

COMMISSIONER OF INCOME TAX, JAIPUR

v.

SIREHMAL NAWALAKHA

AUGUST 16, 2001

[B.N. KIRPAL AND SHIVARAJ V. PATIL, JJ.]

*Gift Tax Act, 1958: Sections 2(xii), 4(1) (c) and (d)—Gift of immovable property by unregistered document—Held, for a valid gift under Section 2 (xii) and (4) compliance with the provisions of Transfer of property Act and Registration Act necessary—Transfer of Property Act, 1882—Sections 122 and 123—Registration Act, 1908—Sections 17.*

*Words & Phrases :*

*"Gift"—Meaning of in the context of Section 2(xii) of Gift Tax Act, 1958 and Section 122 of the Transfer of Property Act, 1882.*

**Respondent, by an unregistered declaration sought to make a gift of certain immovable property to his wife. The Gift Tax Officer held that no valid gift had been made by respondent since the provisions of Section 123 of the Transfer of Property Act, 1882 had not been complied with. The said findings were affirmed by the Assistant Commissioner and the Tribunal. However, on reference, the High Court observed that the definition of the word 'gift' under the Gift Tax Act, 1958 was wider than the definition of 'gift' in the Transfer of Property Act, and held that registration of document was not necessary for a valid gift under Section 4 of the Act. Hence the present appeal by Revenue.**

**Allowing the appeal, the Court**

**HELD : 1.1. High court erred in coming to the conclusion that the case fell within the provisions of Section 4 of the Gift Tax Act, 1958 and, therefore, as it was a deemed gift it was not necessary that the document had to be registered. [619-H; 620-A]**

**1.2. There can be no doubt that certain transactions may not be regarded as a gift for the purposes of the Transfer of Property Act but would fall within the ambit of the expression 'gift' by virtue of Section 4 of the Gift**

- A Tax Act, but in each one of the cases which in certain circumstances is to be regarded as a gift under Section 4 there has to be a transfer of immovable property and a transfer by reason of Section 17 of the Registration Act can only be by way of a registered document. Surrender or forfeiture of an interest in immovable property as contemplated by Section 4(1) (c) or vesting of any property in another person as contemplated by Section 4(1) (d) in the case of an immovable property would also attract the provisions of Section 17 of the Registration Act. [618-G-H; 619-A, B, C]

- 1.3. In order that there could be a transfer of property by way of gift as contemplated by the Transfer of Property Act, there has to be a registered document if the property sought to be transferred is immovable. The general law did not stand abrogated and the requirement of complying with the provisions of the Transfer of Property Act and the Registration Act had to be fulfilled. [617-F, 619-G-H]

- Commissioner of Gift Tax, Kerala v. R. Valsala Amma*, 82 ITR 828 (SC),  
D relied on.

- Smt. Padma Lalchand Mirchandani v. Commissioner of Income Tax, New Delhi*, 128 ITR 174 (Delhi); *Commissioner of Gift-tax, Bombay III v. Matilda Ferreira*, 112 ITR 934 (Bombay); *K. Madhavakrishnan v. Commissioner of Gift-tax, Tamil Nadu*, 124 ITR 233 (Madras) and *Darbar Shivraj Kumar v. Commissioner of Gift-tax, Gujarat-IV*, 131 ITR 647 (Gujarat), approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6725 of 1994.

- F From the Judgment and Order dated 12.2.1985 of the Rajasthan High Court in Income Tax Ref. No. 27/75.

B.B. Ahuja, K.C. Kaushik, Rajiv Tyagi, R.R. Dwivedi and B.V. Balram Das for Ms. Sushma Suri for the Appellant.

- G N.M. Ranka, Sushil Kumar Jain and Raj Kumar Yadav for the Respondent.

The Judgment of the Court was delivered by

- KIRPAL, J. The respondent was the owner of immovable property and by declaration dated 10th October, 1966 he sought to give a gift of certain out-houses attached to a building to his wife.

The declaration which was made was not registered. The Gift Tax Officer rejected the respondent's claim that a valid gift had been made as, according to him, there had not been any compliance with the provisions of Section 123 of the Transfer of Property Act. The Assistant Commissioner and the Tribunal took the same view and thereafter following question of law was referred to the High Court by the Tribunal :

“Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that no valid gift of out-houses of the building named as “Deep Shikha” was made by the assessee to his wife in terms of the Gift-tax Act, 1958?”

By the impugned judgment the High Court answered the question of law in favour of the respondent. It came to the conclusion that the definition of the word ‘gift’ under the Gift Tax Act was wider than the definition of ‘gift’ in the Transfer of Property Act and many acts and transactions which may not amount to gift under the Transfer of Property Act shall still amount to a gift under the Gift Tax Act especially by virtue of the the provisions of Section 4 of the Gift Tax Act. It, accordingly, came to the conclusion that it was not necessary that a document should be registered in order that there should be a valid gift.

Section 122 of the Transfer of Property Act defines ‘gift’, *inter alia*, as meaning the transfer of immovable property made voluntarily and without consideration from one person to another. Section 123 provides that for purposes 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.

There can be little doubt that in order that there should be a transfer of property by way of gift as contemplated by the Transfer of Property Act, there has to be a registered document if the property sought to be transferred is immovable.

Section 2 (xii) of the Gift Tax Act defines ‘gift’ as meaning a transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration and would include the transfer of a property deemed to be a gift under Section 4. The heading of Section 4 is “Gifts to include certain transfers”. The said Section reads as follows :-

“4. Gifts to include certain transfers. - (1) For the purpose of this Act,—

- A (a) where property is transferred otherwise than for adequate consideration, the amount by which the value of the property as on the date of the transfer and determined in the manner laid down in Schedule II exceeds the value of the consideration shall be deemed to be a gift made by the transferor ;
- B Provided that nothing contained in this clause shall apply in any case where the property is transferred to the Government or where the value of the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India;
- C (b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;
- D (c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contractor other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment, to the extent to which it has not been found to the satisfaction of the Assessing Officer to have been *bonafide*, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;
- E (d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift made in his favour by the person who causes or has caused the property to be so vested;"
- F
- G There can be no doubt that certain transactions may not be regarded as a gift for the purposes of the Transfer of Property Act but would fall within the ambit of the expression 'gift' by virtue of Section 4 of the Gift Tax Act, but in each one of the cases referred to in Section 4 there has to be a transfer of immovable property which in certain circumstances is to be regarded as a gift. For instance, cases falling under clause (a) of Section 4 where the
- H property is transferred for less than adequate consideration such a transfer

would not be regarded as a gift under the Transfer of Property Act but would be regarded as a gift under the Gift Tax Act. What is, however, important is that there has to be a transfer of property and a transfer by reason of Section 17 of the Registration Act can only be by way of a registered document. A

The respondent seeks to bring the case within the provisions of clause (c) or (d) of Section 4. There can be no doubt in our mind that surrender or forfeiture of an interest in immovable property as contemplated by clause (c) of Section 4 or vesting of any property in another person as contemplated by clause (d) of Section 4 in the case of an immovable property would attract the provisions of Section 17 of the Registration Act. What is important is that there has to be a valid transfer of property and whether that transfer amounts to a gift or not would bring in to question the applicability of the provisions of the Gift Tax Act. B C

As we have already observed, there may be certain transactions of transfer which may not amount to a gift within the meaning of Section 122 of the Transfer of Property Act but would be regarded as gifts for the purpose of subjecting such transfers to the levy of gift tax. In this behalf, reference may usefully be made to *Commissioner of Gift Tax, Kerala v. R. Valsala Amma*, 82 ITR 828 (SC) wherein this Court at page 830 observed that "the Gift-tax Act did not change the general law relating to the rights of property". The general law would take into its ambit not only the provisions of the Transfer of Property Act but would also require application of the provisions of the Registration Act. It is not necessary for us to refer to the decisions of the High Courts in this behalf except to note that the consistent view of the High Courts has been that for effecting a transfer the provisions of the Transfer of Property Act and/or the Registration Act have to be complied with. [See *Smt. Padma Lalchand Mirchandani v. Commissioner of Income Tax, New Delhi*, 128 ITR 174 (Delhi); *Commissioner of Gift-tax, Bombay III v. Matilda Ferreira*, 112 ITR 934 (Bombay); *K. Madhavakrishnan v. Commissioner of Gift-tax, Tamil Nadu*, 124 ITR 233 (Madras) and *Darbar Shivraj Kumar v. Commissioner of Gift-tax, Gujarat-IV*, 131 ITR 647 (Gujarat). D E F

In the instant case, the High Court did not even refer to the provisions of the Registration Act and, therefore, fell in error in coming to the conclusion that the case fell within the provisions of Section 4 of the Gift Tax Act and, therefore, as it was a deemed gift it was not necessary that the document had to be registered. In our view, the general law did not stand abrogated and the requirement of complying with the provisions of the Transfer of Property Act and the Registration Act had to be fulfilled. The High Court, therefore, erred G H

A in answering the question of law in the negative and against the Revenue.

For the aforesaid reasons, this appeal is allowed, the judgment of the High Court is set aside and the question of law is answered in favour of the appellant. No costs.

B S.V.K.

Appeal allowed.