

Supreme Court of India

Commissioner Of Gift-Tax, Kerala vs George Kuruvilla on 27 January, 1969

Equivalent citations: 1969 74 ITR 328 SC, (1970) 3 SCC 817

Author: J Shah

Bench: A G Shah, V Ramaswami

JUDGMENT J.C. Shah, J.

1. The respondent claimed exemption from payment of gift- in respect of certain properties gifted by him (in favour of his son, Thomas relying on the provision of Section 5(1), Clause (xiv), of the Gift-tax Act. Tribunal upheld the claim of the respondent. The High Court of Kerala agreed with the Tribunal in a case referred to it.

2. The Tribunal did not annex the deed of gift, on the interpretation which the liability to pay the tax had to be determined, to the statement the case. An attempt was made in the High Court on behalf of the department to tender in evidence a copy of the gift deed. The High Court rightly rejected the application, because the High Court could not add to the state-Kent of the case. The High Court-proceeded to observe that they were not Satisfied that the gift deed formed part of the record. About the correctness of this statement we entertain some doubt. The respondent was claiming the benefit of an exemption from liability to pay tax in respect of a transaction of gift made by him and the burden of proving facts which entitled him to the exemption lay upon the respondent. We are unable to agree that the question as to the liability or otherwise of the respondent to pay the tax could be determined by the departmental authorities and the Tribunal without even looking at the deed of gift. We direct that the Tribunal be called upon to submit a supplementary statement of case and annex therewith the deed of gift dated February 3, 1960, executed by the respondent in favour of the children. After the supplementary statement is received by this Court the appeal will be placed for hearing.

3. Mr. Pai on behalf of the respondent has contended that the appellant should be called upon to pay the costs of this hearing, because it is on account of the laches of the appellant that this adjournment is necessitated. We do not think that at this stage we would be justified in passing any order relating to costs.