

**Joint Cgt, Special Range-33 V.**

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**Court :** Income Tax Appellate Tribunal ITAT Mumbai

**Decided On :** May-31-2005

**Reported in :** (2005)95ITD0179M(Mum.)

**Appellant :** Joint Cgt, Special Range-33 V.

**Judgement :**

This appeal is filed by the department having been aggrieved by the order of the learned Commissioner of Gift Tax dated 20-7-2000 for the assessment year 1991-92 in the case of the assessee. The department has raised following issues in the Grounds of Appeal : "1. On the facts and the circumstances of the case and in law, the learned CIT (A) erred in holding that the retiring partner Miss Priti Shahs relinquishing her capitals, to the tune of Rs. 14,45,954 in four firms, in favour of her brother Shri Shreyans J. Shah does not amount to gift under sections 2(xii) and 4 of the G.T. Act merely because she renounced the world and became a sanyasin." Both parties were heard regarding the issues raised by their counsel in appeal and their legal implications. During the course of hearing, the learned Representative of the assessee has filed Xerox copy of the notice issued by the GTO under section 16 of the G.T. Act to the assessee and declaration made by Miss Priti Jaswantlal Shah on 14-1-1991 and page-183 of Hindu Law (Mulla) 15th Edition in support of the contentions of the assessee.

On careful consideration of the material made available with the Tribunal and analyzing the same in the light of the arguments advanced by both the parties, we find the admitted facts relating to the issue are as follows : Miss Priti J. Shah is a

partner in the following four firms viz., (1) M/s. Bio Distributors, Jaipur, (2) M/s. Bio Chem Pharmaceuticals, Madras, (3) M/s. Toyochem Laboratories, Bombay and (4) Biochern Pharmaceuticals Industries, Bombay. She declared to renounce the world and became "Sadhvi" under Swetambar Jain Sect and accordingly she issued a declaration on 14-1-1991 inter alia stating that she retired from the firms with effect from 31-12-1990 and the capital standing in her name till the date of her retirement shall be divided between her two brothers Shri Mayank and Shri Shreyans in equal shares. Apart from that, she also stated that other movable properties should also be divided between the said two brothers equally. Basing on these facts, the assessing officer after hearing the assessee and finding that there is a gift made by the said Miss Priti J. Shah as contemplated under section 2 of sub-section (xii) of the G.T. Act and accordingly levied Gift tax.

Aggrieved by this, the assessee went in appeal before the learned CIT (Appeals). After hearing the assessee and taking into consideration the assessing officers views and assessment records, has come to the conclusion by passing the impugned order that Miss Priti J. Shah has renounced the world and became a "Sanyasin" with Jain Religious Sect and as per her declaration dated 14-1-1991, she made a formal declaration renouncing the world and becoming "Sadhvi" and to avoid any legal complications, she declared that the assets held by her are to be partitioned by her two brothers equally and such a declaration will not fall within the purview of provisions contained in section 2(xii) of the Gift Tax Act and accordingly he deleted the Gift tax levied by the assessing officer against the assessee. Aggrieved by this, the department filed the present appeal before the Tribunal.

The learned departmental Representative has vehemently contended in support of the assessment order passed by the assessing officer and assailed the impugned order contending that the document namely the declaration of Miss Priti J. Shah is amount to a gift deed as by virtue of that document only, the properties of the said Miss Priti J. Shah were shared by the assessee and his brother in equal shares and hence it clearly falls within the provisions contained in section 2 of sub-section (xii) of the Gift Tax Act and accordingly it is liable for gift tax. The contrary view taken by the learned CIT (Appeals) is not sustainable for legal scrutiny and hence

he sought for setting aside the impugned order and restoring the assessment order.

Contrary to this, the learned Representative of the assessee has contended that section 5 of the Gift Tax Act mentions the gift that are exempted under the Gift Tax Act among them properties passed to a person under a will as well as in contemplation of death exempted under Clauses (x) and (xi) of section 5 of the Gift Tax Act and property devolved on a person under a document executed in contemplation of death is also stated to be exempted as per sub-clause (xi) of section 5 of the Gift Tax Act. The gift implies presence of two persons that are donor and donee and there must be a document between them, then he started contending that the declaration made by Miss Priti J. Shah on 14-1-1991 is a unilateral document intimating that she is having shares in 4 firms and she is retiring from the said firms with effect from 31-12-1990 and she decided to renounce the world and became "Sadhvi" under the Swetamber Jain Sect and intimating that her properties are to be shared by her two brothers Shri Mayank and Shri Shreyans equally to be engaged by them absolutely and appointing her father as a person to settle the disputes, if any, that may arise between these two brothers in distributing the said assets between themselves.

It is contended by the learned Representative of the assessee that it is nothing but amounting to a will or a document in contemplation of death which squarely falls within the exemption contained in clause (x) and (xi) of section 5 of the Gift Tax Act, thereby he contends that it is not liable for any Gift Tax Act. Consequently he sought for up-holding the impugned order by dismissing the departments appeal.

On careful analysis of the rival submissions made by the parties and analyzing the material placed before the Tribunal and in the light of the submissions, we find that as per Mulla Hindu Law it is undisputed that a person renounce the world by becoming "Sanyasi" is deemed to have died a civil death hence the present declaration under consideration made by Miss Priti J. Shah, clearly states that as she has decided to renounce the world by becoming "Sadhvi" according to Jain Swetambar Sect and thereby she is going to die a civil death and in anticipation of that civil death, she made declaration that her properties are to be equally

partitioned by her two brothers as contained in the said declaration and it is also provided by the said Miss Priti J. Shah in the said declaration that if any disputes and difficulties arising in such distribution should be resolved by her father. So it can be easily said that this is nothing but a unilateral document in the lines of a will or a document made in contemplation of death (in present case civil death) but not at all falls within the purview of section 2 of clause (xii) of Gift Tax Act as was held by the assessing officer.

Therefore, by virtue of exemption contained in Clauses (x) and (xi) of section 5 of the Gift Tax Act, the present transaction will amount to only an arrangement made in a will or any arrangement made in contemplation of death hence, it is exempted from the Gift Tax.

The contrary view taken by the assessing officer is not sustainable for legal scrutiny and setting aside the said order of the assessing officer by the learned CIT (Appeals) by his impugned order, is in a way proper and hence we hereby uphold the same by dismissing the departments appeal finding the issue raised by the department is de-void of merits.

I have my reservations on the conclusion arrived at by my learned brother. I, therefore, consider it appropriate to express my views by way of this separate note.

The short issue requiring our adjudication in this appeal is whether or not, on the facts and in the circumstances of this case, the exemption under clause (x) or clause (xi) of section 5(l) will be available to the assessee in appeal before us. Learned CIT (A) has decided this question in favour of the assessee and it is this conclusion which is called into question by the revenue in the present appeal before us.

Section 5(l)(x) and 5(l)(xi) of the Gift Tax Act, which have been held to be applicable on the facts of this case, are as follows : (5) Gift tax shall not be charged under this Act in respect of gifts made by any person....

The question before us then is whether the gift in question can be said to be a gift under will or in contemplation of death. The sole document on which the gift is said to be a gift under a will, or alternatively, a gift in contemplation of death, is a notarized declaration dated 14-1-1991 which is reproduced below for ready reference : "I Preeti Jaswantlal Shah, aged about 21 years, residing at 5/8, Avanti Apartments, Flank Road, Sion, Bombay-400 022, do hereby declare as follows : That I have decided to renounce the world and become a sadhavi under the Swetamber Jain Sect. This act presupposes that I shall not have any worldly attachments.

1. That I was a partner in the firm of M/s. Biochem Pharmaceutical Industries (Bombay), M/s. Toyochem, Laboratories (Bombay), M/s. Bharat Pharmaceuticals (Madras) and M/s. Bio Distributors (Jaipur) since last many years, and I have retired from the said four firms with effect from 31-12-1990 and I declare that I have no right, title or interest in the said firms and that the capitals standing in my name till the date of retirement, shall be divided between my two brothers, namely: Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah in equal proportions.

2. That I have bank accounts at Union bank of India, Bombay and Madras, jointly with my father Shri Jaswantlal Shantilal Shah. That I also have balances in my CDS and PRE accounts and I have some shares, N.S.Cs., F.D.Rs, Unit Trust and Insurance policies. I hereby declare that whatever shares I have, the same shall be transferred in equal proportions between my two brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah. Whatever CDS, PRE, N.S.Cs, F.D.Rs, Unit Trust, Insurance policies amounts in Banks or any other amounts to which I am entitled to, shall also be divided in equal proportions between my two brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah.

3. That I also possess some jewellery such as gold and diamond ornaments, silverwares and also cash. I hereby declare that the gold and diamond ornaments, silver and cash shall be divided equally between both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah and that they shall be the absolute owners of the same.

4. That whatever amounts are outstanding receivable by me from any person or persons, firms or companies, shall be recoverable by both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah and they shall divide the same equally between themselves.

5. I hereby declare that whatever amounts are transferred to both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah shall be their absolute property and that nobody shall have any right, title or interest thereon.

6. In the event of any difficulties in the distribution of the above assets or any other matters which may arise in the course of division, my father Shri Jaswantlal Shantilal Shah shall be the final authority and whatever he decides shall be final and binding to all the beneficiaries under this declaration.

Solemnly affirmed and declared at Bombay on this 14th day of January, 1991." This declaration, to my mind, is nothing more than a statement of intent. The very preamble of declaration talks about Priti Jaiswal Shahs (PJS, in short) "decision" to renounce the world and become Sadhavi under the Shwetambar Jain Sect. There is no material to suggest that this decision was ever implemented. Mullas Hindu Law, which has been relied upon by the assessee, also states that "A person does not become a sanyasi merely by declaring himself a sanyasi or by wearing clothes ordinarily worn by a sanyasi. He must perform the ceremonies necessary for entering the class of sanyasis; without such ceremonies, he cannot become dead to the world"(Mullas Hindu Law: 15th Edition, at page 183). There was no material before the CIT (A), to establish that such religious ceremonies have been performed. Yet, the CIT (A), without a question, accepts the unsubstantiated averments of the assessee and proceeds on the basis as if she had actually taken sanyas.

Confidence in assessee may be desirable but it cannot justify such a blind faith, without bothering to verify even the elementary facts. As to what should CIT (A) have done in such a situation, I can do no better than to quote from Mr. N. Vittals D Rangaswamy Memorial Lecture as below : "...Confidence is not purely a matter of faith . Gorbachev quoted Russian proverb trust but verify". The same concept is reflected in the Arabic proverb, "trust in Allah, but tie your camel to the tent".

Oliver Cromwells observation "Trust in God, but keep your powder dry" means the same thing. All these statements basically highlight the basic fact that while faith is very important in business even the faith has to be sustained on the basis of actions and that the facts should be verified." (272 ITR Journal 1) Not only that the assessee did not substantiate the fact of the sanyas at stage of proceedings before the authorities below, even at the stage of proceedings before the Tribunal, the assessee has chosen not to file any evidence of actual sanyas. The gulf between what one intends and what one ends up doing is often so wide that all the statement of intentions cannot be treated as evidences of actions, but then this is precisely what the CIT (A) has done. I am not inclined to approve the same.

In any event, the said declaration is dated 14-1-1991 and PJS, in paragraph No.1 of the declaration, states that she has "retired from the said four firms with effect from 31-12-1990" and she further declares that she has no "right, title or interest in the said firms and that the capital standing in my (her) name till the date of retirement shall be divided between my brothers namely Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah in equal proportion". The transfer is thus effective from 31-12-1990. PJS had admittedly not become sadhavi before that date. At best, she could have become a sadhavi only after 14-1-1991, because a decision to do something presupposes that such a thing is to be done in future not in past. The transfers effective on or before that date cannot be said to be under will. A will operates after a persons death and not before that persons death.

The expression will has not been defined in the Gift Tax Act. However, under section 2(h) of the Indian Succession Act, 1925, will has been defined to mean legal declaration of the intention of testator with respect of his property which he desires to be carried into effect after his death. A will thus takes effect not on the date on which it is made, nor on any date prior to the date of death of the person making it, but only on the date of death of such person. A will is always revocable prior to death of the person making it and it does not create any right of the person in whose favour will is made. Once a person dies, he leaves the world forever, but a sanyasi can always come to the normal worldly life. Death is irreversible, sanyas is not.

Therefore, it is only natural death which is relevant for the purposes of will and not the civil death. The case before us fails on all these tests. Therefore, even if sanyas is to be taken as a civil death and even if PJS had actually taken sanyas, the transfers in question cannot be said to be under will. It is altogether a different matter that neither is it a case of sanyas or civil death, nor does the exemption under section 5 come to play in the cases of sanyas or civil death.

The expression in contemplation of death is also not defined in the Gift Tax Act but clause (a) of Explanation to section 5 specifically states that this expression, for the purposes of Gift Tax Act, shall have the same meaning as assigned to it by section 191 of the Indian Succession Act. We have to, therefore, turn to section 191 for finding out relevant meaning of this expression. Section 191 of the Indian Succession Act provides as follows : (1) A man may dispose of, by gift made in contemplation of death, of any movable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers to another possession of any movable property to keep it as a gift in case donor dies of that illness.

(3) Such a gift may be resumed by the given, and shall not take effect if he recovers from the illness during which it was made, nor if he survives the person to whom it was made." The law is thus clear that in order to be treated as a gift in contemplation of death, it is one of the important conditions that the donor must be ill and expects to die shortly of the illness. The finding about the donor being ill is thus sine qua non for applicability of exemption under section 5(l)(xi). The authority, if needed, is contained in Honble Supreme Courts judgment in the case of CGT v. Abdul Karim Mohd. (1991) 191 ITR 317 (SC). By no stretch of imagination, this condition can be satisfied in the present case. The CIT (A)s stand that taking up sanyas is civil death will not, therefore, suffice. One also has to proceed on the basis that planning to take up sanyas is to be treated as an illness, and perhaps terminal illness. That is too far fetched a proposition to meet judicial approval. In any event, section 5(l)(xi) refers to gifts in contemplation of death and, in my humble understanding, it implies reference to natural death alone. There is nothing to suggest that section 5(xi) also takes care of gifts in contemplation of a



civil death. The very scheme of gifts in contemplation of death takes into account only natural death, as evident from the specific reference to illness. An illness is only relevant to natural death and not a civil death. As Rowlatt, J. said, in the case of *Cape Brady Syndicate v. IRC* 1 KB 64, "In the taxing statute, one has to look merely at what is clearly said; there is no room for any intendment...." These observations are all the more relevant for the provisions dealing with exemptions.

It is also well settled in law that exemptions are available only when the same are plainly authorized by the statute. The theory of liberal interpretation and general rule of resolving ambiguity in favour of the tax payer is not relevant in this context. This exception, laid down by *Littman v. Barron* 1952 (2) AIR 393, and followed by the Honble Supreme Court in *Mangalore Chemicals Fertilizers Ltd. v. DCCT* 1992 Suppl. I SCC 21, and *Novopan India Ltd. v. CCEC* 1994 (73) ELT 769 SC, has been summed up in the words of Lord Lohen as that "in case of ambiguity, a taxing statute should be construed in favour of the tax payer does not apply to a provision giving tax payer relief in certain cases from a section clearly imposing liability". The exemptions can only be available when plainly authorized by the statute.

I am, therefore, unable to share my brothers perception that the declaration before us, and which is the foundation of assessee's claim of exemption under section 5(l)(x) and 5(l)(xi), is "a unilateral document on the line of a will or a document made in contemplation of death (in the present case a civil death) "and that "...by the virtue of clause (x) and clause (xi) of section 5 of the Gift Tax Act, the present transaction will amount to only an arrangement made in will or any arrangement made in contemplation of death". In my considered view, the conclusion arrived at by the CIT (A) is indeed erroneous. Neither there is any material on record to suggest that PJS actually took sanyas by performing the ceremonies necessary for entering the class of sanyasis, nor, for that purpose, the cases of civil death, even if that be so, are covered by exemption under section 5(l)(x) or 5(l)(xi).

For the reasons stated above, I am of the considered view that the CIT (A) has indeed erred in law, and on facts of this case, in holding that the provisions of section 5(l)(x) and section 5(l)(xi) are applicable on the facts of this case. I am of

the view that the relief given by the CIT (A) is to be vacated and the order of the assessing officer is to be restored. I order so.

Since there is a difference of opinion between the learned Judicial Member and the learned Accountant Member on the ground of appeal raised by the assessee, we hereby, frame the point of difference under section 255(4) of the Income Tax Act as under, for resolving the controversy by a Third Member to be nominated by the Honble President.

"Whether, under the facts and circumstances of the case, the declaration dated 14-1-1991, made by Miss Priti Jaswantlal Shah, will amount to a deemed gift under section 2(xii) or exempt under section 5(l)(x) and/or 5(l)(xi) of the Gift Tax Act?" In my view the precise point of difference is as follows and it is only on this point on which we have our difference of opinion : "Whether or not, on the facts and in the circumstances of the case, the assessee was entitled for exemption under section 5(l)(x) and/or 5(l)(m) of the Gift Tax Act?" This appeal by the revenue for the assessment year 1991-92 directed against order of the Commissioner of Gift-tax (Appeals) has been referred to me under section 255(4) of the Income Tax Act read with corresponding provision of the Gift Tax Act on account of difference of opinion between the Members who heard this appeal. In the view of learned Judicial Member the following question would cover the controversy arising between the Members-.

"Whether, under the facts and circumstances of the case, the declaration dated 14-1-1991, made by Miss Priti Jaswantlal Shah, will amount to a deemed gift under section 2(xii) or exempt under section 5(l)(x) and/or 5(l)(xi) of the Gift Tax Act?" "Whether or not, on the facts and in the circumstances of the case, the assessee was entitled for exemption under section 5(l)(x) and/or 5(l)(m) of the Gift Tax Act?" The matter was fixed for hearing first on 21-4-2005 when on request of the assessee it was adjourned to 4-5-2005. It was again fixed and arguments of both the parties have been heard.

The facts of the case are that one Miss Priti Jaswantlal Shah is claimed to have renounced the world and became a Sadhvi under Swetambar Jain Sect on 26-1-1991. Before the above date and on 14-1-1991 she issued the following

declaration : "I Priti Jaswantlal Shah, aged about 27 years, residing at 5/8, Avanti Apartments, Flank Road, Sion, Bombay-400 022, do hereby declare as follows : That I have decided to renounce the world and became a sadhavi under the Swetamber Jain Sect. This act presupposes that I shall not have any wordly attachments.

1. That I was a partner in the firm of M/s. Biochem Pharmaceutical Industries (Bombay), M/s. Toyochem Laboratories (Bombay), M/s. Bharat Pharmaceuticals (Madras) and M/s. Bio Distributors (Jaipur) since last many years, and I have retired from the said four firms with effect from 31-12-1990 and I declare that I have no right, title or interest in the said firms and that the capitals standing in my name till the date of retirement, shall be divided between my two brothers, namely : Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah in equal proportions.

2. That I have bank accounts at Union bank of India, Bombay and Madras, jointly with my father Shri Jaswantlal Shantilal Shah. That I also have balances in my CDS and P.P.F. accounts and I have some shares, N.S.Cs., F.D.Rs, Unit Trust and Insurance policies. I hereby declare that whatever shares I have, the same shall be transferred in equal proportions between my two brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah. Whatever CDS, PRE, N.S.Cs., F.D.Rs., Unit Trust, Insurance policies amounts in Banks or any other amounts to which I am entitled to, shall also be divided in equal proportions between my two brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah.

3. That I also possess some Jewellery such as gold and diamond ornaments, silverwares and also cash. I hereby declare that the gold and diamond ornaments, silver and cash shall be divided equally between both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah and that they shall be the absolute owners of the same.

4. That whatever amounts are outstanding receivable by me from any person or persons, firms or companies, shall be recoverable by both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah and they shall divide the same equally between themselves.

5. I hereby declare that whatever amounts are transferred to both my brothers Mayank Jaswantlal Shah and Shreyans Jaswantlal Shah shall be their absolute property and that nobody shall have any right, title or interest thereon.

6. In the event of any difficulties in the distribution of the above assets or any other matters which may arise in the course of division, my father Shri Jaswantlal Shantilal Shah shall be the final authority and whatever he decides shall be final and binding to all the beneficiaries under this declaration.

The Gift Tax Officer was of the view that Miss Priti J. Shah made gift of movable properties through transfer in pursuance of her declaration dated 14-1-1991. He rejected the contention of the donee (through whom assessment was being made under section 21A of the Gift Tax Act) that on renouncing the world, Miss Priti J. Shah automatically lost all her properties and her brothers took over her assets as trustees of the person who had renounced the world. These brothers did not have any legal right in the said property. The GTO charged and applied provision of section 2(xii) of the Gift Tax Act and assessed value of assets gifted at Rs. 14,54,954. He allowed deduction of Rs. 20,000 under section 15(2) and this way took total value of gifted property at Rs. 14,34,950.

Being aggrieved by above assessment, one of the brothers Shri Shreyans J. Shah filed appeal and contended that provision of section 2(xii) of Gift Tax Act were not applicable in this case. The appellants contentions are recorded by the learned CGT(A) in para 2.3 of his order. His findings are recorded in paras 2.4 and 2.5 of the order.

These paras are reproduced below : "2.3. The appellant has objected to this action and has pointed out that : "Appellant sister Miss Priti Shah renounced the world and became a Sadhvi under the Svetamber Jain Sect. After she decided to leave the worldly affairs she had no right interest or title in any of the properties belong to her.

After she decided to renounce the world and became Sadhvi she made a declaration on 14-1-1991 stating that her properties will go to both of her brothers. The said declaration is like a will which was made in order to avoid any legal

complication about her properties. Under such circumstances the properties worth Rs. 14,54,954 came into the possession of the appellant. A Xerox copy of the said declaration is enclosed.

It is further stated that where a person enters into a religious order renouncing all worldly affairs, his action tantamounts to civil death which is mentioned under the principles of Hindu Law written by Mulla.

A Xerox copy of relevant page is enclosed. She became Sadhvi on 26-1-1991 as per declaration the properties came in the possession of the appellant and the same therefore shall not be liable for gift-tax.

Thus it is stated that there is no transfer of properties from one person to another and therefore provisions of section 2(xii), of the Gift Tax Act shall not apply. Further provisions of section 4 of the Gift Tax Act are also not applicable in appellants case. The learned assessing officer is therefore not justified in assessing the gift in appellants hand.

2.4 It is seen from the commentary on the principles of Hindu Law by Mulla that where a person is excluded from inheritance on account of a disability, he and his wife and children are entitled to maintenance out of the property which he would have inherited but for the disability and where he is excluded from a share on partition. All property, which belongs to such a person at the time of renunciation, passes immediately on his renunciation to his heirs, but property acquired by him subsequent to the renunciation passes to his spiritual heirs. A person does not become a sanyasi by merely declaring himself a sanyasi or by wearing clothes ordinarily worn by sanyasi. He must perform the ceremonies necessary for entering the class of sanyasi; without such ceremonies, he cannot become dead to the world. 2.5 It is seen from the above that Miss Priti J. Shah had renounced the world and had become a sanyasini with the Jain religions sect and nothing has been brought on record by the assessing officer to the contrary. As Miss Priti J. Shah had renounced the world, she had only made a declaration dated 14-1-1991 to avoid any legal complication, and just because she had made a formal declaration of renouncing the world and becoming a sadhvi and also renouncing the assets held by her in favour of her two brothers. It cannot be said that the

provisions of section 2(xii) and section 4 of the G.T. Act are applicable and the assets so distributed are liable to Gift-tax, when the Hindu Law describes that a person enters into a religious order, its action is tantamount to civil death and this declaration can only be taken as a declaration made in contemplation of-death and the assessing officer, is directed to delete the addition of Rs. 14,54,954 made under the Gift tax Act and the appellants ground is allowed." The revenue being aggrieved brought the issue in appeal before the Income Tax Appellate Tribunal raising the following effective ground of appeal : "1. On the facts and the circumstances of the case and in law, the learned CIT (A) erred in holding that the retiring partner Miss Priti Shahs relinquishing her capitals, to the tune of Rs. 14,45,954 in four firms, in favour of her brother Shri Shreyans J. Shah does not amount to gift under sections 2(xii) and 4 of G.T. Act merely because she renounced the world and became a sanyasin." After considering submissions of both the parties, the learned Judicial Member in his proposed order held that as per Mullas Hindu Law, a person renouncing the world by becoming sanyasi is deemed to have died a civil death. In the present case declaration under consideration made by Miss Preeti J. Shah clearly recorded that she has renounced the world by becoming "Sadhvi". Therefore, declaration was made in anticipation of her civil death. She declared that her properties be equally partitioned by her two brothers. It was further provided in the declaration that if any dispute or difficulty arose in distribution, the same should be resolved by her father. According to the learned Judicial Member, it could be said that the unilateral document was in the lines of a will or a document made in contemplation of death. Such declaration did not at all fall within the purview of section 2(xii) of Gift Tax Act as held by the assessing officer. The arrangement was also entitled to exemption in clauses (x) and (xi) of section 5 of the Gift Tax Act. The contrary view taken by the assessing officer was not sustainable for legal scrutiny. The learned Judicial Member accordingly upheld the order of the learned CIT (A).

The learned Accountant Member did not agree with the above proposed order. He held that clauses (x) and (xi) of sub-section (1) of section 5 of the Gift Tax Act were not applicable. He reproduced the declaration in his order and held that declaration was nothing more than statement of intent of Miss Preeti J. Shah. The learned Accountant Member found that transfer of properties was effected on 31-

12-1990 whereas declaration was made on 14-1-1991. Thus transfer of properties cannot be said to be effected under a will. While considering above question whether declaration could be in contemplation of death, the learned Accountant Member referred to provision of section 191 of the Indian Succession Act. He held that position of law on the point was clear and that a gift in contemplation of death could only be made by donor who is ill and is expected to die shortly of illness. Thus condition of Statute in this case was not satisfied. The learned Accountant Member also held that there was no material available on record to show that Miss Priti J. Shah had actually taken sanyas. For the reasons given by him, the learned Accountant Member held that provisions of clauses (x) and (xi) of sub-section (1) of section 5 of the Gift Tax Act were not applicable to the facts of this case. He ultimately held, "I am of the view that the relief given by the CIT (A) is to be vacated and the order of the assessing officer is to be restored. I order so." The aforesaid difference of opinion has been brought before me.

I have heard both the parties. The learned counsel for the assessee argued that the Gift Tax Officer in his order had clearly accepted that Miss Preeti Shah renounced the world and took Sanyas on 26-1-1991. Her wealth was divided between her two brothers in equal share on 31-1-1991. In the above background the learned Accountant Member was not justified and even doubted that Miss Preeti Shah became a Sanyasin under the relevant Jain Sect on 26-1-1991. The learned counsel fairly conceded that clauses (x) and (xi) of sub-section (1) of section 5 of Gift Tax Act were not relied upon by the assessee. The assessee did not claim exemption under the above provision. It was assessee's case that provisions of section 2(xii) read with section 2(xxiv) of the Gift Tax Act were not attracted. No "transfer" was involved in the declaration, which came into operation after Miss Preeti J. Shah renounced the world and became a Sanyasi. The declaration was a unilateral act, which could not be treated as "transfer of property". In support of his arguments, the learned counsel relied upon relevant provisions of Hindu Law as also on decision of Pune Bench of ITAT in the case of GTO v. Smt.

Sushilabai Himmatmal Jain (2002) 81 ITD 273 (Pune-Trib) and on decision of Honble Madras High Court in the case of Radha Gajapathi Raju v. Assistant

Controller of Estate Duty (1999) 239 ITR 620 (Mad). As brothers of Miss Preeti had taken over properties post renunciation, the declaration could be treated as a will and not a gift. Accordingly provisions of section 2(xii) of Gift Tax Act were not attracted in this case. The learned counsel further argued that the learned Accountant Member committed a mistake in not deciding above issue whether declaration was at all a gift within a meaning of section 2(xii) of the Gift tax Act. The learned counsel accordingly supported the proposed order of the learned Judicial Member.

The learned departmental Representative supported orders of the assessing officer as well as that of the learned Accountant Member. He read out declaration dated 14-1-1991 of Miss Priti J. Shah and submitted that it was a "transfer" in present It was not to operate in future. The learned Departmental Representative argued that sub-section (xxiv) of section 2 of Gift Tax Act defined the word "transfer" in a very wide term. The declaration of Miss Preeti was fully covered by definition of word "transfer" and therefore, it was liable to be taxed under section 2(xii) of the Gift Tax Act. The property of donor was effectively transferred to her two brothers. The declaration could not be treated as a "will" as there were no impediments to postpone transfer to future. The declaration became effective immediately. The properties mentioned in the declaration and gifted to brothers, were not gifted in contemplation of death. The death as per the statutory provision means physical death and not civil death as is involved in the case before us. The learned Departmental Representative relied upon decision of Honble Madras High Court in the case of His Holiness Sri La-Sri Shanmugha Desika Gnanasambanda Paramacharya Swamigal v. CED (1985) 153 ITR 390 (Mad). He also referred to the decision of Honble Supreme Court in the case of Abdul Kareem Mohd (supra). The learned Departmental Representative accordingly supported the impugned order of the assessing officer.

I have given careful thought to the rival submissions of the parties.

The controversy involved in this appeal is one, which is agitated by the revenue as per ground raised and reproduced in the earlier part of this order. I shall consider the proposed orders of the learned Members in the light of ground raised by the



revenue. The short question therefore involved is, whether Miss Preeti. Shah made a taxable gift of properties within meaning of section 2(xii) of the Gift Tax Act. The learned counsel for the assessee is right in contending that the assessment order of the GTO is based on the premises that Miss Priti J.Shah renounced the world and became a Sanyasin under the Jain Sect.

Therefore, above matter could not be agitated and reopened before the Income Tax Appellate Tribunal. Under the Hindu Law a person who renounces the world by becoming a perfect sanyasi is taken to be civilly dead. There is no doubt that on a mere declaration that he has become a Sanyasi or on wearing clothes ordinarily worn by a Sanyasi is not sufficient to make a person perfect Sanyasi. It is essential that he must enter into fourth stage of his life in accordance with necessary ceremonies. He must not only retire from all worldly interest and become dead to the world but to attain this, must perform necessary ceremonies without which the renunciation will not be complete. The learned representatives of the parties did not show me that the requirements for attaining Sanyas under the law applicable to Jain Sect were different from Hindu Law. In the light of order of the GTO, I presume that necessary ceremonies were performed in this case and Miss Preeti J. Shah renounced the world in accordance with law. She was treated as civilly dead on becoming a Sanyasin. This inference is further supported by the fact that the GTO in the present case invoked the provisions of section 21A of the Gift Tax Act and made assessment on the donee. I hold Miss Preeti was civilly dead on 26-1-1991 when she became a Sanyasin.

The learned counsel for the assessee also fairly conceded that provisions of clause (xi) of sub-section (1) of section 5 were not attracted in this case. The Gift was not made in contemplation of death. Even otherwise death contemplate in the provision is physical death and not civil death. This contention of the assessee is rejected.

The learned counsel for the assessee argued that provisions of clauses (xii) & (xxiv) of section 2 of the Gift Tax Act were not applicable.

The aforesaid provisions were considered by their Lordships of Honble Supreme Court in the case of CGT v. MS. Getti Chettiar (1971) 82 ITR 599 (SC) wherein it

has been held as under : "Gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or moneys worth, and includes the transfer of any property deemed to be a gift under section 4".

The expression "transfer of property" is defined in section 2(xxiv).

That provision reads: "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 (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 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." In the case before their Lordships the assessee in a partition of immovable properties took properties of lesser value than he was entitled to under the law. The question raised before their Lordships was whether in taking lesser share in the partition, gift was made by the assessee. Their Lordships held that no transfer of property was involved in the act which could be subjected to tax. Their Lordships had occasion to consider as to what is the true import of word "Transfer of property" in section 2(xxiv) of the Gift Tax Act. It was observed as under : "This takes us to section 2(xxiv). The opening words of the provision refer to "transfer of property". That clause enumerates several types of transfers and not to any other transactions. It is also necessary to attach significance to the words "or other alienation of property" immediately after setting out the various types of transfers. If we read the clause as a whole, it is clear that it deals with transfer of properties in various ways.

As observed in Craies on Statute Law (sixth edition, page 213), an interpretation clause which extends the meaning of a word does not take away its ordinary meaning. An interpretation clause is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable,

but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to something to which it would not ordinarily be applicable.

Bearing in mind these principles, let us now examine the scope of section 2(xxiv). That provision speaks of "disposition", "conveyance", "assignment", "settlement", "delivery", "payment" or "other alienation of property".

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 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. If so understood, it is clear that the word "disposition", in the context, means giving away or given 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)." It is evident from above that definition of words "transfer of property" is very wide under section 2(xxiv) of the Gift Tax Act. Words like "disposition", "conveyance", "assignment", "settlement" or "alienation of property" are used in the definition. It has been contended on behalf of the assessee that the declaration dated 14-1-1991 came into operation after Miss Preeti J. Shah renounced the world on 26-1-1991 and therefore, at best it could be treated as a will. The transfer of property took place post-renunciation. Thus on the date Miss Preeti J. Shah renounced the world and could be treated as

civilly dead there was no transfer and the case was not covered by clause (xii) of section 2 of the Gift Tax Act.

On careful consideration of declaration dated 14-1-1991 I am unable to accept above contention. In my view aforesaid declaration came into effect on 14th January and thus she transferred her movable assets in bank, actionable claims and balances with different firms to her brothers. At any rate the transfer of movable assets took place before she became a "Sadhvi" and her intention to the above effect, is clear from the following statement in the declaration : "That I have decided to renounce the world and become a sadhavi under the Swetamber Jain Sect. This act presupposes that I shall not have any worldly attachments." So she wanted to give up worldly attachment before giving effect to her decision to renounce the world. The declaration was required to operate before renunciation of the world took place and before she became a "sadhvi". The declaration could not operate post renunciation. The declaration relating to movable properties could certainly be covered by words "disposition", "conveyance", "assignment",- "settlement" or "other alienation of property" used in the definition of "transfer of property" in section 2(xxiv) of the Gift Tax Act. Above words make "transfer of property" under the above provision a term of very wide import. Miss Preeti did settle and assign her properties and made a taxable gift.

It was contended by the learned counsel for the assessee that for "disposition" there has to be a bilateral act. "Transfer of property" could not take place under a unilateral act in the shape of declaration of Miss Priti J. Shah. Reliance was placed on the decision ITAT Pune Bench in the case of Smt. Sushilabai Himmatmal Jain (supra). The facts in the aforesaid case were different and therefore, decision is not applicable to the case in hand. I further find it difficult to appreciate as to why through a unilateral act one cannot settle, assign or through other alienation effect, transfer of property. There is no dispute that properties have been transferred to two brothers who accepted them and thus became owner of what was assigned or given to them. The donors intention to divest herself of all control over subject-matter of gift is absolutely clear in the declaration. There is no other declaration or document under which properties of Miss Priti were acquired by her brothers as full and absolute owners. In my view it is not proper to contend (without any

material) that she renounced the world with "worldly attachments" contrary to her owed and holy declared intention. There is further nothing on record to show that her relations did not give effect to her directions and acted in a manner which would have defeated her desired purpose to be a true Sanyasin without any worldly attachments in shape of properties etc. On the facts and in the circumstances of the case, I reject the contention raised on behalf of the assessee.

The other contention of the assessee that declaration dated 14-1-1991 was a will is also required to be rejected. Where crucial question arises whether the declaration in question is a gift or will, one has to see whether the document becomes operative immediately or would take effect on the death of the declarant. On consideration of all the terms of the declaration, it is clear that it is a transfer in praesenti. At any rate it became operative and was requested to be given effect to before Miss Preeti J. Shah had renounced the world by adopting Sanyas.

It was not a document, which would come into effect after renunciation.

I therefore, find it difficult to treat the declaration as a will.

In my considered opinion, under the declaration she transferred through assignment and declaration all her movable property mentioned in the declaration to her two brothers in equal shares. She made a gift chargeable to tax under section 2(xii) of the Gift Tax Act. The Gift Tax Officer was right in invoking above provision in this case.

For the aforesaid reasons I agree with the proposed order of the learned Accountant Member setting aside order of the CGT(A) and restoring that of the assessing officer.

The appeal should now be put up before the regular Bench for an appropriate order.

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