

PETITIONER:
THE COMMISSIONER OF GIFT TAX, TRIVANDRUM .

Vs.

RESPONDENT:
T.M. LOUIZ

DATE OF JUDGMENT: 20/09/2000

BENCH:
S.P.Bharucha, S.N.Phukan, Y.K.Sabharwal

JUDGMENT:

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JUDGMENT

Bharuch, aJ, J..

The High Court of Kerala answered in the affirmative and against the Revenue the following question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that no element of gift was involved when the assessee retired from the firms in which he had been a partner?"

The Revenue is in appeal by special leave.

The assessment year with which we are concerned is the Assessment Year 1973-74. The assessee retired with effect from 1st April, 1972 from two firms in which he was a partner. The Gift Tax Officer assessed him to gift tax on the basis that, upon such retirement, there was a gift because the assessee had surrendered his rights in the firms. The

assessee appealed and the Appellate Assistant Commissioner upheld the assessee's contention that there was no voluntary act by him and that he had only relinquished his right and interest in the firms so that there was no gift. Before the Tribunal it was urged on behalf of the Revenue that the amounts taken by the assessee from the firms for his shares therein was less than the market value thereof since the goodwill of the firm had not been taken into account. There had, therefore, been a relinquishment of his shares, which was a gift. The Tribunal took the view that on retirement, the retiring partner was only entitled to get the value of his share in the partnership assets less his liabilities, it was, therefore, merely an adjustment of rights between the retiring partner and the continuing partners in the assets of the partnership and there was no element of transfer of interest by the retiring partner to the continuing partners. From out of the order of the Tribunal, the question, quoted above, was referred to the High court. The High Court took much the same view as that taken by the Tribunal.

The learned Attorney General, appearing for the

revenue, drew our attention to the definitions of "gift" and 'transfer of property' -in the Gift Tax Act. '"Gift" is defined is 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 money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section.

Explanation:-- A transfer of any building or part thereof referred to in clause (iii), clause (iiia) or clause (iiib) of section 27 of the Income-tax Act by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money's worth, shall be deemed to be a gift made by such person."

"Transfer of property" is defined as under:

"'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--

(a) the creation of a trust in property;

(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 (whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made) 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 submission of the learned Attorney General, when 1

assessee did not voluntarily take what he was entitled to upon retirement from the two firms; he gave up what he did not take to the other partners and there was a gift by him to them thereof. He laid emphasis on the fact that the definition of "transfer of property" included a settlement and, in his submission, there was a settlement of accounts here.

Our attention was drawn by the learned Attorney General to the Judgment of the Calcutta High Court in Commissioner of Gift Tax vs. Nani Gopal Mondal (ISO I.T.R. 469). This was, as is very clear from the following passage, a case of an express gift and, therefore, is of no relevance to the facts of the case before us:

"In the instant case, Mani Gopal Mondal by the deed of gift transferred his share or interest in the firm which included his share of goodwill also. Hence, for the purpose of payment of gift-tax, the value of one-third share of the

assessee in the goodwill shall also be taken into account.''

The learned Attorney General then referred to the judgment of this Court in Commissioner of Gift Tax. Gujarat vs. Chhotalal Mohan Lal (166 i.T.R. 124). This was a case in which there were three partners in a firm: C had a share of seven annas, G had a share of four annas and P had a share of five annas. P retired and the firm was re-constituted. G

continued as before. The share of C was reduced to four annas. R was inducted as a partner with a four annas share. The two minor sons of C were admitted to the benefit of the partnership with a share of twelve and thirteen percent respectively. The Question was 'whether there was a gift by C to his two minor sons of his share of three annas partnership. This Court held that with the admission of the two minors to the benefit of the partnership, the right to the money value of the goodwill stood transferred and there had been a gift within the meaning of the Gift Tax Act.

The definition of "gift" makes it clear that there has to be a transfer by one person to another of movable or immovable property: such transfer has to be voluntary and without consideration - in money or money's worth. What is, therefore, absolutely essential for the purposes of a gift "is a transfer of property. "Transfer of property" is defined for the purposes of the Gift Tax Act as any disposition or conveyance, or assignment or settlement or delivery or payment or other alienation of property. The question, therefore, is whether, on the facts of the case at hand, there has been any such transfer of property.

To recapitulate, when the assessee retired from the two firms, he received the value of his shares therein and the argument was that what he had received was less than the market value of his shares since the goodwill of the firms had not been taken into account.

When a partner retires from a partnership, the partnership continues. The assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm. All the retiring partner gets is the value of his share in the partnership assets less its liabilities. It cannot, in such circumstances, be held, assuming that the retiring partner received less than what was his due, that the difference was something that he had transferred to the continuing partners within the meaning of transfer of property for the purposes of the Gift Tax Act or that there was a gift liable to gift tax.

The work settlement in the definition of transfer of property in the Gift Tax Act takes colour from the context of the definition and its neighbouring words and means a settlement upon trust and not a settlement of accounts.

The judgment of this Court in Chhotalal Mohan Lal (supra) needs a brief explanation. When P retired, the firm was reconstituted and C's minor sons were admitted to the

benefits to the partnership with a three annas share at the same time C's share was reduced from seven to four annas. Necessarily, therefore, at a notional point of time just prior to the reconstitution a three anna share out of C's seven anna share in the partnership was transferred by C to his minor sons. There was therefore, a gift by C to his minor sons of the three anna share, and it was taxable. The facts of the case before us are different and this judgment can be of no assistance.

We think, therefore, that the view taken by the Appellate Assistant Commissioner, the Tribunal and the High Court was the right view.

The civil appeal is dismissed.

No order as to costs.