Commissioner of Gift-tax, Bombay City I Vs. G.G. Morarji

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Court : Mumbai

Decided On : Feb-11-1965

Reported in : (1965)67BOMLR406; [1965]58ITR505(Bom); 1965MhLJ645

Judge : V.S. Desai and ;Y.S. Tambe, JJ.

Acts : Gift Tax Act, 1958 - Sections 2, 3, 4, 5, 5(1), 6, 23, 25 and 26

Appeal No. : Gift-tax Reference No. 1 of 1962

Appellant : Commissioner of Gift-tax, Bombay City I

Respondent : G.G. Morarji

Advocate for Def. : S.P. Mehta, Adv.

Advocate for Pet/Ap. : G.N. Joshi, Adv.

Judgement :

Tambe, J.

1. This is a reference under sub-section (1) of section 26 of the Gift-tax Act (hereinafter called as 'the Act') at the instance of the Commissioner of Gift-tax.

2. Facts giving rise to this reference ar : We are here concerned with the assessment year 1958-59. The assessee, Gordhandas Goculdas Morarji, has been assessed in the status of an individual. The Bombay Municipality acquired

certain immovable property belonging to the assessee, paying the assessee a compensation of Rs. 2,90,000. Out of this amount, Rs. 2,85,000 were deposited by the assessee in the following manne :

(1) Rs. 1,00,000 (Comprising of two deposit, one of Rs. 50,000 deposited in the Canara Bank in the joint names of the assessee and his son V. G. Morarji, and the other deposit of Rs. 50,000 in the United Commercial Bank in the joint names of the assessee and his another son, D. G. Morarji). Both these deposits were made on 9th October 1958.

(2) Rs. 1,45,000 (Comprising of three fixed deposits of Rs. 1,00,000, Rs. 25,000 and Rs. 20,000; the first in the joint names of the assessee and his wife and the others in the joint names of the assessee and his son).

(3) Rs. 40,000 (Kept in a fixed deposit in the joint names of the assessee and his son, V. G. Morarji, in Bank of Baroda on October 9, 1958).

After making these deposits, the assessee made three settlements in respect of these aforesaid three groups of deposits and Rs. 5,000 from the balance of Rs. 2,90,000. We are here concerned only with the first item relating to Rs. 1 lakh, comprising the two deposits of Rs. 50,000 each. By a deed of settlement dated December 22, 1958, the assessee settled the said sum of Rs. 1 lakh in favour of his wife and his three sons. It was not in dispute either before the gift-tax authorities or before the Tribunal that the aforesaid three settlements were gifts within the meaning of the Act, and were chargeable to tax thereunder. It was, however, contended before the Gift-tax Officer that the assessee was entitled for exemption under section 5(1)(viii) of the Act in respect of the said sum for Rs. 1 lakh settled by the assessee on his wife by the aforesaid deed date December 22, 1958. The Gift-tax Officer held that the assessee to was not entitled the exemption. The view taken by him was that under the settlement, the sum of Rs. 1 lakh was not gifted outright by the assessee to his wife. On the other hand, the said sum of Rs. 1 lakh was only settled on trust in favour of his wife and three sons, the wife having only a life interest therein, and, therefore, the assessee was not entitled to the exemption under section 5(1)(viii). An appeal taken by the assessee before the Appellate Assistant Commissioner also failed. The view taken

by him wa : 'All that had happened is, a sum of Rs. 1 lakh has been placed in trust in favour of the appellant's wife and her sons with the stipulation that the appellant's wife was to be entitled only for the income of the trust fund during her lifetime. Since, the beneficiary namely, the appellant wife, had only, a limited interest in the trust fund the sum of Rs. 1 lakh cannot be regarded as gifted by the appellant to his wife.' The assessee took a further appeal to the Tribunal. The Tribunal allowed the appeal. The view taken by the Tribunal wa : 'This approach of the department on the argument that there was no gift by the appellant to his wife is based on an argument which is self-contradictory. It is on the basis that this gift or a deemed gift within the meaning of section 2(xii) read with section 2(xxiv) of the Act that it has been included and taxed as a gift and, therefore, to say that this was no gift and to deny the claim for exemption is an argument which destroys the case for taxing it even. The reason adduced for denying this relief is, therefore, clearly unsustainable. A gift which is deemed gift if good for being taxed is also good enough for the exception. The contention of the appellant is accepted.' In this view of the matter, the Tribunal allowed the appeal. At the instance of the Commissioner the Tribunal has stated the case referring the following question of law to u :

'Whether, on the facts and circumstances of this case, the assessee if entitled to the exemption under section 5(1)(viii) of the Gift-tax Act in the sum of Rs. 1 lak ?'

3. Mr. Joshi, learned counsel for the revenue, contends that the Tribunal was in error in holding that the stand of the department was self-contradictory. A transaction could be a gift under the Act, but none the less, it may not be a gift falling under the exemption clause. The question which fell for consideration was whether it was a gift falling within the exemption clause, namely section 5. According to Mr. Joshi, on a true construction of the relevant provisions of the settlement deed, there is a gift but the gift is only to the trustee, and not to the wife. The property that is transferred is the sum of Rs. 1 lakh. That property is transferred to the trustee. Creation of a life interest in the income of the trust fund in favour of the wife is not a transfer of any property to the wife. The gift does not, therefore, fall under the exemption clause of section 5(1)(viii) of the Gift-tax Act. The assessee, therefore, is not entitled to get exemption in respect of Rs. 1 lakh

claimed by him.

4. Mr. Mehta, learned counsel for the assessee, on the other hand, contends that no doubt the claim made by the assessee in the beginning was that he was entitled to exemption in respect of the entire amount of Rs. 1 lakh. But before the Tribunal, according to Mr. Mehta, it was also contended that even though the assessee may not be entitled to exemption in respect of the entire amount of Rs. 1 lakh, the assessee would be entitled to the exemption to the extent of the amount ascertained to be the value of the gift made by the assessee in favour of his wife under the trust deed. Mr. Mehta further stated that he himself had appeared for the assessee before the Tribunal and had urged this point before the Tribunal. He further made it clear that before us he was not contending that the assessee has provided that the income of the said amount of Rs. 1 lakh was to be given to his wife during her lifetime. That amounts to creation of an interest in the property, and there is a transfer of property to that extent involved in favour of the assessee's wife. There is, therefore, a gift within the meaning of section 5(1)(viii) of the Act, and the assessee is entitled to exemption to the extent of the value of the gift determined under section 6 of the Act.

5. Before we proceed to deal with the contention raised by counsel for parties, it is first necessary to deal with the preliminary objection raised by Mr. Joshi. He contends that there is no warrant to assume that a submission as stated by Mr. Mehta just now had been made before the Tribunal. The order of the Tribunal does not disclose it, nor does the statement of the case. He further stated before us that in the grounds of appeal in the memo of appeal (not before us) filed by the assessee before the Tribunal, such a ground has not been expressly taken. The contention raised by Mr. Mehta, therefore, is not one arising out of the order made by the Tribunal under section 23 of the Act, and, therefore, we have no jurisdiction to answer such a question. We find it difficult to uphold the preliminary objection raised by Mr. Joshi. Under sub-section (1) of section 26, the Tribunal is empowered to refer to this court 'any question of law arising out of such order (i.e., order under section 23 or section 25)'. In the instant case the appellate order of the Tribunal has been one under section 23. It is indeed true that neither the appellate order of the Tribunal nor the statement of the case mentions that the contentions

in the form now raised by Mr. Mehta before us had been raised on behalf of the assessee before the Tribunal have not been summarised either in the order or in the statement of the case. There is, therefore, nothing in the order or in the statement of the case to assume that such a contention had not been raised by the assessee before the Tribunal, Mr. Mehta, advocate of this court, has made a statement at the Bar that he himself had argued the appeal and had raised the contention before the Tribunal and advanced an argument thereon. No statement has been made at the Bar to counter that statement. There is no warrant not to accept the statement of Mr. Mehta. The said contention relates to a question of law. No doubt, the Tribunal has not in its order dealt with it, but it must be deemed to have been dealt with by the Tribunal. Presumably, the Tribunal has not dealt with it because it took the view that the assessee was entitled to exemption in respect of the entire amount of Rs. 1 lakh. Having regard to the respective cases of the revenue and the assessee, and the question referred to us the contention raised by Mr. Mehta is covered by the question referred to us. Now, the rival contentions in brief wer : According to the department the assessee was not entitled to any exemption at all under section 5(1)(viii) of the Act, while according to the assessee, he was entitled to the exemption under the said provision, and the principal question is whether the transaction falls within the provisions of section 5(1)(viii) entitling the assessee to claim exemption thereunder. If, on the construction of the relevant provision, we come to the conclusion that the assessee is entitled to exemption under section 5(1)(viii) the mere fact that he was claiming exemption to the extent of Rs. 1 lakh would not disentitle the assessee from claiming exemption to the extent of the amount he would in law be entitled to. The assessee may pray for a larger relief, but that would not disentitle him from claiming a smaller relief in respect of the right claimed by him. Nor can it be said that when a larger relief is claimed by the assessee before the Tribunal on the strength of a certain provision of law, he cannot be entitled to argue in a reference that he is entitled to a lesser relief under the same provision of law on the ground that the claim for a smaller relief is not one arising out of the order of the Tribunal. In this view of the matter, the preliminary objection raised is overruled.

6. Sub-section (6) of section 26 in express terms provides that the High Court in deciding the question of law raised before it may, if it thinks fit, alter the form of the

question of law. Having regard to the statement made by Mr. Mehta, we reframe the question as under :

'Whether, on the facts and in the circumstances of the case, the assessee is entitled to the exemption under section 5(1)(viii) of the Gift-tax Act to the extent of the value of the gift to his wife, if an ?'

7. Before we proceed to deal with the relevant provisions of the Act, it would be convenient to refer to certain clauses of the settlement deed. As already stated, the settlor is the assessee, G. G. Morarji. He has a wife by name Indumati and three sons by names Narsingh, Vijaysingh and Dilipsingh. The preamble recite :

'Whereas in consideration of the natural love and affection which the settlor bears towards his wife and his three sons and their respective issues and in order to make a provision, inter alia, for them and for other diverse other good causes and considerations he is desirous of irrevocably settling and has agreed to settle irrevocably the said sum of Rupees one lakh upon the trust.....'

8. And to effectuate the said desire, he under the said deed of settlement, assigned and transferred to the trustees the said amount of Rs. 1 lakh upon trust, subject to the powers and provisions declared and contained in the deed of settlement. Clauses 1 and 2 relate to the power conferred on the trustees in investing the said fund of Rs. 1 lakh. Clause (2) confers power on the trustees to incur certain expenses incidental to the performance of the trust, and clause (3) provide : 'Subject to the foregoing clause two the said trustees shall pay the said interest and income of the said trust funds to the said Indumatibai, wife of the settlor, for and during her life and down to her death.' It is not necessary to refer to the other clauses which relate to the duties of the trustees after the death of his wife, Indumati. Under the deed of settlement thus, the beneficial interest which the wife of the assessee had acquired was to receive interest and income of the trust fund of Rs. 1 lakh during her lifetime. The question to be considered is whether this constitutes a 'gift' to his wife within the meaning of section 5(1)(viii) of the Act.

9. And this brings us to the relevant provisions of the Gift-tax Act. This Act has been enacted in the year 1958 by Parliament to provide for levy of gift-tax. The

charging section is section 3, and it provide :

'3. Subject to the other provisions contained in this Act, there shall be charged for every financial 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.'

10. Under the charging section thus, gifts made after the 1st April, 1957, are chargeable to tax under section 3 subject to the other provisions contained in the Act. The charge is on the person making the gift in respect of the gifts made by him. Section 5 provides that gift-tax shall not be charged under this Act in respect of certain gifts described in clauses (1) to (16) of sub-section (1) thereof. The material clause, viz., clause (viii), as it stood at the material time, read :

'(viii) to his or her spouse, subject to maximum of rupees one lakh in value in the aggregate in one or more previous years...'

11. The question to be considered is whether, by settling the interest and income of the trust fund of Rs. 1 lakh on his wife, Indumati, during her lifetime, the assessee had made any gift to his wife. If there is any such gift in the said settlement, the assessee would be entitled to exemption under section 5(1)(viii) of the Act. If, on the other hand, therein no gift is involved to his wife, the assessee is not entitled to any exemption. Gift has been defined in section 2, which is the interpretation clause. Clause (xii) defines a 'gift' and it provide :

''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.'

12. It is not necessary for the purposes of this case to refer to section 4 which deals with the deemed gifts. Now, the essence of gift thus is a voluntary transfer of an existing movable or immovable property by one person to another without consideration in money or money's worth. Property has been defined in clause

(xxii) a :

''Property' includes any interest in property, movable or immovable.'

Clause (xxiv) defining 'transfer of property', inter alia, provide :

'(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....'

13. It is not necessary to read the other sub-clauses of clause (xxiv). Reading these three clauses - (xii), (xxii) and (xxiv) - together, it is clear that interest in property it itself property, and grant of interest in property by one to another would be a transfer of property within the meaning of the Act. On the reading of these three clauses together, it would necessarily follow that when a person voluntarily grants interest in property to another without consideration in money or money's worth, it would amount to a gift within the meaning of the Act. Mr. Joshi also referred to us the definition of 'donee' which provide : ''Donee' means any person any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary.' It is his argument that, under the settlement, the property transferred is a sum of Rs. 1 lakh. The said property has been transferred by the assessee to the trustees. The trustees are the donees of the property. The wife of the assessee has acquired no interest in the trust property. There is, therefore, no gift involved by the assessee to his wife. It is not possible to accept the argument of Mr. Joshi. It is indeed true that the legal title to the trust fund has been transferred by the assessee to the trustees. But that has not the effect of creating no interest in trust property in favour of his wife who is the beneficiary under the settlement. A 'trust' is defined in section 3 of the Indian Trusts Act, and reading the section, it becomes clear that though the legal title in the trust property vests in the trustees,

what he gets under the trust by accepting the trust is only an obligation annexed to the trust property arising out of the confidence placed in him by the settlor. He has to carry out these obligations which he has accepted in accordance with the directions given to him by the settlor under the settlement for the benefit of other persons. The persons for whose benefit the trustee discharges these obligations are termed as the beneficiaries, and the interest of the beneficiary under the settlement is termed in section 3 as the 'beneficial interest.' The subject-matter of the trust is called 'trust property'. The nature of the beneficial interest or the interest of the beneficiary has been described in section 3 as 'his (beneficiary's) right against the trustee as owner of the trust property'. The argument of Mr. Joshi is that what a beneficiary gets under the settlement is only a right against the trustee and not any interest in the trust fund. Now, reading section 3 as a whole, it is clear that the right which the beneficiary gets against the trustee is not a right in air. It is a right in respect of the property which is called the trust property. The right of the beneficiary against the trustee in respect of the trust property is called beneficial interest. It is in law termed as equitable title to the property. It is not possible to hold that the right which a beneficiary gets under the trust is not an interest in the trust property. The fundamental attribute of ownership of property is power or right of transfer and right to possess and enjoy property and/or its income. The trustee has no power to transfer trust property for his benefit, nor can he enjoy the trust property for his benefit. He undoubtedly possesses the trust property, but the possession is for the benefit of others, the beneficiaries. The trust thus is merely a means or a vehicle by which a donor passes on his interest in the trust property to the beneficiaries. In effect, a trust is a gift of trust property or an interest therein to the beneficiaries. Mr. Joshi, however, contends that may be the position under the Trust Act, but, by reason of the definition of 'transfer of property' contained in clause (xxiv), such is not the position under the Gift-tax Act. Sub-clause (a) of clause (xxiv) provides that the creation of a trust is transfer of property. A transfer of property is complete when the trust is created. It is not open then the travel to sub-clause (b) of clause (xxiv) to see whether by making a trust an interest in the property has also been created by the author of the trust in favour of the beneficiaries. We see nothing in the language used in clause (xxiv) so to restrict the operation and legal effect of creation of a trust in favour of the

beneficiaries. To accept the contention of Mr. Joshi would lead to unforeseen results. It would virtually amount to denial of the benefit which the legislature by enacting section 5 have conferred on a donor. It would mean that the gifts, which fall within section 5, would fall out of section 5 if made through the instrumentality of a trust. Various types of gifts are, to the extent stated therein, exempted from tax. To illustrate, clause (vii) provide : 'to any relative dependent upon him for support and maintenance...' The section contemplates that a person, who by making a gift of his property makes a provision for support and maintenance of a relative dependent on him, should get certain exemptions from liability to pay tax. A person, who has to provide for maintenance of his minor children, if the construction is accepted, would have to make it otherwise than by trust or settlement. In certain cases, assuming that there are minor children, it would not be possible even to make provision for support and maintenance of these minor children without making a trust. On the construction, a person if he does make provision for support and maintenance of his minor children by creating a trust, invites a liability to tax. Such illustrations could be multiplied by referring to certain other clauses of section 5, e.g., (iv), (v), (xii) etc. There is no warrant to assume such an intention on the part of the legislature, specially when making a trust has been taken to be a mode of 'transfer of property'. In our opinion, therefore, by creating a settlement of date December 22, 1958, the assessee has transferred interest in the trust fund to his wife. There is no dispute that the settlement has been voluntarily made, and there is no consideration in money or money's worth. It would, therefore, be a gift of an interest in the trust property, namely, the trust fund, which was in existence at the time of making of the transfer. Mr. Joshi, however, contends that even if on the view we have taken, it is a gift, it is not a gift falling under clause (viii) of section 5(1). According to him, in order to bring a gift under the said clause (viii), it must be established that the spouse has a disposing power over the property gifted to him or her. Reliance in support of this argument is placed on sub-section (3) of section 5. Sub-section (3) provides that 'Notwithstanding anything contained in sub-section (1) or sub-section (2), where either spouse makes any gifts out of any such gifts received by that spouse as fall within clause (viii) of sub-section (1), the gifts so made shall be deemed to be taxable gifts made by that spouse and nothing contained in sub-section (1) or sub-

section (2) shall apply in relation to any such gifts.' It is difficult to read the said sub-section as limiting the operation of clause (viii) of section 5(1), or as a proviso to clause (viii) taking out of it certain gifts which fairly fall under clause (viii). Sub-section (3) is an independent provision. All that has been stated in this sub-section is tha : a spouse after getting a property by way of a gift, if makes another gift of the same property, would not be entitled to get any exemption provided for either in sub-section (1) or sub-section (2) of section 5. That does not mean that for a gift does not fall under clause (8), it must be one in respect of which the donor's spouse should necessarily have capacity to dispose it of. Mr. Joshi, in the alternative, argued that unless the spouse is the only donee of the gift, the gift does not fall under clause (viii). Here the donees are more than one. The settlement deed provides that the wife Indumati is entitled to the interest and income of the trust, fund during her lifetime. Thereafter the property is to go to his children and others as provided for in the trust deed. The wife is not the only donee. There are other donees also. A gift to the spouse under the settlement deed, therefore, does not fall under clause (viii). Again, we are unable to read any such proviso to the said clause (viii). All that is provided in the clause is that if there is a gift in favour of the spouse, then to the extent of the gift not exceeding Rs. 1 lakh, the assessee is entitled to an exemption. Further, in our opinion, having regard to the terms of the settlement deed, there is no joint donee along with the spouse Indumati in the year of assessment. The interest whatever the children and others have in the trust property is a contingent beneficial interest which would come into existence on the happening of the event, namely, the death of Indumati. There had been no transfer of interest as such in praesenti in favour of these persons in the year of assessment. In our judgment, therefore, the assessee is entitled to an exemption under section 5(1)(viii) to the extent of the value of the gift involved in the settlement to his spouse. The manner or the mode of ascertaining the value of a gift is provided in section 6 and the rules framed under sub-section (3) of section 6 of the Act.

14. In the result, our answer to the question as reframed is that on the facts and in the circumstances of the case, the assessee is entitled to the exemption under section 5(1)(viii) of the Gift-tax Act to the extent of the value of the gift to the spouse as may be ascertained in accordance with the provisions of law. No order

as to costs.