

KERALA HIGH COURT

Commissioner of Gift Tax

Vs.

Dr. George Kuruvilla

Income-tax Referred Case No. 26 of 1964

(S. Velu Pillai and V.P. Gopalan Nambiar, JJ.)

02.04.1965

JUDGMENT

Gopalan Nambiar, J.

1. Under Section 26(1) of the Gift Tax Act, 18 of 1958, the Income-tax Appellate Tribunal, Madras Branch has stated the case and referred the following question of law for our decision :

"Whether on the facts and in the circumstances of the case, the assessee was entitled to the exemption in respect of G. K. Hospital and the adjoining land of 1.38 cents under Section 5(1)(xiv) of the Gift Tax Act ?"

2. The facts and circumstances of the case on which the above question of law falls to be answered by us are those : The assessee Dr. George Kuruvilla is a practising doctor. By a deed of settlement dated 3rd February, 1960, he gifted some of his properties. Among these, the two items, with which we are concerned, were given away to one of the sons, Thomas Kuruvilla aged 24 years. The donee Thomas Kuruvilla passed his M.B.B.S. examination in December 1959 and joined his father's profession in July 1960.

3. Section 5(1)(14) of the Gift Tax Act, on the basis of which the question of law falls to be determined, is as follows :

"(1) Gift Tax shall not be charged under this Act in respect of gifts made by any person -
X X X X

(xiv) in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift Tax Officer to have been made *bona fide* for the purpose of such business, profession or vocation.

4. Neither the gift deed nor a copy thereof has been annexed to or forwarded along with the statement of the case to this Court. The attempt of the counsel for the Revenue to tender a copy of the gift deed before us has been objected to by the counsel for the assessee. We have declined

to look into the gift deed, as we are not satisfied that the same forms part of the record.

5. The two ingredients to be satisfied in order to attract Section 5(1)(xiv) are : (1) that the gift deed was made "in the course of carrying on a business, profession or vocation"; and (2) that it was made "for the purpose of such business, profession or vocation."

6. That the assessee was a doctor by profession and was continuing to exercise the said profession at the time of the gift is not disputed. On the strength of certain observations at p. 598 of Sampath Iysugar's book on The Three New Taxes, (1959 edition), it is argued by the counsel for the Revenue that the phrase in the course of" postulates also a connected relation. The observation appears to have been based on the decision of the Supreme Court in *State of Travencore-Cochin v. Shanmugha Vilas Cashew-nut Factory*¹, We are not satisfied that the principle of the said decision rendered in a totally different context and under totally different circumstances can be applied here. We hold that the first of the ingredients has been satisfied.

7. Was the gift made for the purpose of the business ? is the next question. We feel it difficult to resist the conclusion that in the background and circumstances, the gift could well be regarded as having been made for the better ordering of the business of the assessee. It seems to us that it would be enough to show that the gift was made on ground of commercial expediency and in order to directly or in directly facilitate the carrying on of the business, profession or vocation. We do not think that it is further necessary to prove as contended on behalf of the Revenue that the benefit actually accrued to the business or that the gift was made with a view to earn profits for the business. We feel that sufficient authority is afforded for our conclusion by the decision in *Binodiram Balchand v. Commissioner of Income-tax, M. P.*², and also by the decision of the Supreme Court in *Commissioner of Income-tax, Bombay North v. Chandulal Keshavlal and Co*³.

8. In the result, we answer the question referred on favour of the assessee and against the Department.

9. A copy of this judgment Under seal of this Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by Section 26(6) of the Gift Tax Act.

10. We make no order as to costs of this reference.

Answer in affirmative.

¹ AIR 1953 SC 333

³1960-38 ITR 601 : AIR 1960 SC 738

²1983-48 ITR 548 at p. 553: (AIR 1963 Madh-Pra 223 at p. 224)