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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GTA-6-2010 (O&M)
Date of Decision:07.11.2024

MAHARAJA AMARINDER SINGH L/H LATE MAHARAJA YADVINDRA SINGH, PATIALA

........Appellant(s)

V/s.

THE GIFT TAX OFFICER, DISTRICT 1(1), PATIALA

.........Respondent(s)

CORAM: ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr.Akshay Bhan, Senior Advocate, assisted by
Mr. Shantanu Bansal, Advocate for the appellant.

Mr. Saurabh Kapoor, Senior Standing Counsel, with
Ms. Muskaan Gupta, Advocate
for the respondent-Income Tax Department.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. This appeal has been preferred by the Assessee against the order dated 20.08.2009 (Annexure P-6) passed by the Income Tax Appellate Tribunal (herein after referred to as “ITAT”), whereby the ITAT decided the question as framed by the Hon’ble Supreme Court against the appellant-Assessee.

2. After first round of litigation, when it reached to the Supreme Court and yet order has been passed in favour of the appellant-Assessee, the Supreme Court directed as under:-

> *“Exemption was claimed, as stated above, under Sectioin 5(1) (xvi) in respect of the aforestated two distinct and separate items. On going through the pleadings, we find that the findings have been recorded at the cost of clarity. There is utter confusion regarding the nature of the gift, the effect of the Hindu Succession Act, 1956, as we as well as the scope of the Gift Tax*

Act, 1958. In the circumstances, we have no option but to remit the matters to the Tribunal for fresh consideration in accordance with law on the following two issues:-

(a) Whether the gift amount of ₹10,00,000/- was made out of Privy Purse.?"

It is true that a finding of fact has been recorded by the authorities below that the gift has been made out of the Privy Purse. However, in these cases for the reasons mentioned above, we want the tribunal to bifurcate the two issues and given separate independent findings on each of the issues and, consequently, we direct the Tribunal to de novo examine this point on its own merits uninfluenced by the observations of the High Court in the impugned judgment and its own observations in the earlier order.

(b) Whether the transfer of agricultural lands admeasuring 425 bhigas of the value of ₹3,82,500/- was at all exigible to tax under the Gift Tax Act, 1958, particularly after the enactment of the Hindu Succession Act, 1956?"

3. While deciding the question No.(a) as above, the ITAT has noticed that the Commissioner of Gift Tax has held that the cash gifts were made out of Privy Purse and the cheques were also issued from the Privy Purse. However, it proceeded to pass the following order:-

"17.0 *In this background, we have carefully examined contentions raised by the assessee before the Commissioner of Gift-tax(A) and find that the cash gifts were claimed to have been from the bank account No.956 in the State Bank of India, Patiala wherein deposits were made from the receipts of the Privy Purse against various cheques were issued in favour of the donee trusts. As per the detail of the gifts noted by the Commissioner of Gift-tax (A) and reproduced by us in para 4.2 of our order, it is note-worthy that the gifts have been advanced* *by way of cheques and also by way of cash. The source of cash is stated to be out of the cash shown in the wealth-tax returns whereas the source of cheques is stated to be the amounts of Privy Purse deposited in the relevant bank account. Both the material, namely the relevant wealthy-tax returns or the bank account in question have not been brought on record so as to enable us to give a finding in this regard. Apart therefrom, there is no other material on record which would enable us to arrive at an independent finding as to whether the cash gift of Rs.10 lacs has been xxx out of Privy Purse. Undoubtedly, the onus in this regard is soon the assessee because it is the assessee who has set up a claim that cash gifts are out of Privy Purse and they are exempt in view of section 5(1)(xvi) of the Act provides for exemption of gifts made out of Privy Purse where the same have been made to relatives, dependant for maintenance and support. Therefore, in the absence of the relevant material before us, it is neither possible to test the finding recorded by the Commissioner of Gift-tax(A) and nor rector and independent finding that the cash gifts are given out of Privy Purse amounts. The aforesaid is important because the finding of the Assessing Officer is against the assessee and even the Commissioner of Gift-tax (A) has not referred to any clinching material or basis to justify his finding. Therefore, the claim of exemption u/s 5(1)(xvi) of the Act cannot be further examined. An alternative claim of the assessee was that the Privy Purse amounts constituted joint family property of the Hindu Undivided Family and, therefore, any gift out of the same to the donees in question does not attract liability under the Gift Tax Act, 1958. This claim of the assessee also cannot be examined unless it is found that the cash gifts are out of the Privy Purse amounts.*

18.0 *We have given our anxious thoughts to this issue, keeping in mind the directions of the Hon'ble Supreme Court. Whether or not the cash gifts have come out of the Privy Purse is crucial to decide the applicability of section 5(1)(xvi) of the Act and also the alternative claim of the assessee for exemption from* *the levy of gift-tax. Ostensibly, in order to test both the aforesaid claims of the assessee, it is a primary condition that the source of cash gift ought to be the Privy Purse and this aspect cannot be established on the basis of material and evidence on record. Therefore, the claim for exemption under section 5(1)(xvi) has to be fail, having regard to non-fulfillment of the primary condition referred above. Consequently, we also refrain from adjusting on the alternative claim, having regard to non-fulfillment of the primary condition regard to non-fulfillment of the primary condition referred above."*

4. Learned Senior counsel appearing for the appellant-Assessee submits that once there was a finding of fact already arrived at by the Commissioner Gift Tax, which has not been held to be perverse, there was no occasion for the appellant-Assessee to be asked independently to again provide the proof other than what was on record before the Commissioner Gift Tax in support of his submission that the gift amount of ₹10,00,000/- were made out of the Privy Purse. He further submits that the ITAT was not only required essentially to give findings relating to gift amount to be made as Privy Purse, but was also required to look into effect of the provisions of the Hindu Succession Act, 1956 having come into force and whether the said amount would be treated as HUF.

5. Learned counsel for the respondent submits that once the case was remanded to the ITAT, it was the duty of the Assessee to again produce the record before the ITAT independently what was produced before the Commissioner Gift Tax and the same was required to be adjudicated independently. Since the appellant-Assessee did not produce the proof relating to the source of cash and cheques having come from Privy Purse, the

ITAT cannot be said to be committed any illegality in not treating the same to be from the Privy Purse.

6. We have considered the submissions of the learned counsel for both the parties and carefully gone through the orders passed as noticed above.

7. The Supreme Court had itself given a finding that the question whether the gift amount of ₹10,00,000/- was made out of the Privy Purse, was a finding of fact required to be given by the ITAT. Since the ITAT was already seized of the entire record and the Commissioner of Gift Tax has, in its findings in Para 8, noticed various cheques and cash being made from the Privy Purse amount on various dates, the ITAT could not have further asked the appellant-Assessee to produce other than what was already available before Commissioner of Gift Tax.

8. It would be apposite to quote Para 8 of the order dated 31.03.1979 passed by the Commissioner of Gift Tax:-

> *"8. That leaves the question of the cash gifts of Rs 10 Lacs. In the regard the main objection of the GTO was that appellant has not been able to give any evidence to show that these cash gifts were given out of the Privy Purse. But the contention of the A.R. was that as per the details available with them for these cash gifts it is quite clear that these were made out the amounts available with the appellant either in cash as show in the Wealth-tax returns or in the Bank Account No. 956 in the State Bank of India, Patiala, wherein the deposits were made from the receipts of the Privy Purse against which the various cheques were issued in favour of the two trusts in question. Hence after going through the details furnished by the A.R. these does not*

remain any doubt about the fact that the gifts were made out of the Privy Purse amounts as under: -

I. Maharani Mohinder Kaur Trust

5.11.1971	*By Cheque*	*Rs.25,000/-*
18.12.1971	*By Cash*	*Rs.3,45,000/-*
18.12.1971	*By Cash*	*Rs. 2,30,000/-*
		Rs.6,00,000/-

II. Yuvraj Amrinder Singh Trust

05.11.1971	*By Cheque*	*Rs.25,000/-*
5.11.71	*By Cash*	*Rs.55,000/-*
8.11.1971	*By Cheque.*	*Rs.50,000/-*
10.04.1971	*By Cheque*	*Rs.70,000/-*
10.04.1971	*By Cheque*	*Rs. 65,000/-*
5.08.1971	*By Cheque*	*Rs. 1,35,000/-*
Total		***Rs. 4,00,000/-***

9. Thus, from the above, it is apparent that the statement of account of the Privy Purse of a particular Bank Account No.956 of State Bank of India, Patiala was available before the concerned Commissioner Gift Tax and it clearly reflected that from the account relating to Mohinder Kaur Trust Privy Purse, cheques and cash were released in favour of the said Trust amounting to ₹6,00,000/- and to Amarinder Singh Trust of ₹4,00,000/- in all on various dates which would further require adjudication.

10. We, therefore, find that the order passed by the ITAT hinges on perversity and does not take into account the record which was available with them as the case had been travelled from the Commissioner Gift Tax. The answer to question No.(a) is, therefore, accordingly found to be in favour of the appellant-Assessee and it is held that the gift amount of `10,00,000/- was made out of Privy Purse. Consequences thereof shall follow.

11. In view of the aforesaid observations, the present Appeal stands disposed of.

12. All pending applications also stand disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[SANJAY VASHISTH]
JUDGE

November 7, 2024
Ess Kay

Whether speaking / reasoned	:	*Yes*	/	*No*
Whether Reportable	:	*Yes*	/	*No*