(2000) 10 SC CK 0026

Supreme Court of India

Case No: C.A. No. 3137 of 1995

Sri Jagatram Ahuja		APPELLANT
	Vs	
The Commissioner of Gift Tax, Hyderabad		RESPONDENT

Date of Decision: Oct. 17, 2000

Acts Referred:

- Gift Tax Act, 1958 - Section 2(xii)
- Income Tax Act, 1961 - Section 10(2), 27

Citation: AIR 2000 SC 3195 : (2000) AIRSCW 3778 : (2000) 246 ITR 609 : (2000) 7 SCALE 183 : (2000) 8 SCC 249 : (2000) 4 SCR 1 Supp : (2000) 7 Supreme 131

Hon'ble Judges: Shivaraj V. Patil, J; S.N. Phukan, J; S. P. Bharucha, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Shivaraj V. Patil, J.
This appeal is by the assessee against the judgment and order dated 25-4-1988 passed by the Division Bench of the High Court of Andhra Pradesh. It relates to the assessment year 1972-73.

2. The income tax Appellate Tribunal, Hyderabad (for short the ''Tribunal'' had referred the following question under 26(1) of the Gift-tax Act, 1958 (for short the ''Act'') for the opinion of the High Court:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the release by the assessee who was one of the partners in the firm of 3-Aces, of his rights in the assets of the firm for a consideration of Rs. 3,00,000/- when the market value of the assets of the firm in proportion to his share was in excess thereof, did not amount to a gift within the meaning of the Gift-tax Act.

3. The High Court by the impugned judgment answered the said question in negative and against the assessee.

4. Briefly stated, the facts leading to the filing of this appeal are as follows.

5. The appellant and his brother Bishanlal Ahuja were the partners of a partnership firm constituted on 9-1-1965 under the name and style of "3-Aces". The firm was engaged in the business of a restaurant in a building known as "Mohsin-ul-Mulk Kothi" situated at Abid Road, Hyderabad.

6. An agreement was entered into between the appellant and his brother Bishanlal on 15-4-1971. The terms of the said agreement are set out below:

(i) Sri Jagatram (assessee) is to retire before December 31, 1971.

(ii) Steps are to be taken to finalise accounts relating to the partnership and determination of the amount due to Sri Jagatram on retirement.

(iii) Sri Bishanlal agreed to pay a sum of Rs. 1,50,000 to Sri Jagatram towards the value of 50% share of the goodwill of the firm.

(iv) The above sum of Rs. 1,50,000 payable by Sri Bishanlal to Sri Jagatram shall be in addition to the sum due to Sri Jagatram from the partnership at the time of retirement.

(v) If the total sum including 50% share value of the goodwill, i.e., Rs. 1,50,000/-, payable to Sri Jagatram falls below Rs. 3,00,000, the amount in excess of the balance actually due to Sri Jagatram at the time of retirement shall be treated as the sale value of 50% share of the goodwill belonging to Sri Jagatram.

(vi) Sri Jagatram shall execute proper conveyance in favour of Sri Bishanlal conveying 50% share in the land and building in which the business of 3-Aces is carried on.

(vii) It is open to Sri Bishanlal to classify the sum payable to Sri Jagatram as between moveable and immovable properties and get necessary documents executed by Sri Jagatram.

7. Pursuant to the said agreement, a Deed of Dissolution of the partnership was executed on 22-11-1971 w.e.f. that date. The relevant terms contained in the Deed of Dissolution are given below:

(i) All the assets and liabilities of the partnership including the land and building are taken by Sri Bishanlal from November 22, 1971.

(ii) Sri Jagatram renounced his interest, share and interest in the said assets and liabilities from November 22, 1971.

(iii) In full settlement and satisfaction of the share, right and interest of Sri Jagatram in the partnership including land and buildings, profits and goodwill and the amounts standing to the credit of Sri Jagatram in the partnership accounts as on

November 21, 1971, Sri Jagatram has agreed to receive Rs. 3,00,000.

(iv) Out of the said Rs. 3,00,000, Rs. 1,00,000 has already been paid. The balance of Rs. 2,00,000 is payable by Sri Bishanlal against the sale consideration of the undivided 50% share in the land and building known as "Mohsin-ul-Mulk Kothi".

(v) Sri Jagatram should immediately execute a sale deed and register the same in favour of Sri Bishanlal conveying his 50% share in the land and building for Rs. 2,00,000.

8. It was on 10-3-1972 that the appellant and Bishanlal executed a document styled as ''Release Deed'' pursuant to and consistent with the aforementioned two documents.

9. Originally assessment of gift tax was made on 12-2-1972 on a total gift of Rs. 70,000/ -. After allowing exemption of Rs. 5,000/- it was determined at Rs. 65,000/-. Subsequently, the Gift Tax Officer took up the proceedings u/s 16 of the Act, 1958 by reopening the assessment already made. He valued the share of the appellant in the partnership assets at Rs. 12,67,015/-. An amount of Rs. 3,00,000/- paid by Bishanlal to the appellant was deducted and thus the value of the property alleged to have been gifted by the appellant to his brother Bishanlal was arrived at Rs. 9,67,015/-. On appeal by the appellant, the Commissioner of Gift-tax (Appeals) confirmed the order of the Gift-tax Officer. However, he reduced the total value of the gift by Rs. 3,77,000/-. The appellant took up the matter in further appeal before the Tribunal. The Tribunal accepted the appeal holding that the distribution of assets between partners on the dissolution of the firm, even though unequal, does not amount to "transfer of property" within the meaning of Section 2(xxiv) and therefore, did not amount to "gift" as defined in Section 2(xii) of the Act.

10. At the instance of the Revenue, the Tribunal referred the above stated question u/s 26(1) of the Act for the opinion of the High Court. The High Court referring to the various decisions and for the reasons stated in the impugned judgment took the view in favour of the Revenue.

11. In CGT vs. Chhotalal Mohanlal [1987]166 ITR 124(SC) , M.K. Kuppuraj vs. CGT [1985] 153 ITR 481 (Mad) and CGT vs. Premji Trikamji Jobanputra [1982] 133 ITR 317 (Bom.) distinguishing the other cases, particularly the case of CGT vs. Getti Chettiar [1971] 82 ITR 599(SC) strongly relied on in support of the case of the appellant.

12. At the outsets, the learned Counsel for the appellant submitted that the appellant is not challenging the valuation of property of alleged gift. Hence, it is unnecessary for us to go into that question. The learned Counsel for the appellant seriously contended that the High Court manifestly erred in answering the question in favour of the Revenue contrary to the ratio and principles stated in the case of Getti Chetiar (supra). He further submitted that the decisions relied on by the High Court in support of its conclusion were not directly on the point and some of them

arose under the Estate Duty Act.

13. Per contra, the learned senior counsel for the respondent argued supporting the view taken by the High Court.

14. We have carefully considered the submissions made by the learned Counsel for the parties. In order to appreciate the respective contentions of the parties and to resolve the controversy we consider it appropriate to extract definitions of "Gift" and "Transfer of property" from Section 2 of the Act:

2.(xii) "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 or conversion of any property referred to in Section 4, deemed to be a gift under that section;

Explanation.--A transfer of any building or part thereof referred to in Clause (iii), Clause (iiia) or Clause (iiib) of Section 27 of the income tax Act, by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money''s worth, shall be deemed to a gift made by such person.

2. (xxiv) "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 (whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made) of property vested in any person; not the owner of the property, to determine its disposition in favour of any person other than the 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;

15. This Court in Commissioner of Gift-Tax, Madras vs. N.S. Getti Chettiar [1971] 82 ITR 599 SC] , arising under the Act itself construing and considering the very same provisions held that in a Hindu Joint Family by allotting greater share to other members of coparcenary than that to which they were entitled, the assessee could not be held to have made a gift. Facts of the case were that the assessee was the Karta of Hindu Undivided Family consisting of himself, his son and his six grandsons. There was a partition in the family property. The total value of the properties divided was Rs. 8,51,440/- but the assessee, the Karta took properties worth only Rs. 1,78,343/- allotting the remaining properties to other coparceners. After considering

various decisions and provisions of law, this Court arrived at the following conclusions:

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 of which he was liable to pay gift tax. On the reason that a member of Hindu Undivided Family has no definite share in the family property before the 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.

16. 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. The words disposition, conveyance, assignment, settlement, delivery and payment are all used to indicate some kind of transfer of property. An interpretation clause which extends the meaning of a word does not take away its ordinary and popular meaning.

17. It is settled position in law that a partition of Hindu Undivided Family cannot be considered as a transfer in the strict sense. In Commissioner of Income-tax vs. Keshavlal Lallubhai Patel [(1965) 2 SCR 100 = 55 ITR 637] this Court stated thus:

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 Radhakrishnayya v. Gutta Sarasamma ILR 1951 Mad.607. 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 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 [41 ITR 297 (Mad.)], , 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, 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-common to each of such tenants-in-common''.

This Court in Getti Chettiar case aforementioned has stated thus:

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 Hindu Undivided Family 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 Section 2(xxiv).

This leaves us with Clause (d) of Section 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 Hindu Undivided Family who, as mentioned earlier, has no definite share in the family property before division, 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 had gone to court to enforce his claim. Till partition, his share in the family property is indetermination. He becomes entitled to a share in the family property only after the partition. Therefore, there is no 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 Clause (d) of Section 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 Section 2, each of which deals with one or the other mode of transfer. If Parliament intended to bring with in 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.

18. This Court again in Addanki Narayanappa and Another vs. Bhaskara Krishnappa [AIR 1966 SC 1300], considering the provisions of Sections 14, 15, 29, 32, 37, 38 and 48 of Partnership Act, 1932 has explained as to the nature of property during subsistence of partnership and after its dissolution. It is held that "from a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners, when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realization of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time, and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) and Sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48."

19. In Malabar Fisheries Co. vs. Commissioner of Income-tax, Kerala [1979] 120 ITR 49 SC] this Court considered few provisions of income tax Act, 1961. Referring to the case of Addanki Narayanappa and other cases expressed the view that a partnership firm under the Indian Partnership Act is not a distinct legal entity apart form the partners constituting it and that in law the firm as such has no separate rights of its own. When one talks of the property or assets of the firm all that is meant is property or assets in which all partners have a joint or common interest. Hence the contention that upon dissolution of the firm rights in the partnership assets are extinguished, cannot be accepted. It is further, held that the partners own jointly or in common the assets of the partnership and, therefore, the consequence of the distribution, division or allotment of assets to the partners which flows upon dissolution after discharge of liabilities is nothing but a mutual adjustment of rights between the partners and there is no question of any extinguishment of the firm''s rights in the partnership assets amounting to a transfer of assets within the meaning of Section 2(47) of the income tax Act, 1961. Although the case arose under the provisions of income tax Act, but as to the nature and character of transaction of mutual adjustment of rights between the partners upon dissolution of a firm, it was clearly held that such a transaction did not amount to transfer. If there is a sale or transfer of assets by the assessee to a person, the position would be different. Since a partner in a firm has no exclusive right on any property of the firm he cannot transfer the property. But upon the dissolution of a firm allotment or adjustment of the assets takes place. Hence there was no element of transfer in such a case.

20. Yet, in another case Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Bhandara vs. Dewas Cine Corporation [1968] 68 ITR 240 SC] , dealing with the provisions of Section 10(2)(vii) of income tax Act again referring to Addanki Narayanappa''s case this Court took the view that a partner might in an action for dissolution insist to sell the assets of partnership to realize his share. But where in satisfaction of the claim of a partner to his share in the value of the reside determined on the looting of an actual or notional sale, the properties so allotted cannot be taken to have been sold to him.

21. On principles and in view of the clear ratio, the decision of Getti Chettiar (supra) of this Court supported the case of the appellant which decision was rightly applied by the Tribunal to the facts of the case. The High Court in relation to the said decision has stated thus:

Be that as it may, it is not for us to express any opinion on the said criticism. By virtue of Article 141 of the Constitution, the said decision and even the observations aforesaid are binding upon us. In our opinion, however, the ratio of the said decision has no application to the distribution of assets as between partners whose shares inter se are specific and determined at any given point of time. Moreover, this decision has to be read and understood in the light of the subsequent decision of the Supreme Court in CED vs. Kantilal Trikamlal [1976] 105 ITR 9 , which is, no doubt, a case arising under the Estate Duty Act. Section 2(15) of the Estate Duty Act defines "property" in the following terms.

22. The High Court having rightly stated that the said decision and even the observations made were binding on it wrongly did not apply the ratio of the said decision to the facts of the case in hand. Further the High Court committed an error in stating that the said decision had no application to the distribution of the assets as between the partners whose shares inter-se are specific and determined at any given point of time and that the said decision had to be read and understood in the light of the subsequent decision of this Court in Kantilal Trikamlal''s case. As in the case of Hindu Family, the coparceners do not have exclusive rights on any specific property of the family, the property allotted to their shares become specified only on partition; the same is the position in the case of partner of a firm. No partner of a firm can claim exclusive or specific right in any specific asset of the property of a firm. Coparceners also have definite share in the Hindu Undivided Family. So also the partners have definite share in the partnership. In our considered view, the principles stated in Getti Chettiar''s case equally apply to case of allotment or adjustment or properties among the partners upon dissolution of a firm. We fail to understand how Kantilal Trikamlal''s case made any difference. The said case did not show any disagreement with the principles stated in Getti Chetiar''s case and no distinction was made to take a different view. On the other hand, principles stated in Getti Chettiar ''s case were affirmed. In relation to Getti Chettiar''s case, in Kantilal Trikamlal, it is stated thus:

That 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, form the one along which that word in the Estate Duty Act is traveling. Mr. Justice Hegde rightly observed, if we may say so with respect, that:

Words in the 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." (pp. 605-606).

The words "transaction" in Section 2(24) 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 Section 2(xxiv). A close reading of that provision and the judgment will dissolve the mist of misunderstanding and discloses 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 Getti 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 amount 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).

23. We find that Kantilal Trikamlal''s case supports the view taken in Getti Chettiar''s case. Added to this, Section 2(15) of the Estate Duty Act, defining "property" came up for consideration in Kantilal Trikamlal''s case. We may state here itself that the words and expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are parameter legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in other statute. The aim and object of the two legislations, namely, the Gift-tax Act and the Estate Duty Act are not similar.

24. In CIT vs. Bankey Lal Vaidya [1971] 79 ITR 594 (SC) , it is clearly stated that where in the course of dissolution, the assets of the firm are divided between the partners according to the respective shares, by allotting the individual assets or paying the money value equivalent thereof, no transfer is involved and that it is merely a case

of distribution of assets.

25. The same view is taken in Addl. CIT vs. Mohanbhai Pamabhai [1987] 165 ITR 166 (SC) that where a partner retires from a firm and receives his share of amount calculated on the valuation of the net partnership assets including goodwill of the firm, no transfer is involved.

26. We now refer to the cases relied on by the High Court to support its view. In CGT vs. Chhotalal Mohanlal [1974] 97 ITR 393 (Guj) , this Court reversed the decision of Gujarat High Court and in the light of the facts and circumstances of the case, held that there was a gift for the purpose of the Gift-tax Act. In that case, a firm by name M/s. Chhotalal Mohanlal came into existence with three partners namely, Chhotalal Mohanlal, G. Chhotalal and P. Vedilal with 7 annas, 4 annas and 5 annas shares respectively. During the assessment year 1963-64, under the new deed, P. Vedilal retired. The share of G. Chhotalal remained unchanged. One R. Chhotalal became a partner with 4 annas share. The share of assessee Chhotalal Mohanlal was reduced to 4 annas. For the remaining 4 annas share, 2 minor sons of Chhotalal Mohanlal were admitted to the benefits of the firm with 12% and 13% interest respectively. There was also no change in the share capital standing in the name of the assessee. As can be seen form the facts stated above, P. Vedilal retired and the firm was reconstituted; two minor sons of Chhotalal Mohanlal, one of the partners were admitted to the benefits of the partnership and simultaneously share of said Chhotalal Mohanlal was reduced from 7 annas to 4 annas giving 3 annas share to the minor sons. In this situation when at the time of the reconstitution of the firm, a 3 annas share out of Chhotalal Mohanlal''s 7 annas share in the partnership firm was given to his minor sons it was taken as transfer of property by way of gift and as such it was taxable. Hence the case of Chhotalal Mohanlal did not advance the case of the Revenue on the facts of the case before us.

27. The case of M. K. Kuppuraj was also a case where the assessee''s share was reduced and his minor children were admitted to the benefits of the partnership with 8% share in the profits and this case was referred to and approved by this Court in Chhotalal Mohanlal''s case. The case of Premji Trikamji is again a case where in the Constitution of a firm, minors were admitted to the benefits of the partnership firm. In all these cases, minors were admitted to the benefits of the partnership and if such partner or minor did not bring in capital of his own into the partnership firm corresponding to his share, it was held that the transaction amounted to a gift. But the present case stands entirely on a different footing. It is clearly and merely a case of adjustment or distribution of assets of the firm in regard to share of the appellant on its dissolution and as such no transfer of property was involved in it.

28. Thus, in our view, the High Court was not right in applying the decisions in (1) Chhotalal Mohanlal (2) M.K. Kuppuraj, (3) Premji Trikamji to the facts of the case in hand.

29. The cases of this Court in (1) Getti Chettiar, (2) Malabar Fisheries Co., (3) Dewas Cine Corporation, (4) Bankey Lal Vaidya and (5) Mohanbhai Pamabhai aforementioned fully support the appellant on facts and in the circumstances of the case.

30. Having regard to all aspects and for the reasons stated above, we conclude that the High Court committed an error in answering the question in negative i.e. in favour of the Revenue and against the assessee-appellant. Hence this appeal is entitled to succeed. The judgment and order of the High Court reported in [1988] 172 ITR 632 (AP are set aside, upholding the order of the Tribunal. The question aforementioned is answered in the affirmative i.e. against the Revenue and in favour of the assessee-appellant. The appeal is ordered accordingly. No costs.