

Srinath Das Vs. Income-tax Appellate Tribunal, Delhi Bench b and ors.

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Court : Allahabad

Decided On : Jul-19-1974

Reported in : [1977]109ITR315(All)

Judge : Satish Chandra and ;H.N. Seth, JJ.

Acts : [Gift Tax Act, 1958](#) - Sections 4, 2(12) and 22

Appeal No. : Civil Miscellaneous Writ No. 1863 of 1974

Appellant : Srinath Das

Respondent : income-tax Appellate Tribunal, Delhi Bench "b" and ors.

Advocate for Def. : R.R. Misra, Adv.

Advocate for Pet/Ap. : Ashok Gupta, Adv.

Judgement :

H.N. Seth, J.

1. This petition under Article 226 of the Constitution is directed against three orders dated October 22, 1971, March 20, 1972, and September 17, 1973, passed by the Gift-tax Officer, A-Ward, Mathura, the Appellate Assistant Commissioner of Gift-tax, Range-II, Agra, and the Income-tax Appellate Tribunal, Delhi Bench 'B', Delhi, respectively.

2. The petitioner, Srinath Das, who is a partner in a firm known as Kishan Cold Storage, Mathura, filed a gift-tax return for the assessment year 1971-72, showing that he gifted a sum of Rs. 20,000 to one Sanjai Kumar, minor son of Sri Prithivi Nath, on 1st January, 1970. This gift was said to have been effected by debiting and crediting the respective personal accounts of the donor and the donee, maintained in the books of the firm. In due course the interest accruing on the aforesaid amount was also credited to the account of Sanjai Kumar. Income-tax payable on the interest accruing on the aforesaid amount gifted by the petitioner was, under Section 199(4) of the Income-tax Act, deducted at source and paid to the Government on behalf of the donee. Subsequently, on 31st May, 1972, the donee withdrew the entire amount from the said firm and deposited it elsewhere.

3. The Gift-tax Officer held that the gift in question was invalid and inoperative inasmuch as the petitioner, as one of the partners in the firm, was not free to claim or exercise any exclusive right over the amount gifted and also because mere making of entries in the books of the firm did not result in delivery, symbolic or otherwise, of the amount gifted to the donee. However, as the petitioner had himself voluntarily filed a return showing the gift of Rs. 20,000, he was assessed to tax as a protective measure. After giving an allowance for gift amounting Rs. 5,000, he determined the value of the taxable gift at Rs. 15,000 and assessed him accordingly.

4. Being aggrieved by the finding of the Gift-tax Officer that the gift in question was invalid, the petitioner filed an appeal before the Appellate Assistant Commissioner of Gift-tax, Agra. The Assistant Commissioner, by his order dated March 30, 1972, dismissed the appeal and affirmed the view expressed by the Gift-tax Officer that the gift in question was invalid. The petitioner then took the matter up before the Income-tax Appellate Tribunal, Delhi Bench. The Appellate Tribunal did not go into the question whether the gift, claimed to have been made by the petitioner, was valid and operative or not. It held that inasmuch as the petitioner's appeal before the Appellate Assistant Commissioner was not directed either against the value of the taxable gift determined under the Act or against the amount of gift-tax determined as payable by him nor did the petitioner deny his liability to be assessed under the Act, no appeal under Section 22(1) of the Gift-tax Act, 1958,

lay against the order of the Gift-tax Officer dated October 22, 1971. As the petitioner had no right of appeal before the Appellate Assistant Commissioner there could also be no question of a second appeal to the Tribunal. In the result the second appeal filed by the petitioner was dismissed by the Tribunal on September 17, 1973.

5. The petitioner filed the present petition under Article 226 of the Constitution before this court on 28th March, 1974, and prayed that the three orders passed by the Gift-tax Officer, Appellate Assistant Commissioner and the Income-tax Appellate Tribunal be quashed, and in case it is held that the gift in question was not valid the respondents be directed to refund the amount imposed and realised by them as gift-tax in connection with the gift in question.

6. Learned counsel for the petitioner contended that in this case the appeals filed before the Appellate Assistant Commissioner and the Appellate Tribunal were competent and the Appellate Tribunal erred in not deciding the appeal filed before it on merits.

7. Section 22 of the Gift-tax Act gives a right of appeal to any person against the assessment order passed by a Gift-tax Officer, inter alia, if,--

(a) the assessee objects to the value of the taxable gift determined under the Act ;
or

(b) he objects to the amount of the gift-tax determined as payable by him under the Act; or

(c) he denies his liability to be assessed under the Act.

8. The order passed by the appellate authority (annexure II) as also the grounds of appeal filed by the petitioner before the Income-tax Appellate Tribunal (annexure III) show that the only ground raised by the petitioner before those authorities was that the Gift-tax Officer had erred in recording a finding that the gift in question was invalid. The petitioner was throughout insisting that the disputed gift had been validly made. It does not appear that before the Appellate Assistant Commissioner the petitioner pleaded that in case it was held that the gift was not valid he was not

liable to be assessed under the Act. Consequently, it cannot be said that the petitioner was a person who was either objecting to the value of the taxable gift determined under the Act, or to the amount of gift-tax determined as payable by him, or that he denied his liability to be assessed under the Act. As a matter of fact, the averments made in the present writ petition go to indicate that even today the petitioner insists that the provisions of the Gift-tax Act were attracted and that he was liable to be assessed to tax in respect of the gift made by him on 1st January, 1970. He also does not dispute the correctness of the value of the taxable gift or the amount of gift-tax determined to be payable by him. It is, therefore, clear that the petitioner was not a person who could have maintained an appeal under Section 22 of the Act against the order dated 22nd October, 1971, passed by the Gift-tax Officer. The Tribunal, in our opinion, was quite justified in holding that neither any appeal to the Appellate Assistant Commissioner of Gift-tax nor a second appeal to the Income-tax Appellate Tribunal lay in this case. The order passed by the Appellate Assistant Commissioner of Gift-tax expressing any opinion on the merits of the case, therefore, has no legal validity, inasmuch as it had been made in proceedings which were beyond his jurisdiction.

9. Learned counsel for the petitioner next contended that in any case the finding recorded by the Gift-tax Officer in his order dated October 22, 1971, that the gift in question is invalid and inoperative is erroneous on the face of the record and is liable to be quashed. The two grounds on which the Gift-tax Officer held that the gift executed by the petitioner was invalid were :

- (1) that the petitioner, as a partner in the firm, was not free to Claim or exercise any exclusive right over the amounts gifted, and
- (2) in the circumstances, the gift could not be considered to have been completed by any symbolic delivery of the property gifted.

10. A perusal of the assessment order shows that on the 1st January, 1970, an amount of over Rs. 20,000 stood credited in the account of Srinath Das, the petitioner, in the books of Messrs. Kishan Cold Storage, Mathura. Normally, a partner in a firm is free to withdraw any amount, other than the amount contributed by him as capital, that stands to his credit in his personal account maintained by

the firm. Such amount can be dealt with and disposed of by the partner in any manner that he likes. Learned counsel for the revenue has not been able to point out any law which prohibits a partner from claiming or exercising exclusive right in respect of an amount standing to his credit in his personal account maintained by the firm. There is nothing in the order of the Gift-tax Officer or in the affidavits filed before us to show that the amount standing to the credit of the petitioner in his personal account maintained with the firm represented the capital contributed by him for the business of the firm. In the circumstances, we are of opinion that the finding recorded by the Gift-tax Officer that the petitioner, as a partner in the firm, was not free to claim or exercise any exclusive right over the property for making a gift of Rs. 20,000 is patently erroneous and the first reason given by the Gift-tax Officer for holding the gift to be invalid had no substance.

11. So far as this court is concerned, the law on the subject has been laid down in the case, *Bhau Ram Jawaharmal v. Commissioner of Income-tax* : [1971]82ITR772(All) , wherein it has been held by a Division Bench that in order to sustain a gift it is not necessary that in every case there should be a physical delivery of the amount gifted by the donor to the donee. A transfer can be effected in the books of the donee-firm by making a debit entry in the account of the donor, and making corresponding credit entry in the account of the donee. So long as entries made in the respective accounts put the gifted amount beyond the control of the donor and result in his ownership in it being replaced by the ownership of the donee, there is no reason why a valid gift cannot be effected through such book entries. In this case the court drew a distinction between cases where entries are made in the accounts of the donor and the donee maintained in the books of third party holding money to the credit of the donor, and a case where the donor purports to effect the transfer by making entries in his own books. In the latter case it would be possible for the donor who makes the transfer entries in his books to reverse the same without the donee coming to know of the same and as such it may not be possible to say that delivery of the gifted amount has taken place. However, in a case where such entries are made under the directions of the donor in the books of a third party it would not be possible for the donor to get those entries reversed by his unilateral action. In the instant case, the transfer entries were made in the books of the firm as distinguished from the personal books of the

petitioner. Merely because the petitioner was a partner in the firm, in whose books these entries were made, it cannot be said that the books of the firm were his personal books which could be dealt with by him in any manner that he chose. Moreover, the respondents admit that, ever since the making of the gift, interest accruing on the amount gifted was being credited in the account of the donee and ultimately the donee withdrew the entire amount from the firm and invested the same elsewhere. There is nothing on the record to show that after the amount together with interest thereon had been credited in the personal account of the donee, the petitioner could exercise any dominion over the same, We are, accordingly, of opinion that in this case, after relevant entries were made in the books of the firm, the dominion and control over the sum of Rs. 20,000 passed from the donor to the donee and the gift in question was quite valid and complete.

12. In the result, this petition succeeds and is allowed with costs. The finding recorded by the Gift-tax Officer, 'A' Ward, Mathura, in his order dated October 22, 1971, to the effect that the gift in question was not valid is quashed. The order of the Gift-tax Officer determining the amount of taxable gift and directing the issue of demand notice and challan on that basis is maintained.

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