

Smt. Raja Devi Vs. Inspecting Assistant Commissioner.

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Court : Delhi

Decided On : May-15-1989

Reported in : [1989]30ITD285(Delhi)

Appeal No. : GT APPEAL NO. 31 (DELHI) OF 1988 [ASSESSMENT YEAR 1983-84]

Appellant : Smt. Raja Devi

Respondent : inspecting Assistant Commissioner.

Judgement :

ORDER

Per S. K. Jain, Judicial Member - The assessed, Smt. Raja Devi spent Rs. 40,000 in performance of marriages of her two grand daughters (sons daughters), namely, Ms. Rachna and Ms. Sippy in December 1982. She also paid an air-ticket of Rs. 7,840 for Ms. Sushma. In the opinion of the IAC of Gift-tax (Assessment) the said marriage expenditure of Rs. 40,000 and air-ticket of Rs. 7,840 amounted to gift by Smt. Raja Devi. He, therefore, issued notice under section 16(1) of the Gift-tax Act to the assessed calling upon her to furnish gift-tax return. The assessed filed NIL return. However, the IAC of Gift-tax (Assessment) treated the said expenditure as gift and accordingly completed the assessment. The assessed was unsuccessful in appeal before the Commissioner of Gift-tax (Appeals). Hence this second appeal.

2. The stand of the assessed has been that there was no gift for the expenses incurred for performance of marriages of grand daughters and the travelling expenses incurred for another grand daughters. The Assessing Officer took marriage expenses as gift on the reasoning that there was no legal obligation on the assessed for performance of marriages of her grand daughters. It was legal obligation of fathers of the girls. Thus according to the Assessing Officer, the assessed impliedly made gift of Rs. 40,000 for performance of those marriages and cost of air-ticket of Rs. 7,840 was a direct gift. As to the legal obligation to perform marriages, the Assessing Officer placed reliance on sections 20 and 21 read with section 3(b) of the Hindu Adoption and Maintenance Act, 1956.

3. The Commissioner of Gift-tax (Appeals) endorsed the assessment order.

4. Same stands as were taken by the parties before the tax authorities below have been reiterated by them before us.

5. 'Gift', as defined in clause (xii) of section 2 of the Gift-tax Act, 1958, means (i) transfer of any existing movable or immovable property, (ii) made voluntarily and without consideration in money or moneys worth, by one person to another. The person who makes the gift is called donor and a person who acquires the property under gift is called donee. 'Transfer of property as defined in clause (xxiv) of section 2, means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property. It is thus plain that to constitute gift there should be a donor and a donee and there should be voluntary transfer of any existing movable or immovable property without consideration by the donor to the donee. Such transfer should be by way of disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property. In the instant case nothing has been transferred by the assessed to her grand daughters. The grand daughters did not acquire any property. Gratuitous expenditure on any person without transferring any property to him cannot by any stretch of imagination constitute gift. The expenditure incurred by the assessed on marriage of her two grand daughters should not, therefore, be judged from the angle of legal obligation. Even if it is assumed that the assessed discharged the legal obligation of her son by making expenditure for the marriage of her son's daughters it cannot

be taken that there was implied gift either to the son or to the grand daughters to the extent of the expenses incurred in the marriage. There was no transfer of property either to the son or to the grand daughters; none of them had any control over the expenditure made by the assessed. It may be assumed that the son and the grand daughters were indirectly benefited by the expenditure incurred by the assessed but thereby it cannot be said that any of them acquired any property positively. It is, therefore, held that there was no gift of Rs. 40,000 by the assessed.

6. However, it cannot be gainsaid that cost of air-ticket in the sum of Rs. 7,840 incurred by the assessed for her grand daughter, Ms. Sushma, was a gift to Ms. Sushma. The air-ticket was a property. It was transferred by the assessed to her grand daughters. It is, therefore, held that the total value of the gift was Rs. 7,840 only. The assessment of shall be modified accordingly.

7. In the result, the appeal is partly allowed.