**(1998) 232 ITR 0354 : (1998) 149 CTR 0306**

# CWT/CIT v. Shanmughasundaram, K. N. ()

**WEALTH TAX**

**--Clubbing of wealth under s. 4(1)(a)**----GIFT TO MINOR CHILDREN--*Gift treated as valid in gift-tax assessment proceedings*--

**Ratio :**

Property transfered to minor children by the assessee was treated as valid gift by the Gift Tax Officer during gift-tax assessment, therefore, property could not be included in the net wealth of the assessee under section 4(1)(a)(v).

**Held :**

The gifts which were made by the assessee in favour of the three minor daughters were accepted as valid gifts by the Gift Tax Officer and the order of the Gift Tax Officer was upheld in appeal by the Appellate Assistant Commissioner and the said order has become final. Since the revenue has already treated these gifts as valid gifts for the purpose of gift-tax, income from gifted property cannot be included in income of the assessee for the purpose of income-tax assessment.

**Case Law Anlysis :**

*CIT v. K. N. Shanmuga Sundaram (1978)* *115 ITR 178* *(Mad)* approved

**Application :**

Also to current assessment years.

**Dt. Ord. :**

6-5-1997

**Wealth Tax Act 1957** s.4

**Wealth Tax Act 1957** s.4(1)(i)

**INCOME TAX**

**--Clubbing of income under s. 64(1)(iii)**----INCOME OF MINOR--*Gift treated as valid in gift-tax assessment proceedings--*

**Ratio :**

Property transferred to minor children by assessee was treated as valid gift by the Gift Tax Officer during gift-tax assessment, therefore, income from gifted property could not be included in the income of the assessee under section 64.

**Held :**

The gifts which were made by the assessee in favour of the three minor daughters were accepted as valid gifts by the Gift Tax Officer and the order of the Gift Tax Officer was upheld in appeal by the Appellate Assistant Commissioner and the said order has become final. Since the revenue has already treated these gifts as valid gifts for the purpose of gift-tax, income from gifted property cannot be included in income of the assessee for the purpose of income-tax assessment.

**Case Law Anlysis :**

*CIT v. K. N. Shanmuga Sundaram (1978) 115 ITR 178 (Mad)* approved.

**Application :**

Also to current assessment years.

**Dt. Ord. :**

6-5-1997

**Income Tax Act 1961** s.64

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# COMMISSIONER OF WEALTH-TAX/INCOME-TAX v. K. N. SHANMUGHASUNDARAM.

Civil Appeal No. 1200 of 1982 with Civil Appeals Nos. 1025-1033 of 1982 (Appeals by certificate from the judgment and order dated October 18, 1977, of the Madras High Court in Tax Cases Nos. 189 of 1973 and 113 of 1974), decided on May 6, 1997.

ORDER

Civil Appeals Nos. 1025-1033 of 1982 upon being mentioned taken on board.

These appeals by certificate of fitness granted under section 261 of the Income-tax Act, 1961, and under section 29 of the Wealth-tax Act, 1957, raise a common question for consideration and, therefore, they are being disposed of by this common order.

One, K. N. Shanmuga Sundaram, has gifted premises bearing door Nos. 8, 9 and 12, Karpagambal Nagar, Mylapore, Madras, to his three minor daughters, Padmalochani, Hamsa and Usha, respectively, by three separate documents. As per the gift deeds the gifts were made on account of the affection which the assessee had for his minor daughters and also the duty which the assessee and his minor son owed to maintain the donees in future in conformity with their family status and dignity and also to give the minor daughters necessary marriage presents and streedhanam at the time of their marriage. The total value of the properties gifted to the three minor daughters is stated to be about Rs. 90,000. The total assets of the assessee amounted to Rs. 13 lakhs. For the assessment year 1965-66, the Gift-tax Officer made a protective assessment accepting the assessees contention that the gifts were valid. The Appellate Assistant Commissioner also held that the gifts were valid gifts and the gift-tax had to be charged on them. No appeal was filed before the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") against the said order of the Appellate Assistant Commissioner. In the income-tax assessments of the assessee for the assessment years 1965-66 to 1969-70 the incomes from the properties which were so gifted to the minor daughters were assessed in the hands of the assessee. On appeal, the Appellate Assistant Commissioner directed the Income-tax Officer to exclude the income from the properties in view of his earlier decision about the validity of the gifts made by the assessee. The Tribunal, on appeal, upheld the said orders and held that the gifts were not invalid and their income could not be assessed in the hands of the assessee. At the instance of the Revenue, the Tribunal referred to the Madras High Court the following question (see [1978] 115 ITR 178, 180) :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the gifts of immovable properties belonging to the joint family made by its karta to his minor daughters were not invalid and that, therefore, the income from the settled properties should not be included in the assessment of the assessee-family ?"

Similarly, in the matter of the wealth-tax assessment of the assessee for the assessment years 1965-66 to 1969-70, the Wealth-tax Officer sought to include the value of the properties gifted by the assessee to his three minor daughters. The Appellate Assistant Commissioner directed the exclusion of the value of these properties in view of his finding that the gifts were valid. The said finding was confirmed by the Tribunal and the Tribunal referred the following question to the High Court (see [1978] 115 ITR 178, 181) :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the gifts of immovable properties belonging to the joint family

made by its karta to his minor daughters were not invalid and that, therefore, the value of the settled properties should not be included in the assessment of the assessee family ?"

The references, income-tax as well as wealth-tax, relating to the assessment years 1965-66 to 1968-69 were disposed of by the Madras High Court by judgment dated October 18, 1977, while such reference regarding income-tax relating to the year 1969-70 was disposed of by the High Court by its judgment dated January 17, 1979, and the reference relating to wealth-tax for the assessment year 1969-70 was decided by the High Court by its judgment dated April 17, 1980.

In its judgment dated October 18, 1977 (see [1978] 115 ITR 178), which was followed in the subsequent judgment relating to the assessment year 1969-70, the High Court, by relying upon the decision of this court in Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa, AIR 1964 SC 510; [1964] 1 SCR 497, has held that under Hindu law the father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family, and by custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion and it is a moral obligation which continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift but the obligation can be discharged at any time either during the life-time of the father or thereafter. The High Court has further held that the right of the father or his representative to make such a gift is not confined to the marriage occasion and that there was no reason why a father should not have the power to make a gift of a reasonable portion of the joint family property to his minor unmarried daughters who might get married or continue to remain spinsters and lead a life of celibacy. According to the High Court, the need of a father in a Hindu undivided family to make a provision for the future maintenance of his minor unmarried daughters is greater and more compelling than the one he may have to make a provision for the maintenance of the daughter at the time of the marriage or thereafter. For a daughter who gets married or who has already got married, has her husband who may provide for her maintenance in addition to the support which she derived from her father after the marriage while there is no such support from a person like the husband or other relation in the case of a minor unmarried daughter of a Hindu father of an undivided family. The High Court further found that having regard to the fact that the total assets of the assessee amounted to Rs. 13 lakhs and that the gift which each of the three minor daughters got would bear only 1/39 portion of the total value of the assets of the assessee on one computation and only 1/55 portion of the total value of the property by another computation it could not be said that the properties gifted to the minor daughters do not bear a small or reasonable proportion to the total value of the properties owned by the family of which the assessee is the manager. In view of the aforesaid findings, the High Court has answered the questions referred to it against the Revenue and in favour of the assessee.

Dr. Gauri Shankar, learned senior counsel appearing for the Revenue, has submitted that the High Court was in error in extending the principle laid down by this court in Guramma Bhratar Chanbasappa Deskmukh v. Mallappa Chanbasappa, AIR 1964 SC 510,

in respect of gift to a daughter in connection with her marriage or a married daughter to a gift to an unmarried daughter who may continue to remain a spinster and lead a life of celibacy. The submission is that this court in Ammathayee alias Perumalakkal v. Kumaresan alias Balakrishnan, AIR 1967 SC 569, has confined the principle laid down in Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa, AIR 1964 SC 510, to the nature of the gift referred to therein.

We do not consider it necessary to deal with the said contention urged by Dr. Gauri Shankar because in the facts of these appeals, we find that the gifts which were made by the assessee in favour of the three minor daughters were accepted as valid gifts by the Gift-tax Officer and the order of the Gift-tax Officer was upheld in appeal by the Appellate Assistant Commissioner and the said order has become final. Since the Revenue has already treated these gifts as valid gifts for the purpose of gift-tax, it is not open to the Revenue to assail the said gifts in connection with the income-tax and wealth-tax assessments. We, therefore, do not find any merit in these appeals and the same are accordingly dismissed. No order as to costs.

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