

Commissioner of Gift-tax Vs. Smt. E.S.M.P. Rasiya Banu

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Court : Chennai

Decided On : Aug-06-1981

Reported in : [1984]146ITR592(Mad)

Judge : Balasubrahmanyam and ;Swamikannu, JJ.

Acts : [Gift Tax Act, 1958](#) - Sections 5(1)

Appeal No. : Tax Case No. 110 of 1977 (Reference No. 84 of 1977)

Appellant : Commissioner of Gift-tax

Respondent : Smt. E.S.M.P. Rasiya Banu

Advocate for Def. : S.V. Subramaniam, Adv. for Subbaraya Aiyar, ;Padmanabhan and ;Ramamani

Advocate for Pet/Ap. : J. Jayaraman and ;Nalini Chidambaram, Advs.

Judgement :

Balasubrahmanyam, J.

1. This reference made by the Income-tax Appellate Tribunal arises under the G.T. Act, 1958. The assessee, a Muslim lady, by name Rasiya Banu, was a partner in a partnership firm called M/s. Mydeen Agencies. She had a 20 per cent, share in the partnership. With effect from September 30, 1971, she retired from the firm. However, she did not take anything in money or specie from the firm, as and towards her- share to which she was entitled as a retiring partner. The GTO held that the assessee's, relinquishment of her share on retirement from the firm amounted to a gift. He levied gift-tax on it, determining the value of the relinquished share at Rs. 77,896. By stages, the matter came before the Appellate Tribunal. The Tribunal confirmed the officer's view that the assessee's relinquish ment of her 20 per cent, share amounted to a gift, but they proceeded to hold that it was eligible for exemption under Section 5(1)(xiv) of the G.T. Act.

2. Section 5(1)(xiv) enacts that gift-tax shall not be charged in respect of a gift made by any person 'in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made bona fide for the purpose of such business, profession or vocation'.

3. This section was obviously intended to exempt what may be called business gifts. We are quite familiar with free gift schemes and other presents which modern businessmen make in the course of carrying on business and for furthering their business purposes. The gifts may be for a variety of business purposes. Free gifts are given by manufacturers of advertised products in a competitive market. A buyer of articles such as soap-powder or fans is given free gifts of plastic buckets, stainless steel vessels and the like. Favoured customers may be given large-scale discounts in the listed price of articles. People in business may sponsor a cricket match or other sport and give prizes to the best man in the field just to push their business. Industrialists are

known to make presentations and give momentos of valuable articles to dignitaries who lay foundation stones for factories, cut the tapes for opening branches, or preside over jubilees. They may be presented with costly shawls, models of keys and trowels, building models and the like, made of silver, marble, ivory or other costly material. There may be various other presents by trades people both to customers and to officialdom ; large-sized donations to political parties by industrial houses. Some even undertake to adopt villages. So far as the recipients of the benefits are concerned, they are pure gifts. From the point of view of the businessmen, however, who disburse them, the presents are made only with a view to a substantial return from the business. The return may not be apparent, it may not even be measurable in terms of money in the immediate present, but it will have long-term advantages in the enlargement of markets, the enhancement of goodwill and the like. Otherwise, businessman will not be making these gifts at all. Apparently, in view of these larger economic considerations, Parliament has exempted these gifts from gift-tax, taking care, however, to stipulate that the gifts should be made 'in the course of' the business and 'for the bona fide purposes' of the business.

4. The inquiry in every case, therefore, is whether a gift is or is not made in the course of the donor's business and whether it is or is not for the purpose of the donor's business. These are ordinarily questions of fact, but in a few cases they may raise legal problems. Take a case where a sole proprietor of a business gives a partnership right to another without asking him to pay anything towards the existing goodwill. This is the kind of case in which courts have been asked to examine the applicability of the exemption provision in Section 5(1)(xiv). The courts have uniformly held that in such cases there is a gift to the person who is given partnership rights in an existing sole proprietary concern, for he acquires them without having to pay for the goodwill or any other consideration to the erstwhile sole proprietor. The courts have held that the taking in of a person as a partner, although containing a gift element, would nevertheless be exempt under Section 5(1)(xiv), if, even after the gift, the donor, that is to say, the erstwhile sole proprietor, continues to carry on the business in the partnership which takes it over. It is, therefore, quite possible to hold in such cases that the gift is 'in the course of' carrying on the donor's business, in terms of Section 5(1)(xiv). The courts have also taken the view that the gift in these cases may be regarded as having been effected 'for the purposes' of the business, if the motivation of the sole proprietor for taking in a partner is found to have been to further the cause of the business. Three cases cited before us, at the time of the hearing, were cases of this kind : GGT v. Dr. George Kuruvilla : [1970]77ITR746(SC) , CGT v. Gheevarghese, Travancore Timbers and Products : [1972]83ITR403(SC) and CGT v. Rukmani Ammal : [1973]87ITR549(Mad) .

5. What we have, on hand, in the present reference, however, is a different, or almost an opposite, kind of case. Instead of converting a proprietary business into a partnership concern by granting partnership rights gratis, to another person, the assessee leaves an existing partnership concern without demanding from her co-partners whatever is due to her share as a retiring partner. There is, no doubt, an element of gift present. but the question is whether the gift qualifies for exemption under Section 5(1)(xiv).

6. The Tribunal, while upholding the assessee's claim for exemption under Section 5(1)(xiv), relied on the following facts: (1) The day after the assessee's retirement from the firm, three minor children of hers were admitted to the benefits of partnership in that very firm and the business was continued to be carried on without interruption. (2) The assessee's minor children brought into the partnership Rs. 67,000 as their capital contribution. (3) The firm's turnover in business increased in the period after the admission into the partnership of the assessee's minor children. On these findings, the Tribunal concluded that the assessee's relinquish-ment of her 20% share in the firm was 'in the course of' and for 'the purposes of' her business within the meaning of the exemption provision in Section 5(1)(xiv) of the Act.

7. In this reference, at the instance of the CGT, it is urged by Mr. Jaya-raman, the Department's standing counsel, that the three grounds on which the Tribunal granted exemption in this case have no relevance to the requirements of Section 5(1)(xiv). He submitted that the relinquishment by the assessee of her 20 per cent, share in the firm, which is the gift under discussion, did not occur 'in the course' of any business carried on by the assessee; nor was it made 'for the purpose' of any such business. Learned counsel pointed out that

the assessee had retired from the firm at the time when she relinquished her share for nothing. Hence, far from the gift being made in the course of business, it was actually made while the assessee had stopped carrying on business by leaving the partnership. Learned counsel proceeded to submit that even the purpose of the relinquishment by the assessee was not a business purpose, for, it was clear from the record that the assessee was only interested in leaving the business for her own personal reasons.

8. We accept the submissions of Mr. Jayaraman as well founded. The assessee had no individual business of her own, but was only a partner in Mydeen Agencies. Even so, as a partner she might be regarded as carrying on that business. But the question is, was the relinquishment by her of her 20 per cent, share in Mydeen Agencies a relinquishment 'in the course' of her carrying on that business. The answer, to our minds, must be in the negative. The reason is, far from carrying on the business, she actually left it, by retiring from the firm. From the date of retirement, she ceased to carry on any business. Even the gift, that is to say, the assessee's relinquishment of her share, emerged only because she bowed out of the partnership business. To find out whether a gift in a given case is effected in 'the course of carrying on the business', we should take two points of time, one immediately before the gift and another after the gift. At both points of time, the assessee concerned must be seen to be carrying on business. It is only in such situation we can say that the gift has been effected in the course of carrying on the business. That, however, was not so in the present case.

9. The assessee's claim must fail for another reason as well. It does not satisfy the other requirement laid down in Section 5(1)(xiv), namely, that the gift must have been made 'for the purpose of the assessee's business'. The Tribunal had not given any clear finding as to why the gift was given. It, however, appears from the recitals in the subsequent partnership deed that the assessee retired from the partnership with effect from September 30, 1971, for the purpose of assuming her household responsibilities and also with a view to safeguarding the future good of her son and daughters. These two purposes cannot be regarded as business purposes at all, under Section 5(1)(xiv). The assessee's desire to devote her entire time to her domestic duties and to improve the prospects of her children only represent personal or domestic objectives, and not business motivations.

10. Mr. Subramaniam, learned counsel for the assessee, pointed out that after the assessee's retirement from the firm, her minor children were admitted to the benefits of the partnership. From this fact, according to learned counsel, must be inferred a business purpose connected with the very partnership in which the assessee was a partner. We do not think this is a correct way of looking at the facts. What the section requires for grant of the exemption is that the gift must subserve the purpose of the assessee's business, and not somebody else's business. The moment the assessee in this case retired from the firm, subsequent events in the firm interested her no more. The minors joined for partaking in the firm's benefits for their own purposes, not for the assessee's. Likewise, the firm admitted the minors to the benefits of the partnership, for its own purposes, and not for the assessee's. We are, therefore, satisfied that this case fails to fulfil both the requirements of Section 5(1)(xiv) of the Act. We disagree with the Tribunal's conclusion to the contrary.

11. The question of law referred to us is as follows:

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the gift which had arisen on account of the relinquishment of the assessee's interest in the firm of M/s. Mydeen Agencies was exempt under Section 5(1)(xiv) of the Gift-tax Act?'

12. We answer the question in the negative and in the Department's favour. The assessee has to pay the costs of this reference. Counsel's fee Rs. 500.