

**KERALA HIGH COURT**

P.K. Subramania Iyer

Vs

Commissions of Gift Tax

Income Tax Referred Case No. 40 of 1966

(M.S. Menon, C.J. and V. Balakrishna Eradi, J.)

08.09.1967

**JUDGMENT**

**M.S. Menon, C.J.**

1. This is a reference at the instance of the assessee by the Income-tax Appellate Tribunal, Madras Bench, under Section 26(1) of the Gift-tax Act, 1958. The question referred is :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the abandonment by the assessee of his exclusive right to the self-acquired properties in favor of the joint Hindu family amounted to a gift within the meaning of Section 2(xii) read with section 2(xxiv)(d) of the Gift-tax Act 1958" ?

2. Section 2(xii) of the Gift-tax Act, 1958 defines the expression "gift". According to that definition "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 of any property deemed to be a gift under Section 4". Section 4 deals with certain transfers which have to be deemed to be gifts for the purposes of the Act. We are not concerned with that section in this case.

3. Section 2(xxiv) of the Gift-tax Act, 1958 defines the expression "transfer of property". According to sub-clause (d) of that section, that expression will include

"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 and other person". The remaining portions of the definition of the expression "transfer of property" do not arise for consideration in view of the wording of the question referred for decision.

4. Counsel for the Department wanted to press into service the whole of the definition. We have

not allowed him to do so as we have been called upon to decide only whether what has been done by the assessee can be considered as a transaction entered into by him with intent to diminish directly or indirectly the value of his own property and to increase the value of the property of the joint Hindu family of which he is a member. The words "within the meaning of Section 2(xii) read with section 2(xxiv)(d) of the Gift-tax Act, 1958" in the question referred clearly indicate that such is the case.

5. According to counsel for the assessee the action of the assessee of throwing his self-acquisitions into the hotchpot of his joint family will not amount to a transfer in any sense of the term. In the light of our conclusion in the last preceding paragraph this question in all its aspects and the authorities cited in support thereof including the decision of the Supreme Court in *Commissioner of Income-tax v. M.K. Stremann*<sup>1</sup> under Section 16(3)(a)(iv) of the Indian Income-tax Act, 1922, of this Court in *Controller of Estate Duty v. Arunachalam Chettiar*<sup>2</sup>, under Section 10 of the Estate Duty Act, 1953, and of the Mysore High Court in *Smt. Laxmibai Narayana Rao v. Commissioner of Gift-tax*<sup>3</sup>. under the Gift-tax Act, 1958, itself, also do not arise for consideration and are not considered in this judgment.

6. The first question for determination is whether the act of the assessee in throwing his self-acquisitions into the hotchpot of his joint family can be considered to be a "transaction" entered into by him. A transaction entered into by a person, in our opinion, should be an act which is bilateral or multilateral in character, and not a mere unilateral action which is all that occurs when a coparcener throws his self-acquisitions into the hotchpot of his joint family.

7. In *Nallesappa v. Nattappa*<sup>4</sup>, the Court dealt with the matter as follows :-

"If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family state : in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and got thrown into the common stock of which it becomes a part."

In *Venkata Reddi v. Lakshmana*<sup>5</sup>, the Court said :

"Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein'.

And in *Ranganathan v. Controller of Estate Duty*<sup>6</sup>. the Madras High Court said :

"A unilateral declaration by a member of a coparcenary that he was bringing

<sup>1</sup>(1965) 56 ITR 62 : AIR 1965 SC 1494

<sup>3</sup>(1961) 65 ITR 19

<sup>5</sup>AIR 1963 SC 1601

<sup>2</sup>(1967) 1 ITJ 734 (Ker)

<sup>4</sup>AIR 1961 SC 1268

<sup>6</sup>(1963) 49 ITR (E.D.) 137 : AIR 1963 Mad 432

his separate acquisitions into the joint family properties is sufficient to impress those

separate properties with the character of joint family property. It has been so held in several decisions."

8. "A transaction, in the ordinary sense of the word" said Garth C.J. in *Gujju Lall v. Futeh Lal*<sup>7</sup>, "is some business or dealing which is carried on or transacted between two or more persons". To the same effect was the definition given by Jackson, J. in the said decision :

"A transaction, as the derivation denotes, is something which has been concluded between persons by a cross of reciprocal action as it were."

9. Section 4(f) of the Australian Gift Duty Assessment Act, 1941-42, provides that the expression "disposition of property" includes.

"any transaction entered into by any person with intent thereby to diminish, directly or indirectly the value of Ms own property and to increase the value of the property of any other person."

In *Grimwade v. Federal Commissioner of Taxation*<sup>8</sup>, Latham C.J. and Webb, J. said :

"A transaction by a person must be a transaction with some other person" :

and that to interpret the words "enter into a transaction" as if they had the same meaning as "do an act or abstain from doing an act" gives no real effect to the words "enter" and "transaction".

10. In (1949) 78 CLR 199." the meaning of the word "property" occurring in Section 4(f) also came up for consideration. The Court said :

"Paragraph (f) is intended to cover cases of transactions entered into with the intent to diminish the value, not of some property which is transferred to another person, but of the donor's own property in globe and to increase the value of the property in globe of another person."

To the same effect is the judgment of Windever J. in *Gorton v. Federal Commissioner of Taxation*<sup>9</sup>, wherein he said that he did not read Paragraph (f) of Section 4 as confined to cases in which there has been a diminution of the value of some specific item of property belonging to one person and an increase in the value of some specific item of property belonging to another, and

"The word 'property' to describe collectively a man's worldly wealth, his substance, is one of the eldest senses of the word in the English language. And it can bear that sense in the language of the law, for example when the property of the bankrupt is spoken of in bankruptcy legislation. The word 'property' in Para, (f), with which we are here concerned, has in my opinion

<sup>7</sup>(1881) ILR 6 Cal 171

<sup>9</sup>(1964-65) 113 CLR 604

<sup>8</sup>(1949) 78 CLR 199

much the same meaning as the word 'estate' in the corresponding provision of the Death Duties Act 1921 of New Zealand, whence Para, (f) was apparently derived."

This question too does not arise for consideration.

11. In the light of our conclusion that the word "transaction" spells an act which is bilateral or multilateral in character and that the conduct of the assessee in throwing his self-acquisitions into the hotchpot of his joint family was nothing else or other than a unilateral act on his part, the question referred has to be answered in the negative, that is, in favor of the assessee and against the Department. We do so; but in the circumstances of the case without any order as to costs.

12. A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by Sub-Section (6) of Section 26 of the Gift-tax Act, 1958.

Question answered in the negative.