(1984) 03 MP CK 0009

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 65 of 1982

Commissioner of Gift-tax		APPELLANT
	Vs	
Gopiji Laxmichand		RESPONDENT

Date of Decision: March 9, 1984

Acts Referred:

- Gift Tax Act, 1958 - Section 2

Citation: (1985) 153 ITR 416 : (1985) 22 TAXMAN 149

Hon'ble Judges: U.N. Bhachawat, J; Chandrapal Singh, J

Bench: Division Bench

Advocate: R.C. Mukati, for the Appellant; G.M. Chaphekar and V.S. Kokje, for the Respondent

Judgement

Bhachawat, J.
This is a reference u/s 26(1) of the G.T. Act, 1958 (for short, hereinafter referred to as "the Art"), at the instance of the Department by the Income Tax Appellate Tribunal, Indore Bench, Indore, referring the following question for our answer :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the sum of Rs. 80,000 received by the wife of Shri Anand Kumar and their minor children did not amount to a gift by the assessee-HUF liable to gift-tax and consequently in upholding the AAC''s order cancelling the gift-tax assessment made on the assessee-HUF?"

2. The material facts, as obtainable from the statement of the case, giving rise to this reference are these :

3. The assessee, Gopiji Laxmichand, is a HUF of which Laxmichand is the "karta". The joint family consists of Laxmichand ; his son, Anand Kumar; Laxmichand''s wife, Smt. Rajibai; Anandkumar''s wife, Smt. Shakuntala Devi, and the sons of Anandkumar. On October 25, 1973, by virtue of a partition deed, a partial partition of the immovable

properties of the said HUF was effected.

4. The total value of the immovable properties of Rs. 1,35,000 was divided amongst the following members as detailed hereinbelow :

Municipal House No.	Value Rs.	Address	Allotted on partition to--
6/41	8,000	Porwalon-kabas	Smt. Rajibai, Laxmichand, Ratlam.
6/44	7,000	--do--	Laxmichand Gopiji, Ratlam.
6/48	14,000	--do--	Rajkumar Anandkumar, Ratlam.
6/49	22,000	--do--	Sushilkumar Garg, Ratlam ; Anandkumar, Ratlam.
6/38	30,000	Rammohalla, Ratlam.	Smt. Shakuntala Devi, Ratlam.
27/148	14,000	Chandnichowk, Ratlam.	Mahendrakumar, Garg, Anandkumar, Ratlam.
10/58	40,000	Freeganj, Ratlam.	Anandkumar Laxmichand, Ratlam.

5. As a result of the above partial partition, Smt. Rajibai, (wife of the karta Laxmichand), Laxmichand, karta of the HUF, and Anandkumar, son of the karta, were allotted immovable assets of the value of Rs. 8,000, Rs. 7,000 and Rs. 40,000, respectively. This partial partition was accepted u/s 171 of the I.T. Act, 1961, by the ITO, vide his order March 7, 1975, with effect from October 25, 1970. Later on, the GTO found that only three persons, viz., Laxmichand, Smt. Rajibai and Anandkumar, were entitled to a share in the immovable properties on partition and each one of them should have received properties to the extent of Rs. 45,000, and as against this, the total value of the properties received by these three persons was only Rs.

55,000. The GTO, therefore, held that the rest of the properties to the extent of Rs. 80,000 received by Anandkumar''s wife and their children amounted to a gift by the HUF in their favour. Holding thus, the GTO initiated gift-tax proceedings and subjected the amount of Rs. 80,000 to gift-tax.

6. The assessee preferred an appeal before the AAC. The AAC allowed the appeal and held that the receipt of the share by the wife of Anand-kumar and his children of the property valued at Rs. 80,000 was not a gift within the meaning of Section 2(xii) read with Section 2(xxiv) of the Act. The Department went in second appeal before the Tribunal. The Tribunal confirmed the order of the AAC and dismissed the appeal of the Department. Thereupon, at the instance of the Department, the present reference, as already stated hereinabove in para. 1 of this order, has been made to this court.

7. It may be stated here that apart from other decisions, the Tribunal has rested its conclusion, concurring with the AAC''s order, on a decision of the Supreme Court in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, .

8. Learned counsel for the Department has, while assailing the decision of the Tribunal, in elaboration of his argument, contended that since the wife of Anandkumar and his minor children were not entitled to a share, allotment of the immovable property to the tune of Rs. 80,000 to them is a gift. He, in support of his argument, relied on a decision of the Supreme Court in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, .

9. In our opinion, the present case is completely covered by the decision of the Supreme Court in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , which has been referred to in Kantilal Trikamlal''s case and in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, , it has been made very clear that the view taken therein is with reference to the definition of "property" contained in Section 2(15) of the E.D. Act (34 of 1953), whereas the decision in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , relates to the definition of gift contained in Section 2 of the Act, as we shall presently indicate.

10. The facts and the principle laid down by the Supreme Court in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , as capsulised in the headnote, are set out hereinbelow, which are self-explanatory of the fact that that decision completely covers the question at hand :

"The assessee was the ''karta'' of a Hindu undivided family consisting of himself, his son and his six grandsons. 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 total value of the propeties as divided was Rs. 8,51,440 but under that partition, the assessee took properties worth only Rs. 1,78,343, the remaining properties being allotted to the son and the grandsons. The

question was whether by allotting greater share to the other members of the coparcenary than that to which they were entitled, the assessee could be held to have made a "gift" of a portion of his share of the property to the others and was liable to be taxed under the Gift-tax Act, 1958. There was no finding that there was any division of status among the members of the family before they divided the properties :

Held, (i) that the partition did not effect any transfer as generally understood in law and did not, therefore, fall within the definition of ''gift'' in Section 2(xii) of the Act;

(ii) that the partition in the family could not be considered to be a disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property within the meaning of those words in Section 2(xxiv) of the Act.

(iii) that the partition was not a ''transaction'' entered into by the assessee 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 and, therefore, Section 2(xxiv)(d) did not apply ;

(iv) that, therefore, there was no gift by the assessee on which he was liable to pay gift tax.

The Supreme Court did not decide the question what would be the position in law if there was first a division of status in a Hindu undivided family and it was followed up by a division by metes and bounds in which one of the coparceners took properties worth less than what he would be entitled to under the law.

A member of a Hindu undivided family has no definite share in the family property before division and he cannot be said to diminish 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 would have gone to a court to enforce his claim.

The word ''transaction'' in Clause (d) of Section 2(xxiv) takes its colour from the main clause; it must be a transfer of property in some way.

Section 2(xxiv) deals with transfer of properties in various ways and not any other transactions. The words ''disposition'', ''conveyance'', ''assignment'', ''settlement'', ''delivery'' and ''payment'', are all used to indicate some of the modes of transfer of property.

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 statute, 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 ordinarily be applicable.

Words in a section of a statute are not to be interpreted by having those words on 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 they are intended to serve.

In interpreting tax laws, courts merely look at the words of a section ; if a case clearly comes within the section, the subject is taxed and not otherwise."

11. The decision in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , has been referred to in Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, . The below-extracted excerpt from the decision would indicate that in Kantilal Trikamlal''s case, the Supreme Court has not differed from, rather confirmed, the view taken in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, :

"Shri Desai and also Shri Kaji, appearing for the ''accountable person'', in the respective cases, urged that this expansive interpretation taking liberties with traditional jural concepts is contrary to this court''s pronouncement in The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, . That was a case under the Gift-tax Act, 1958, and the construction of Section 2(xxiv) fell for decision. Certainly, many of the observations there, read de hors the particular statute, might reinforce the assessee''s stand. This court interpreted the expression ''transfer of property'' in Section 2(xxiv) and held that the expression ''disposition'' used in that provision should be read in the context and setting of the given statute. The very fact that ''disposition'' is treated as a mode of transfer takes the legal concept along a different street, if one may use such a phrase from the one along which that word in the Estate Duty Act is travelling. Mr. Justice Hegde rightly observed, if we may say so with respect, that :

''Words in the section of a statute are not to be intrepreted 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.'' (pp. 605-606).

The word ''transaction'' in Section 2(xxiv) of the Gift-tax Act takes its colour from the main clause, that is, it must be a ''transfer'' of property in some way. Since a partition is not a '' transfer '' in the ordinary sense of law, the court reached the conclusion that a mere partition with unequal allotments not being a transfer, cannot be covered by Sec- tion 2(xxiv). A close reading of that provision and the judgment will dissolve the mist of misunderstanding and disclose the danger of reading observations from that case for application in the instant case. The language of Section 2(15), Explanation 2, is different and wider and the reasoning of The Commissioner of Gift Tax, Madras Vs. N.S. Getty Chettiar, , cannot, therefore, control its amplitude. It is perfectly true that in ordinary Hindu law a partition involves no conveyance and no question of transfer arises when all that happens is a severance in status and the common holding of property by the coparcener is

converted into separate title of each coparcener as tenant-in-common. Nor does subsequent partition by metes and bounds amounts to a transfer. The controlling distinction consists in the difference in definition between the Gift-tax Act (section 2(xxiv)) and the Estate Duty Act (section 2(15))."

12. We may also state before parting with this discussion that it is undisputed that the aforementioned members formed a HUF. It is a settled position in Hindu law that a joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A joint Hindu family may be composed of smaller or branch joint families, and it may constitute an apex joint family. In the instant case, all these members, referred to hereinabove, constitute an apex HUF. It is also well settled that a wife cannot herself demand a partition, but if a partition does take place between her husband and her sons, she is entitled to receive a share equal to that of a son. In this view of the matter, all these members of the HUF were entitled to a share in the partition. It would not be out of place to mention here that this position is clear from the discussion in Parts 2 and 4 intituled respectively as "Persons Entitled to a Share on Partition" and "Allotment of Shares" of Chapter XVI of Mulla''s Hindu Law, fourteenth edition, particularly paragraphs 306, 307, 315 and 321 at pp. 397, 404 and 407, respectively, of this Chapter.

13. In the light of the foregoing discussion, the question is answered in the affirmative, i.e., in favour of the assessee and against the Department. No order as to costs.