

Commissioner Of Income-Tax, West ... vs Brij Lal Lohia And Mahabir Prasad Khemka on 29 July, 1971

Equivalent citations: [1972]84ITR273(SC)

Author: K.S. Hegde

Bench: A.N. Grover, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. These are appeals by special leave. The only question that arises for decision in these appeals is whether on the facts and in the circumstances of the case the finding of the Tribunal that the gifts alleged to have been made by the assessee to his brother Brij Lal Lohia and his nephew Nand Kishore Lohia are genuine gifts.

2. In these appeals we are concerned with the assessment of the assessee for the years 1947-48, 1948-49, 1949-1950, 1950-1951 and 1951-1952.

3. The assessee is an individual. On July 12, 1943, it is said the assessee made a gift of 5, 11, 101 to his brother Brijlal Lohia and another sum of Rs. 2,50,000/- to Nandkishore Lohia his nephew. There after the assessee's brother and nephew are said to have started a new firm dealing in Jute. At about the same time the assessee stopped his business. The assessee was also dealing in Jute. The question for consideration is whether the gifts alleged to have been made by the assessee were genuine gifts. This question came up for consideration before the authorities under the Act while dealing with the assessment of the assessee for the years 1945-1946 and 1946-1947. Therein on the basis of the material before them the Tribunal held that the gifts in question are not genuine gifts. The High Court did not interfere with the finding of the Tribunal on the basis that it is the finding of facts. When the matter was brought in appeal to this Court in *Kanhaiyalal Lohia (deceased) by his legal representatives Mahabir Prasad Khemka and Ors. vs Commissioner of Income Tax, West Bengal* 44 I.T.R. page 405, this Court also refused to interfere with the finding of the Tribunal observing that the question whether the gifts were real was a matter within the jurisdiction of the Appellate Tribunal as the final fact-finding authority. The question whether those very gifts were genuine or not again came up for consideration before the authorities under Act while dealing with the assessments with which we are concerned in this case. In those cases the assessee adduced considerable additional evidence and on the basis of that evidence the Tribunal after taking into consideration the decisions rendered by the Tribunal in the previous proceeding came to the conclusion that the gifts in question are genuine gifts. In arriving at that conclusion the Tribunal had taken into consideration various circumstances and those circumstances as set out by the

Tribunal are as follows :

(a) On going through the capital account and the wealth statement of the assessee, the Tribunal found that before making this gift to the said persona the total amount standing to this credit were as follows:

(i) A sum of Rs. 16,79,223/-and Rs. 61, 968/-as the balance left over to his credit in his Profit and Loss Account.

(ii) A sum of Rs. 6,32,804/-being his credit balance in his capital account in the partnership business styled Kanailal Lohia (Jute Press). These items, namely, in (i) and (ii) taken together worked out to Rs. 23,73,995/-.

(iii) House properties whose value had been estimated at Rs. 19,00,000/-.

(iv) Besides, those the assessee had certain further assets which had remained undisclosed till the year 1951, valued at over Rs. 20,00,000/-.

4. The Tribunal accordingly held that the assessee's financial position was such that he was capable of making gifts to his brother and nephew of Rs. 7,61,101/-. Proceeding further the Tribunal observed :

(b) The donees after having received the gifts had deposited the said amounts with the National City Bank of new York, which bank had certified that it was the account of a firm whose partners were Messrs Brijlal Lohia and Nand-Kishore. Lohia and it was those persons only who were authorised to sign for and on behalf of the said firm. There were other banks also with whom the said two partners of the said firm had opened up accounts and they had also certified to the same effect.

(c) Affidavit dated the 8th September, 1964 sworn by the assessee, in which he had stated that he had given Rs. 5,11,101/-and Rs. 2,60,000/-to his brother, Brijlal Lohia and nephew Nandkishore Lohia respectively and that he had no concern, right, title or interest whatsoever in the aforesaid gifted money or any business carried on by his said brother and nephew.

(d) Letters from Jwalaprasad Bhartia and Kashiram Lohia, who were persons in the know of the factum of the making of the gifts and testified that in fact the assessee had gifted the aforesaid amounts to his brother and nephew.

(e) The Tribunal also considered that the assessee had no issue and having enough to spare, he was making charities of substantial amounts to various institutions. Such of the institutions to whom the assessee had given donation, were (i) Lohia Charity Trust wherein a sum of Rs. 1,25,000/-was donated; (ii) K.L. Lohia Charity Trust to whom Rs. 2,00,000/-had been donated and (iii) Lohia College, which received Ra.

2,03,000/-as donation from the assessee.

5. The Tribunal took into consideration the following further circumstances :

(a) Registration of the firm Messrs. Brijlal Nandkishore under Section 65 of the Indian Partnership Act with the Registrar of Firms on the 23rd December, 1948;

(b) Sales Tax Registration certificates showing the two persons, namely, Brijlal Lohia and Nandkishore Lohia as partners of the firm known as Messrs. Brijlal Nandkishore.

(c) Affidavit dated the 8th September, 1934 sworn by the assessee stating therein that he had given Rs. 5,11,101/-and Rs. 2,50,000/-to his brother, Brijlal Lohia and nephew Nandkishore Lohia absolutely and that he had no concern, right, title or interest whatsoever in the aforesaid gifted money or in any business carried on by his said brother and nephew;

(d) Copies of the personal accounts of Brijlal Lohia and Nandkishore Lohia in the books of the partnership to show that the gifted amount was introduced by them as their capital in their partnership business and the withdrawals made by them out of the business were so negligible that it carried no meaning in saying that the profits from their business was being indirectly diverted to the assessee under the guise of these withdrawals; (f) The assessee exercised no control at all either over the money gifted or the partnership business and had unequivocally given out on affidavit, adversely to his interest, that he had absolutely no interest to them.

6. Any of the circumstances taken into consideration by the Tribunal cannot be said to be an irrelevant circumstance. Those circumstances have material bearing on the point in issue. It is not said that the Tribunal had ignored any one of the relevant circumstances. All that is said on behalf of the Revenue is that the Tribunal has not taken into consideration the evidence of Mr. Majumdar given in the previous proceedings. Mr. Majumdar's evidence was not before the Tribunal when it dealt with the cases with which we are concerned in these appeals. Therefore, the Tribunal could not have considered the evidence of Mr. Majumdar.

7. On going through the Tribunal's order, we are satisfied that the finding of the Tribunal cannot be said to be a perverse finding. The finding being finding of facts, it was not open to the High Court nor is open to this Court to interfere with that finding.

8. The fact that in the earlier proceedings the Tribunal took a different view of those deeds is not a conclusive circumstance. The decision of the Tribunal reached during those proceedings does not operate as resjudicata. As seen earlier there was great deal more evidence before Tribunal during the present proceedings relating to those gift deeds.

9. In the result these appeals fail and the same are dismissed with costs. One hearing fee.