BOMBAY HIGH COURT

Chimanbhai Lalbhai

Vs

Commissioner of Income-Tax

(Chagla, C.J. S Desai, J.)

20.03.1958

JUDGMENT

Chagla, C.J.

1. This is one of those cases where the Department seems to think that common sense is out of place in taxing cases. The question which we are asked to decide is whether certain amounts gifted by the assessee to his son and daughter constitute valid gifts.

2. Now the undisputed facts are that the assessee made a gift of Rs. 5 lakhs to his son Sudhirbhai, and a gift of Rs. 2 lakhs to his daughter Pratimaben, on the 17th of November, 1952. On this date he made the gifts by making the necessary entries in his own books of account. But he went further on the 8th of November, 1953, and what he did on that date was this. He had an account with the firm of Lalbhai Dalpatbhai. This is a joint family firm which carries on the business of bankers. His son and daughter also had accounts with this firm and he instructed this firm as his bankers to debit him with the sum of Rs. 5,14,831-15-0 and Rs. 2,00,773 and credit Sudhirbhai with Rs. 5,14,831 and Pratimaben with Rs. 2,00,773. The additional amounts over and above Rs. 5 lakhs and Rs. 2 lakhs were interest earned by the son and the daughter from the 17th of November, 1952, to the 8th of November, 1953. Now the books of account of Lalbhai Dalpatbhai clearly show that the instructions of the assessee were carried out and the relevant entries were made. A voucher was actually submitted to the assessee in respect of his instructions and he signed the voucher. The accounts of Sudhirbhai and Pratimaben also show that they drew upon their accounts in respect of these two sums which were credited to them. It is also significant that it is not suggested that the gifts made by the assessee were not bona fides or that the transaction was not actually effected. The record shows that the reason for making these gifts was, as far as the son was concerned, that he was mentally deranged and the father wanted to make provision for his maintenance, and, as far as the daughter was concerned, she was 29 years of age and a similar consideration moved the father in making the gift. The record also shows that the assessee made a will on the 17th of June, 1954, and in this will also he described the gifts

made by him to his son and daughter. The view taken by the Tribunal - a rather surprising view - is that notwithstanding the nature of the transaction, notwithstanding the documentary evidence adduced, notwithstanding the fact that the transaction is a bona fide transaction, in law the gift was not effectuated. Now let us forget these technicalities and look at this matter simply as an ordinary transaction which would take place in the city of Bombay between a constituent and his banker. It cannot possibly be suggested that a cheque upon his account and giving that cheque to a third party and if the third party presents this cheque and the bank accepts it and gives him credit for the amounts represented by the cheque then a valid gift is not made. What are the reasons which lead the Tribunal to this extraordinary conclusion ? The first reason is that as required by the Transfer of Property Act no possession was given of this movable property and till possession is given the gift is not complete. The Transfer of Property Act is very well in its proper place, but it seem to us to be completely out of place in this transaction. Is it seriously suggested that the father in all solemnity should have gone to the bank, withdrawn from the bank Rs. 5 lakhs and Rs. 2 lakhs in currency notes, with equal solemnity handed them over to the son and the daughter, and the son and the daughter should have them proceeded to the bank and deposited the money in the bank, and that then only the transaction would be legally effective ? Why have the banking system at all in this country ? The banks serve the purpose of obviating the necessity of people paying in currency notes. But the Tribunal seems to have forgotten that the banking system has been flourishing in this country and certainly in Bombay and Ahmedabad for a number of years.

3. The second equally extraordinary reason given by the Tribunal is that the assessee did not have sufficient amount to the credit of his account with his bankers on the 8th of November, 1953. Now that is a matter between the assessee and his bankers. If the bankers choose to give overdraft facilities to their constituent and accept his order and give credit to a third party for an amount which exceeds the amount to the credit of their constituent,as far as the third party and the bankers are concerned the bankers become liable to the third party to pay that amount. Therefore, it is difficult to understand what possible relevance the fact of the assessee not having sufficient funds to his credit with the bank has got to with the question as to whether the gift was made by the father to his son and daughter; and as the account shows, although the assessee was short by about Rs. 60,000 when he asked the bank to pay Rs. 7 lakhs, within a short time he made good that shortfall. But that is neither here nor there. That again is a matter of accounting between the bank and its constituent.

4. Another consideration which has weighed with the Tribunal is that the firm of Lalbhai Dalpatbhai at the relevant date did not have sufficient cash in its till to carry out the direction given by the assessee to pay the sums of Rs. 5 lakhs and Rs. 2 lakhs to his son and daughter. Now, once again the Tribunal has completely ignored the normal banking practice. Banking

business would be impossible if the bank has always got to have at its command sufficient money to pay every cheque which it deals with in the course of its ordinary business. Compared to the cheque which it cashes cross the counter, the lakhs of rupees which are dealt with by merely making entries in the books of account clearly show that it is necessary that the bank should have actual funds in order that the bank should acknowledge its liability to pay a certain amount to a third party on behalf of its constituent. We are not concerned with whether the bank was in a position to pay the amount to the son and daughter of the assessee. The bank accepted its liability and as a matter of fact the son and daughter subsequently operated upon their respective accounts on the assumption that the bank had accepted the liability. Mr. Joshi has put forward a further contention and that is that we are not dealing with an ordinary bank, but we are dealing with a joint Hindu family functioning as a bank. We fail to see what difference that makes to the legal aspect of the matter. If the joint Hindu family acted as the assessee's banker, the position in law is identical with what it would be if, instead of going to the joint family banker, the assessee had gone to any other bank in the city of Ahmedabad. The fallacy underlying the whole of the judgment of the Tribunal, with respect, is that it has taken into consideration aspects which may have been relevant if they wanted to decide whether the gift was a bona fide gift and whether the transaction was in reality effected. But having come to the conclusion that the transaction was genuine and the gift was bona fide, all these considerations which seems to have weighed with the Tribunal have nothing whatever to do with the question as to whether the gift was a valid gift in law. The niceties and subtleties of the Transfer of Property Act and novation and chose in action may be considered in a proper case, but certainly not in a case like this, which is a simple transaction of a constituent of a bank ordering his bank to pay sums of Rs. 5 lakhs and Rs. 2 lakhs to his son and daughter.

5. We must answer the first question submitted to us in the affirmative.

6. Question No. (2) : In the negative.

7. The Commissioner to pay the costs.

8. Reference answered accordingly.