate property with the coparcenary property. The separate property thereby ceased to be separate and acquired the characteristics of a joint family or ancestral property not by a physical mixture but by the volition and intention of the coparcener who waived and surrendered his exclusive rights to such separate property unilaterally. There was no question of the family rejecting or accepting the property and there was no donor or donee. Consequently, there was no gift within the meaning of Transfer of Property Act, nor did such an unilateral transaction fall within Clause (d) of Section 2(xxiv) of the Gift-tax Act. The section speaks of "disposition" which was a bilateral or a multilateral act and not an unilateral act.

33. The next decision was *Bhau Ram Jawaharmal v. Commissioner of Income-tax reported in*<sup>7</sup>. The facts before the High Court were that the assessee was a partnership firm consisting of the father and his two sons. One of the sons purported to make a gift of Rs. 10,000 to his sister, and the father purported to make a gift of Rs. 10,000 to his daughter-in-law. The gifts were effected by transfer entries-in the books of the assessee-firm. It was held that the gifts were valid. The Allahabad High Court held in this case that it is not always necessary that there should be a physical delivery of the gift amount by the donor to the donee to make a gift valid. A transfer could be effected by making debit and credit entries in the books of the donor. So long as such entries put the subject-matter of the gift beyond the control of the donor and resulted in his ownership in it being replaced by that of the donee, there was no reason why a valid gift could not be effected through such book entries. The adequacy of a cash balance in the books at the relevant time was of no consideration if the financial resources of the firm were otherwise sufficient and the amount in the donor's account was large enough to cover the amount gifted.

34. The Allahabad High Court made a distinction between a case where transfer entries were

effected in the books of a third party holding moneys to the credit of the donor and a case where the donor purported to effect a transfer by making entries in his own books.

35. The next decision is that of the Punjab and Haryana High Court in the case of Sukhlal Sheo Narain v. Commissioner of Wealth-tax . The facts here were that a father purported to make gifts in favour of each of his three sons by debiting himself and crediting the accounts of his sons in his own account books. It was held that there was no valid gift, as by such entries alone the assessee had not divested himself of the property in the subject-matter of the gift nor did the donees become the full owners thereof. A distinction, same as that drawn by "the Allahabad High Court, was made between cases where transfer entries were made in the books of a third party and where the donor purported to make transfer entries in his own "books.

36. The last is a decision of this court in the case of Commissioner of Income-tax v. Ashok Glass Works . Here the partners of a firm made gifts of over Rs. 3 lakhs by debiting their respective accounts and making credit entries in the names of the donees. Interest on the amounts were credited to the account of the donees and deduction was claimed on the amount of interest. This court held that the contemporaneous entries showed that the transactions were genuine. There was no suggestion that the interest credited to the accounts were fictitious. Accordingly, this court upheld the decision of the Tribunal that the gifts were valid.

37. A number of earlier decisions were considered and principles laid down therein were culled out as follows :

- (a) there must be some evidence of transfer of property in question from the donor to the donee ;
- (b) there must also be some evidence indicating the acceptance of the gift by the donee.
- (c) there was nothing irregular or improper to make a gift by debiting the partnership firm's account in the name of the donee, provided there was evidence that the gift was a valid one and was accepted by the donee.

38. We have carefully considered the respective submissions made on- behalf of the parties as well as the decisions cited.

39. It is to be noted that in the instant case there is no dispute as to the fact that there had been a gift by the assessee to the donees. The intention of the donor to make a gift is, therefore, not questioned. The acceptances by the donees of the gifts have been found as a fact as recorded in their respective letters. The Tribunal has also found as a fact, which is unchallenged, that the reserves of the assessee were large and that the assessee could have paid the amount on the day

the entries were made if they wanted to. The only question is when did this gift become complete. According to the revenue, on the date of the entries the subject-matter of the gift, viz., the two amounts were not delivered in accordance with law and, therefore, property in the said amounts were not transferred. Consequently, there was no valid gift on that date.

40. As already noted, under Section 123 of the Transfer of Property Act, in the case of a gift of a movable property, the transfer may be effected by delivery. Such delivery may be made in the same way as goods sold may be delivered. Section 33 of the Sale of Goods Act permits the parties to deliver by any manner or method which the parties agree as would be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised by the buyer.

41. Keeping these definitions of "transfer" and "delivery" in view, we have to consider the effect of the transfer entries made in the instant case. The assessee made the transfer entries in its books. Simultaneously, the assessee was authorised by the donees by their said letters of acceptance to hold the amounts on behalf of the donees. No doubt there was no positive agreement by and between the parties to show that any particular manner or method of delivery was agreed to but the total effect of the entire transaction, it appears, resulted in putting the amounts in the possession of the assessee who was authorised to hold the amounts on behalf of the donees. This, it appears, resulted in a delivery of the two amounts within the meaning of Section 33 of the Sale of Goods Act.

42. Mr. Sen, on behalf of the revenue, contended that when Section 123 of the Transfer of Property Act was enacted, Section 33 of the Sale of Goods Act was not in existence. The corresponding section of the Indian Contract Act which defined delivery did not contain the latter part of Section 33 of the Sale of Goods Act, i.e., "or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf". This contention is not of much substance. Section 123 of the Transfer of Property Act does not refer to any particular section of any particular statute but merely provides that delivery of a movable property for the purposes of a gift may be effected in the same way as the goods sold may be delivered. No authority was cited by Mr. Sen for the proposition that in construing a particular statute the provisions of other contemporaneous statutes in existence ought to be decisive or conclusive.

43. In this view of the statutory provisions the decisions cited on behalf of the revenue do not advance the contentions of the revenue further. The Madras High Court in the case of *Ida L, Chambers* AIR 1941 Mad 154 did not consider Section 33 of the Sale of Goods Act. Moreover, in that case, it was found as a fact that the donor was not in a position to make a gift in cash. Similarly, in the case of *Shyamo Bibi* [1966] 59 ITR 1 (All), the Allahabad High Court found as

a fact that there was no cash available to the donor to make the gift. There was also no provision for payment of interest on the gift amount. Therefore, the facts in that case can be distinguished from the facts of the present case. The facts in the case of Virji Devshi [1967] 65 ITR 291 (Bom) were entirely different. In that case, the gift was sought to be made to a minor who could never be in a position to accept the gift. Apart from that, an attempt was made to create a trust of the amount gifted. On such facts it was held that no valid gift was created.

44. In the case of New India Colour Co. , the Delhi High Court held that the subject-matter of the gift was the asset of the donor in a partnership firm where the donor was a partner. As such partner the donor was not free to claim or exercise any exclusive right over the property which he sought to donate. On these facts the Delhi High Court held that the gifts could not be considered to have been completed by any symbolic delivery and the transactions amounted to mere book entries. The facts before the Delhi High Court were different from the facts before us. Section 130 of the Transfer of Property Act, it appears, was not complied with.

45. In the case of Sukhlal Sheo Narain , the gift was by the donor and was recorded only in his own books of account. There was no acceptance as in the case before us.

46. In conclusion, we note that if it is held that there was no valid gift on the 28th March, 1957, that is on the date of the entries, and, consequently, whatever was done by the parties on that date was infructuous, then it cannot be held that subsequently when the money was transferred by further entries in the same books it resulted in a valid gift.

47. For the reasons above we answer the question referred to us in the affirmative and in favour of the assessee. In the facts and circumstances of the case, there will be no order as to costs.

**Deb, J.**

**48. I agree.**

Cases Referred.

- 1[1958] 34 ITR 259 (Bom)
- 2[1959] 36 ITR 72 (Bom)
- 3[1966] 59 ITR 1 (All)
- 4[1958] 34 ITR 259 (Bom)
- 5[1967] 65 ITR 291 (Bom)
- 6[1969] 73 ITR 794 (Mad)
- 7[1971] 82 ITR 772 (All)