COMMISSIONER OF GIFT TAX, MADRAS

v.

N. S. GETTY CHETTIAR

September 16, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

Gift Tax Act, 1958—Section 2(xii) and 2(xxiv)—Coparcener taking lesser share and allotting greater share to other members—If makes "gift"—Partition, if "transfer of property".

In a partition of the properties of a joint Hindu Undivided Family a coparcener took as his share less than what he was entitled to and allotted greater share to the other members of the coparcenery. On the question whether the coparcener could be held to have made a "gift" of a portion of his share of the property to the other members and was liable to tax under the Gift Tax Act, 1958.

HELD : (i) A coparcener in a Hindu Undivided Family has no definite share in the family property. His share gets determined only when there is a division of status or a division by metes and bounds. It is not necessary that in every case of partition in a Hindu Undivided Family there should first be a division in status and thereafter a division by metes and bounds. In the present case there is no material to show that there was any division of status before the properties were actually divided. Therefore, it is not necessary to consider what would be the position in law if there was just a division of status and the same was followed by a division by metes and bounds. [738 H—739E]

(ii) The partition of the joint Hindu Family property is not a transfer as generally understood in law. [741-G]

Commissioner of Income-tax, Gujarat v. *Keshavlal Lallubhai Patel,* 55 I.T.R. 637, followed.

(iii) A partition is not a "disposition" "conveyance" "assignment" "settlement" "delivery" "payment" "or other alienation of property" within the meaning of those words s. 2(xxiv) of the Act. These words are used as some of the modes of transfer of property and have to be understood in the setting in which those terms are used and the purpose they are intended to serve. [742-G]

It cannot be considered a "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" within the meaning of cl. (d) of s. 2(xxiv), because, a member of a Hindu Undivided Family who has no definite share in the family property before division cannot be said to diminish directly or indirectly the value of his own property and to increase the value of the property of another person. Further, the transaction referred to in cl. (d) of s. 2(xxiv) takes its colour from the main clause *i.e.*, it must be transfer of property in some way. [742 H—743 C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 128 of 1968 and 1341 of 1971.

Appeals by certificate/special leave from the judgment and order dated December 10, 1965 of the Madras High Court in Tax Case No. 65 of 1967 (Reference No. 18 of 1963).

A *Jagadish Swarup, Solicitor-General, A. N. Kirpal, R. N. Sachthey* and *B. D. Sharma,* for the appellant (in both the appeals).

Uttama Reddy and *D. N. Gupta,* for the respondent (in both the appeals).

B The Judgment of the Court was delivered by

Hegde, J. Both these appeals by the Commissioner of Gift Tax arise from the same judgment. The former one is by certificate and the latter by special leave. Civil Appeal No. 1341 of 1971 came to be filed because the certificate given by the High Court not being supported by any reason, the appeal brought C on the strength of that certificate (Civil Appeal No. 128 of 1969) became unsustainable. That is why instead of one appeal, there are two appeals before us in respect of the same decision.

The decision appealed against was rendered by the High Court of Madras in its advisory jurisdiction, in a reference under s. 26(1) of the Gift Tax Act, 1958 (to be hereinafter referred D to as the Act). The Income Tax Appellate Tribunal, Madras Bench referred the question

> "Whether there was gift by N. S. Getti Chettiar of Rs. 2,46,377 on which he is liable to pay gift tax"

to the High Court seeking its opinion. The High Court answered E that question in the negative. The Commissioner of Gift Tax not being satisfied with that decision has brought these appeals.

The facts of the case are not many though the question of law arising for decision is by no means easy. The respondent, N. S. Getti Chettiar (who will hereinafter be referred to as the F assessee) was karta of his undivided Hindu family consisting of himself, his son Govindaraju Chettiar and six sons of the asid Govindaraju Chettiar. There was a partition of the immovable properties of the family through a registered deed executed on January 17, 1958 and the movable properties were divided on April 13, 1958 on which date the necessary entries in the account books were made. The assessee claimed recognition of that G partition under s. 25A of the Act. That was granted by the Department on November 29, 1958. The total value of the properties so divided was Rs. 8,51,440/- but under that partition the assessee took properties worth only Rs. 1,78,343/-. The remaining properties were allotted to his son and grandsons.

H The Gift Tax Officer overruling the objection of the assessee, came to the conclusion that the assessee by allotting greater share to the other members of the coparcenary than to which

they were entitled, must be held to have made a 'gift' of a portion of his share of the property to the other members and hence was liable to be taxed under the Act. He opined that the partition in question is a transaction entered into between the assessee and the members of his family with intent thereby to diminish the value of assessee's own property and increase the value of the property of his son and grandsons.

Aggrieved by that order, the assessee went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that as no member of an undivided Hindu Family had a definite share in the family assets, on partition, when the joint enjoyment came to an end, there was no need to have arithmetical equality between the shares of the various coparceners. He accordingly held that the assessee was not liable to pay any gift tax in respect of the properties that fell to the shares of his son and grandsons. The Department appealed against this decision to the Tribunal. It was contended before the Tribunal that the transaction in question came within s. 2 (xii) and s. (xxiv), in particular it came within cl. (d) of s. 2 (xxiv), as property included any interest in property and partition constituted a transaction; the assessee had, by relinquishing a portion of what was his due, transferred such interest and properties in favour of the other members of the family for no consideration and consequently the Gift Tax was properly leviable. This contention was not accepted by the Tribunal. It held that the interest that the assessee had in his Hindu Undivided Family pfoperty was not definable, and therefore s. 2(xxiv) was not attracted to the facts of the case.

The High Court agreed with the conclusions reached by the Assistant Appellate Commissioner and the Tribunal. It came to the conclusion that the partition in the family of the assessee did not come within the mischief either of s. 2(xii) or s. 2(xxiv). It also opined that under the partition, there was no deemed 'gift' as contemplated by s. 4 of the Act.

Mr. Solicitor-General appearing for the Commissioner of Gift Tax did not place any reliance before us on s. 4 of the Act. Therefore we need not consider the scope of s. 4 of the Act. All that Mr. Solicitor General contended was that the case came either under s. 2(xii) or under s. 2(xxiv). He built up his arguments thus :—

A partition in a H.U.F. invariably involves two steps, first there is a division of status and thereafter there is a division by metes and bounds. A coparcener's share is fixed according to law as soon as there is a division of status. Therefore, if at the time of division by metes and bounds he chooses to take a share

A less than to which he is entitled to under law, then the same would amount to a 'gift' of the balance of property to which he was entitled, to the other coparceners. We are unable to agree with Mr. Solicitor General that in every case of partition in a H.U.F. there should first be a division of a status and thereafter a division by metes and bounds. There are innumerable cases B where a partition takes place without there being earlier any division of status. Coming to the facts of the case, there is no material before us to show that there was any division of status before the properties were actually divided. The Tribunal has not found that there was any division of status amongst the members of the family before they divided the properties. The C partition deed is not before us nor are the account books showing the division of the movable properties is before us. It is not known whether under the registered partition deed, there was only a partial partition or a complete disruption of the family. That being so, we have to proceed on the basis of the facts found by the Tribunal and apply the law to the facts so found. The argument that there was first a division of status and the same D was followed up by a division by metes and bounds does not appear to have been urged before the Tribunal. Under these circumstances, it is not necessary for us to consider what would be the position in law if there was first a division of status in a H.U.F. and the same was followed up by division by metes and bounds in which division one of the coparceners takes properties E less than to what he is entitled to under law.

Before proceeding to examine the relevant provisions of the Act, it is necessary to mention that according to the true notion of an undivided Hindu family, no individual member of that family, whilst it remains undivided, can predicate of the joint and F undivided property, that he, that particular member, has a certain definite share namely a third or a fourth. All the coparceners in a Hindu joint family are the joint owners of the properties of the family. So long as the family remains joint, no coparcener can predicate what his share in the joint family is. His share gets determined only when there is a division of status or G a division by metes and bounds. Therefore it is not correct to assume that a coparcener in Hindu joint family has any definite share in the family property, berore its division. Having stated that much, let us now proceed to consider the relevant provisions of the Act.

Section 3 of the Act is the charging section. It says :

H

> "Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April 1958, a

tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before the 1st day of April 1957) at the rate or rates specified in the schedule."

'Gift' is defined in s. 2(xii). That sub-clause says :

" "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."

The expression 'transfer of property' is defined in s. 2(xxiv) That provision reads :

" "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 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."

We shall first examine whether the partition with which we are concerned in these appeals can be considered as transfer of property under the general law. Therafter we shall proceed to consider whether it comes within the extended meaning given to that expression in s. 2(xxiv).

It is now settled by the decision of this Court in *Commissioner of Income-tax, Gujarat* v. *Keshavlal Lallubhai Patel*(1) that a partition of joint Hindu family property cannot be considered as transfer in the strict sense—the sense in which all legal expressions are understood and more particularly in tax

(1) 55 I.T.R. 637.

A laws. In the course of that judgment Sikri, J. (as he then was) speaking for the Court observed :

> "But, is a partition of joint Hindu family property a transfer in the strict sense? We are of the opinion that it is not. This was so held in *Gutta Radha-*
B *krishnayya* v. *Gutta Sarasamma*(1). Subba Rao, J., (then a judge of the Madras High Court) after examining several authorities came to the conclusion that "partition is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the shares had an antecedent title
C and, therefore, no conveyance is involved in the process, as a conferment of a new title is not necessary." The Madras High Court again examined the question in *M. K. Stremann* v. *Commissioner of Income-tax*(2) with reference to section 16(3)(a)(iv). It observed that "obviously no question of transfer of assets can arise when all that happens is separation in status,
D though the result of such severance in status is that the property hitherto held by the coparcenary is held thereafter by the separated members as tenants-in-common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the tenants-in-
E common to each of such tenants-in-common."

> The Punjab High Court came to the same conclusion in *Jagan Nath* v. *State of Punjab*(3). Agreeing with these authorities, we hold that when the joint Hindu family property was partitioned, there was no
F transfer of assets within section 16(3)(a)(iii) and (iv) to the wife or the minor son."

We are bound by the ratio of that decision and if we may say so, we respectfully agree with the statement of the law quoted above. Hence we hold that the partition in the family of the
G assessee did not effect any transfer as generally understood in law.

This takes us to to s. 2(xxiv). The opening words of the provision refer to 'transfer of property'. That clause enumerates several types of transfers and not to any other transactions. It is also necessary to attach significance to the words "or other
H alienation of property" immediately after setting out the various

(1) I.L.R. 1951 Mad. 607. (2) (1961) 41 I.T.R. 297.
(3) (1962) 64 P.L.R. 22.

types of transfers. If we read the clause as a whole, it is clear that it deals with transfer of properties in various ways. A

As observed in Craies on Statute Law (6th Edn. p. 213) that an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary to be applied to some things to which it would not ordinary be applicable. B

Bearing in mind these principles, let us now examine the scope of s. 2(xxiv). That provision speaks of "disposition", "conveyance", "assignment", "settlement", "delivery", "payment" or "other alienation of property". C

A reading of this section clearly goes to show that the words "disposition", "conveyance", "assignment", "settlement", "delivery" and "payment" are used as some of the modes of transfer of property. The dictionary gives various meanings for those words but those meanings do not help us. We have to understand the meaning of those words in the context in which they are used. Words in a section of a statute are not to be interpreted by having those words in one hand and the dictionary in the other. In spelling out the meaning of the words in a section, one must take into consideration the setting in which those terms are used and the purpose that they are intended to serve. If so understood, it is clear that the word "disposition" in the context means giving away or giving up by a person of something which was his own, "conveyance" means transfer of ownership, "assignment" means the transfer of the claim, right or property to another, "settlement" means settling the property, right or claim—conveyance or disposition of property for the benefit of another, "delivery" contemplated therein is the delivery of one's property to another for no consideration and "payment" implies gift of money by someone to another. We do not think that a partition in a H.U.F. can be considered either as "disposition" or "conveyance" or "assignment" or "settlement" or "delivery" or "payment" or "alienation" within the meaning of those words in s. 2(xxiv). D E F G

This leaves us with cl. (d) of s. 2(xxiv) which speaks of a 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 another person. A member of H.U.F. who, as mentioned earlier, has no definite share in the family property before division, cannot be said to diminish H

A directly or indirectly the value of his property or to increase the value of the property of any other coparcener by agreeing to take a share lesser than what he would have got if he had gone to court to enforce his claim. Till partition, his share in the family property is indeterminate. He becomes entitled to a share in the family property only after the partition. Therefore there is no B question of his either diminishing directly or indirectly the value of his own property or of increasing the value of the property of anyone else. The "transaction" referred to in cl. (d) of s. 2 (xxiv) takes its colour from the main clause *viz.*, it must be a transfer of property in some way. This conclusion of ours gets support from sub-clause (a) to (c) of clause (xxiv) of s. 2, each of which deals with one or the other mode of transfer. If C the parliament intended to bring within the scope of that provision partitions of the type with which we are concerned, nothing was easier than to say so. In interpreting tax laws, courts merely look at the words of the section. If a case clearly comes within the section, the subject is taxed and not otherwise.

D For these reasons, we agree with the view taken by the High Court of Madras, the Tribunal and the Assistant Appellate Commisisoner that the assessee made no "gift" under the partition deed in question.

In the result these appeals fail. Civil Appeal No. 1341 of 1971 is dismissed on merits and Civil Appeal No. 128 of 1969 E is dismissed as being not maintainable. The assessee is entitled to his costs—Fee one set.

K.B.N. *Appeals dismissed.*