

Appropriate Authority and Others Vs. J.S.A. Raghava Reddy and Others

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Overruled by : [Appropriate Authority & Commissioner Income Tax vs. Smt. Varshaben Bharatbhai Shah & Ors.](#)

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Court : Karnataka

Decided On : Sep-08-1992

Reported in : (1993)110CTR(Kar)96; ILR1992KAR3268; [1993]199ITR508(KAR); [1993]199ITR508(Karn)

Judge : K.A. Swami, A.C.J. and;A.B. Murgod, J.

Acts : [Gift Tax Act, 1958](#) - Sections 2 and 3; [Income Tax Act, 1961](#) - Sections 269UC

Appeal No. : Writ Appeal No. 1705 of 1992

Appellant : Appropriate Authority and Others

Respondent : J.S.A. Raghava Reddy and Others

Advocate for Pet/Ap. : H. Raghavendra Rao, Adv.

Judgement :

K.A. Swami, Actg. C.J.

1. This appeal is preferred by the respondents in Writ Petition No. 13984 of 1992 (see above) against the order dated August 5, 1992, passed by the learned single judge.

2. The learned single judge has followed a decision of the High Court of Madras in *K. V. Kishore v. Appropriate Authority* : [1991]189ITR264(Mad) .
3. The question for consideration is whether the provisions contained in section 269UC of Chapter XXC of the Income-tax Act, 1961, are applicable to the alienation of the property made under one deed by several co-owners, the value of which exceeds Rs. 10 lakhs but the value of the share of each of the co-owners does not exceed Rs. 10 lakhs.
4. The contention of learned counsel for the appellants is that, as the property is one and it is conveyed under one deed, even though it is owned by several persons, the provisions of Chapter XXC and specially section 269UC of the Income-tax Act are attracted. Section 269UC of the Act which is relevant for our purpose reads thus :
- '269UC. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property of such value exceeding five lakh rupees as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as 'the transferor') and the person to whom it is proposed to be transferred (hereinafter referred to as 'the transferee') in accordance with the provisions of sub-section (2) at least three months before the intended date of transfer.
- (2) The agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.
- (3) Every statement referred to in sub-section (2) shall, -
- (i) be in the prescribed form;
 - (ii) set forth such particulars as may be prescribed; and
 - (iii) be verified in the prescribed manner,

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.'

5. Rule 48K of the Income-tax Rules defines the expression 'value' thus :

'The value of any immovable property for the purpose of sub-section (1) of section 269UC shall be the apparent consideration of that property exceeding ten lakh rupees.'

6. Though section 269UC of the Act has the effect of overriding the provisions of the Transfer of Property Act or any other law for the time being in force as it opens with the non-obstinate clause, this overriding is limited to the purpose stated in that section itself and nothing beyond that. As per the aforesaid provisions, the transfer of an immovable property of value exceeding Rs. 10 lakhs as prescribed by the aforesaid rule 48K cannot at all be effected without furnishing the agreement of sale in writing in the form of a statement as prescribed under sub-section (3) of section 269UC of the Act to the authority concerned by the alienor and the alienee three months before the intended date of transfer.

7. The point for consideration is that when an immovable property owned by several persons is conveyed by all the co-owners together under one sale deed, whether it is the value of the entire property that has to be taken into consideration or the value of the share of each of the co-owners that has to be taken into consideration for the purpose of section 269UC of the Act.

8. Under the general law, a single property can be owned by more than one person and, in that event, each will be a co-owner along with others. Each one will be entitled to sell his share according to his own will and wish. The other co-owners will not be entitled to place any embargo nor is their consent required for such a sale. For all purposes, a co-owner will be the owner of his definite share in the property and he is entitled to alienate his share on his own account without the consent of the other co-owners. The fact that all the co-owners together agree to sell the property to one or more persons and agree to convey it under one sale

deed does not in any way make them joint owners of the property. The property may be one item, in other words, it may be a building or a piece of land but, in law, it will have to be considered as consisting of as many different bits of property there are co-owners. The general law which is not overridden by section 269UC of the Act permits and recognises plurality of ownership. Therefore, for the purpose of section 269UC of the Act, the value of the share of each co-owner has to be taken into account and not the total value of the shares of the co-owners even when all of them together sell the property and convey the title under one deed.

9. It is not in dispute in this case that the respondents had divided the property in question before the alienation in question. After the division, they have agreed to sell the property to another person under one sale deed. The sale deed so executed resulted in transferring the property of each co-owner to the vendee. The transferee will get the title of each co-owner. The value of the share of each co-owner does not exceed rupees ten lakhs. As such, the provisions of section 269UC of the Act are not attracted.

10. The facts involved in K. V. Kishore's case : [1991]189ITR264(Mad) were similar to the one on hand. In that case also it was held thus (at page 268) :

'After giving deep consideration to these rival submissions, the following facts would clinchingly establish the case in favour of the petitioners. It is not denied or it is not disputed that the original allottee, A. Srinivasan, died in the year 1962. He being a Hindu, governed by the Hindu Succession Act, on his death, his wife and children acquired a vested right to the definite quantified shares in the property left behind by him. As owners of their respective shares, they were competent to enter into a family arrangement which they did on April 8, 1987, under the terms of which, each one of respondents Nos. 4 to 8 were allotted a definite share in the property. After April 8, 1987, they were individual owners of definite shares in the property. Each one could deal with only his respective share and he cannot deal with the share of another. The property which so fell to the share of each individual will come definitely within the definition of the words 'immovable property'. Such a sharer was entitled to transfer his immovable property to a third person. Merely because a plurality of such individual owners joined together to enter into one

single agreement to transfer their respective shares in favour of one or more persons, that would not make any difference to the main issue that what each transferred is his definite share in the property. Viewed from that perspective, the agreement entered into between the petitioners and respondents Nos. 4 to 8 is to be understood only as an agreement to convey the respective undivided share of respondents Nos. 4 to 8. It is not in dispute that the value of each such share is less than Rs. 10,00,000. The recitals in the agreement in more than one place refer to the fact that what is sold, is the individual undivided share in the property. Consequently, the impugned order made under Chapter XXC of the Act taking the total consideration, the collective shares, cannot be sustained. Both the writ petitions are, accordingly, allowed. No costs.'

11. In *CGT v. R. Valsala Amma* : [1971]82ITR828(SC) , a similar question arose under the Gift-tax Act. In that case, two sisters being co-owners of the property gifted the same to another person under one gift deed. A question arose as to whether the provisions contained in section 2(xvii) of the Gift-tax Act, 1958, were attracted. The Supreme Court held thus (at page 830) :

'Section 2(xvii) of the Gift-tax Act, 1958, defines 'person' as 'person' includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not'. Section 3 is the charging section. It says '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.'

Now, the question is in what capacity the gift was made by the assesseees. Did they do it as an association or as a body of individuals or as individuals. The property received by the assesseees under the will of their mother was admittedly received by them as co-tenants. Each one of them had a half share in that property. The question whether they divided that property or not is not a material question. In law each one of them had half the right in the property that they gifted to their brother. They were holding that property as tenants-in-common and not as

joint tenants. Hence, they made the gift as tenants-in-common and not as joint tenants. Each one must be held to have made a gift of her share of the property though the gift is made through one single document. It is surprising that the Income-tax Officer or the Appellate Assistant Commissioner or the Tribunal should have ever thought that the gift in question was by an association or by a body of individuals. The Gift-tax Act did not change the general law relating to the rights of property. It merely sought to tax a gift of the property owned by a person. As mentioned earlier the property with which we are concerned in this case is a property owned by two persons as tenants-in-common, each one having a definite share.

In our opinion, the High Court was absolutely right in answering the question referred to it in favour of the assessee. Civil Appeal No. 1436/(NT) of 1971 accordingly fails and the same is dismissed with costs.'

12. Thus, the view taken by us and the view expressed in Kishore's case : [1991]189ITR264(Mad) are in conformity with the decision of the Supreme Court in the aforesaid Valsala Amma's case : [1971]82ITR828(SC) . It is also brought to our notice that in R. Lokeswari v. State of Tamil Nadu : [1992]196ITR501(Mad) , Ramalingam J., who decided the aforesaid K. V. Kishore's case : [1991]189ITR264(Mad) , has reiterated the same view. In that case, section 230A of the Income-tax Act was considered. Section 230A reads as follows (at page 503) :

'230A. (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit, or extinguish the right, title or interest or any person to or in any property valued at more than two lakhs rupees, no registering officer appointed under that Act shall register any such document, unless the Assessing Officer certifies that -

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947) ...

(b) the registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts.

(2) The application for the certificate required under sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed.

(3) The provisions of sub-section (1) shall not apply in a case where the person referred to in that sub-section is any such institution, association or body, or belongs to any such class of institutions, associations or bodies, as the Board may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.'

13. In Lokeswari's case : [1992]196ITR501(Mad) , one K. A. Venkatesan Chettiar was the owner of the property. On his death, it devolved upon his heirs. Thus, each heir was entitled to a particular share. They together sold their respective shares in the said property under one deed. The value of the share of each did not exceed rupees two lakhs. Therefore it was held that section 230A of the Act was not attracted. The relevant portion of the judgment reads thus (at page 504) :

'If the owners of the shares of immovable property desire to sell their respective shares and execute a sale deed covering such share and if that share happens to be of a value less than rupees two lakhs, no certificate under section 230A of the Income-tax Act is required. Merely because a plurality of shareholders happen to join together and execute one single document, it would not mean conveyance by a person of a property worth more than rupees two lakhs when the combined value of the shares so transferred happens to be more than rupees two lakhs. In substance, what is transferred by the sharer is his individual share. For the purpose of section 230A of the Income-tax Act, it is the value of the property of a person who makes a transfer which has to be considered.'

14. The same principle applies to section 269UC of the Act.

15. For the reasons stated above, we see no ground to admit this appeal. It is, accordingly, rejected.

