Deputy Commissioner Of Income-Tax vs Priyambhai Bipinbhai Mehta on 21 December, 1995

Equivalent citations: [1996]58ITD11(AHD)

ORDER

B.L. Chhibber, Accountant Member

1. The common grievance raised in these four appeals by the Revenue reads as under :

> The ld CGT(A) has erred in law and on facts in holding that the gifts made by the appellant are as a result of family settlement and, therefore, they do not amount to a transfer and, therefore, are not liable to gift-tax.

2. All the above mentioned four assessees filed returns of gift showing gift of Rupees 'NIL' on the ground that the gifts made by them were exempted from the provisions of the Gift-tax Act because the amounts paid were not gifts but in consideration of the family arrangement/settlement. The following are the details of these gifts :-

Sr. No.	Donor	Amount Rs.	Donee
1.	Bipinbhai Vadilal Mehta HUF	4,25,000	Vimlaben Vadilal
2.	Bipinbhai Vadilal Mehta Indl.	4,30,000	Suhas Chhaya Family Trust
3.	Bipinbhai Vadilal Mehta	1,00,000	Vimlaben Vadilal
4.	Priyambhai Bipinbhai Mehta	6,00,000	Vimlaben Vadilal
5.	Nirmayaben B. Mehta Family Trust.	4,29,857	Suhas Chhaya

A Memorandun of Understanding (pages 23 to 42 of the paper book) was executed between (i) Shri Bipinbhai Vadilal, (ii) Smt. Nirmayaben B. Mehta and (iii) Shri Priyambhai B. Mehta on THE ONE PART; and Shri Suhasbhai Vadilal Mehta and his wife Smt. Chhayaben Suhasbhai Mehta on THE OTHER PART.

3. The preamble to this Memorandum reads as under:

> (1) Shri Vadilal Lallubhai Mehta and his wife Smt. Vimlaben Vadilal Mehta have two sons Shri Bipinbhai Vadilal Mehta and Shri Suhasbhai Vadilal Mehta and four daughters-

(i) Smt. Mrudulaben Biharilal

(ii) Smt. Veenaben Anilbhai

(iii) Smt. Ilaben Anupambhai and

(iv) Smt. Jayshreeben Rameshbhai. All the four daughters are married.

(2) Shri Vadilal Lallubhai Mehta and his wife Smt. Vimlaben Vadilal Mehta and each of their sons and daughters own and hold property -movable and immovable, separately and independently.

(3) This understanding does not concern in any manner the property owned and held by Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta and each of the four daughters. This understanding is confined only to and between Shri Bipinbhai Vadilal Mehta and Shri Suhasbhai Vadilal Mehta and concerning some of the properties held by each of them.

(4) There are also HUFs and private Trusts of Bipinbhai Vadilal Mehta and Suhasbhai Vadilal Mehta and also the Trust known as Vimlaben Vadilal Trust and the HUF known as Vadilal Lallubhai HUF in which Bipinbhai Vadilal Mehta and Suhasbhai Vadilal Mehta and their wives and sons are the only members. Some property and shares held by the above Trusts and the above HUFs are also the subject matter of this understanding. A list of such Trusts and HUFs is given in Annexure I hereto.

(5) There is a Public Limited Company known as Sayaji Mills Ltd. and there are following private companies :

(i) Industrial Machinery Manufacturers Pr. Ltd.

(ii) C. Doctor & Co. Pr. Ltd.

(iii) Mehta Machinery Manufacturers Pr. Ltd. (iv) Oriental Corporation Pr. Ltd., and

(v) C.V. Mehta Pr. Ltd.

At present all these companies are managed by Shri Vadilal Lallubhai Mehta and Shri Suhasbhai Vadilal Mehta.

Bipinbhai Vadilal Mehta and Suhasbhai Vadilal Mehta and their Trusts and HUFs and Vimlaben Vadilal Trust and Vadilal Lallubhai Mehta HUF hold shares in these six companies. Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta also hold shares in these companies but they are not the subject matter of this understanding.

(6) The main object of this understanding is to entrust the management of some of the Companies to Bipinbhai Vadilal Mehta and of others to Suhashbhai Vadilal Mehta by mutual transfer of shares and other procedures and by transfer of some properties from one to the other.

(7) Bipinbhai Vadilal Mehta and Suhashbhai Vadilal Mehta have arrived at this understanding with the blessings of Shri Vadilal Lallubhai Mehta and Smt. Vimlaben Vadilal Mehta and under their guidance and advice and for increasing love and peace in the family.

4. The Gift-tax Officer rejected the claim of the assessees and subjected the amounts gifted by each member to gift-tax on the following grounds :

> (1) On going through the details of the preamble it is seen that there does not appear to be a family arrangement as claimed by the assessee. What is a family has not been defined either under the Gift-tax Act or any other direct tax Act like Wealth-tax Act and Income-tax Act. In the common parlance, a family means, a spouse and the legitimate children. The word "family" includes wife and legitimate children as was observed by the English Court in the case of Pigg v. Clark [1876] 3 Ch. D. 672. Though claimed in the Memorandum of Understanding, the assessee has not made any arrangement with the members of his family.
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> (2) In fact, there are several families which are mentioned in the Memorandum of Understanding. One family is represented by the assessee (Indl)'s father Shri Vadilal Lallubhai Mehta, the other family is represented by the assessee's brother Shri Suhasbhai Vadilal Mehta and the third family is represented by the assessee himself as an individual.
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> (3) It has been expressly mentioned in the Memorandum of Understanding that the assessee's parents and each of their two sons and daughters mentioned above own and held movable and immovable property separately and independently. In fact, each of them is also separately assessed to income-tax and wealth-tax. Each set of family had got its HUF having different members.
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> (4) The donees Vimlaben Vadilal Mehta and Suhasbhai Chhaya Family Trust are not the parties to the Memorandum of Understanding.
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> (5) It has nowhere been mentioned in the Memorandum of Understanding as to how the amounts transferred have been arrived at for making gifts. No proper schedule of properties indicating their value and allocation of share of each person has been drawn up.

The Gift-tax Officer accordingly concluded "The settlement contemplated in the Memorandum of Understanding is of a private and personal nature and is devoid of the trappings of a genuine family settlement." He accordingly treated the transactions as transfer within the meaning of Section 4(1)(a) of the Gift-tax Act and subjected the same to the levy of gift-tax.

5. Before the CIT(A) it was submitted that the common fountain-head of the family was Late Vadilal Lallubhai Mehta. He was about 78 years and he decided that his two sons Bipinbhai and Suhasbhai should live in peace and he decided to make a family arrangement by which the gross holdings of various companies and the assets belonging to the companies were resolved according to the details as per the Memorandum of Understanding. As the entire assets were given over to these two branches and no part of the assets was given to Smt. Vimlaben Vadilal, wife of late Vadilal Lallubhai Mehta and mother of the two parties to the Memorandum of Understanding, it was decided that the elder brother i.e. Shri Bipinbhai Vadilal Mehta and his group will make certain gifts to his mother and to Suhasbhai or his nominees in order to bring some parity between the two unequal shares which each party got. It was not practical to divide the assets by meets and bounds and therefore this Memorandum of Understanding was signed on 30-1 -1982. It was further submitted that it is not necessary that family arrangement should be to sort out an existing dispute. The arrangements can be made to foresee and forestall the future disputes that may arise between the different members of the family particularly after the death of the common fountain-head. The Commissioner (Appeals)'s attention was drawn to Clause 7 of the preamble to the Memorandum of Understanding (reproduced supra). Reliance was placed on the followingvauthorities :

> (1) Ramchandradas v. Girijanandan Devi AIR 1966 SC 323 (2) Arvind Chandulal v. CIT [1983] 140 ITR 241 (Guj.) (3) Kale v. Dy. Director of Consolidation 1976 SCC 119 (4) CIT v. R. Ponnammal[1987] 164 ITR 706 (Mad.) (5) Maturi Pullaiah v. Maturi Narasimham AIR 1966 SC 1836 (6) Ziauddin Ahmed v. CGT [1976] 102 ITR 253 (Gauhati).

After considering the arguments put before him, the CGT(A) held that the entire arrangement had been made as a family settlement in order to avoid any difficulty that may arise in future. Since the amounts had been transferred in accordance with the family settlement, the assessees were not liable to gift-tax. He remarked "I fully agree with the ultimate conclusion drawn by the Hon'ble Gauhati High Court that the transactions does not amount to gift within the meaning of Section 4(1)(a) of the Gift-tax Act." He accordingly reversed the finding of the GTO.

6. Shri Manoj Misra, the learned D.R. submitted that the entire arrangement by way of Memorandum of Understanding was to bypass the provisions of the Gift-tax Act. Referring to the different clauses of the Memorandum of Understanding, he pointed out that the donees were not parties to this Memorandum of Understanding; they had no antecedent title, claim of interest in the properties owned by the donors. According to the learned D.R. the so-called family settlement was not a bona fide one as there were no family disputes real or imaginary which were to be resolved by fair and equitable division or allotment of properties between various members of the family. In this connection he drew our attention to para-7 of the preamble of the Memorandum of Understanding reproduced supra. The learned D.R. submitted that the gifts were made in cash and the gifted amounts did not form part of the Memorandum of Understanding. In support of his contentions, he relied upon the order of the Ahmedabad Bench 'A' in the case of GTO v. Shamjibhai Khimjibhai Patel [1994] 51 ITD 484 ; the judgment of the Hon'ble Andhra Pradesh High Court in the case of N. Durgaiah v. CGT [1975] 99 ITR 477 and the judgment of the Supreme Court in the case of Kale (supra).

7. Shri J.P. Shah, the learned counsel for the assessee took us through various clauses of the Memorandum of Understanding especially paras 16,32 and 33 to prove that the donees were parties to the Memorandum of Understanding. Paras 16, 32 and 33 read as under :

> 16. Over and above the transfer of Vasana land as mentioned above, Bipinbhai Vadilal Mehta shall pay to Shri Suhasbhai Vadilal Mehta by way of gift such amount as may be decided by Shri Vadilal Lallubhai Mehta and the payment of such amount is also a basic and integral part of this understanding. The decision of Shri Vadilal Lallubhai Mehta in this respect shall be final and binding on both the parties."

(32). C.V. Mehta Pr. Ltd., on being transferred to Bipinbhai Vadilal Mehta shall have no claim or demand of any kind whatsoever against Vadilal Lallubhai Mehta or Suhasbhai Vadilal Mehta or Vimlaben Vadilal Mehta or Chhayaben Suhasbhai Mehta or any of them in their capacity as Directors of the said company in respect of anything done or omitted to be done by any one of them as Directors of the Company and Bipinbhai Vadilal Mehta who will be holding overwhelming majority shares of the company agrees to indemnify and always keep indemnified Vadilal Lallubhai Mehta, Vimlaben Vadilal Mehta, Suhasbhai Vadilal Mehta and Chhayaben Suhasbhai Mehta against any such claim, demand, action or cost in respect of anything done or omitted to be done by them or any one of them in the management of C.V. Mehta Pr. Ltd., and/or in connection with its business affairs and transactions. C.V. Mehta Pr. Ltd. shall, in a general meeting, adopt a resolution confirming this indemnity to the past Directors."

33. Bipinbhai Vadilal Mehta as the major shareholder of Sayaji Mills Ltd., shall be bound to see that Sayaji Mills Ltd., does not make any claim or demand of any kind whatsoever against Vadilal Lallubhai Mehta or Suhasbhai Vadilal Mehta or any other Director of Sayaji Mills Ltd., for anything done or omitted to be done by them or any one of them as Managing Director, Chairman or Director of the said Company and Bhipinbhai Vadilal Mehta hereby agrees to indemnify and always keep indemnified Vadilal Lallubhai Mehta and Suhasbhai Vadilal Mehta and the Directors of Sayaji Mills Ltd., against any such claim, demand, action or cost by Sayaji Mills Ltd., in respect of anything done or omitted to be done by them or any one of them in the management of the said Company or in connection with business affairs and transactions of the company. The Board of Directors of Sayaji Mills Ltd., shall pass a resolution confirming this indemnity to the past Directors.

7.1 The learned counsel for the assessee further submitted that an existence of a dispute is not necessary for entering into a family arrangement and in any case antecedent title is not a condition precedent for family arrangement. What is required is that an arrangement is validly entered into between different members of the family. In support of this contention he relied upon the following authorities :

(i) Maharaja Ram Narayan Singh v. Ram Saran Lal AIR 1918 PC 196

(ii) Ramgowda Anangowda Patil v. Bhausaheb AIR 1927 PC 227.

The learned counsel for the assessee quoted the following paragraph from the judgment of the Supreme Court in the case of Maluri Pullaiah (supra) to further support his contention that the courts lean in favour of family arrangement:

> Briefly, stated, though conflict of legal claims in praesenti or in futuro is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.
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> The learned counsel for the assessee, on the basis of above authorities concluded that the family arrangement arrived at was a bona fide one ; it was duly acted upon and hence the amounts transferred in pursuance of the family arrangement did not constitute gifts and are not liable to be taxed under the Gift-tax Act.

8. We have considered the rival submissions and perused the facts on record. In our opinion, the issue involved in these appeals stands squarely covered in favour of the Revenue and against the assessee by the decision of the ITAT Ahrnedabad Bench 'A' in the case of Shamjibhai Khimjibhai Patel (supra) to which one of us (AM) was a party and the judgment of the Hon'ble Andhra Pradesh High Court in the case of N. Durgaiah (supra) and the judgment of the Supreme Court in the case of Kale(suprd) relied upon by the learned D.R. 8.1 In Shamjibhai Khimjibhai Patel's case (supra) the assessee, an individual, had, during the relevant year, transferred without any consideration some equity shares of a limited company and a plot of land to certain members of his family and claimed that he was not liable to be assessed to gift-tax on such transfer as the same was effected in pursuance to a family arrangement. The GTO held that the said transfer constituted gift as the same was made without consideration and that the family arrangement was a self-serving arrangement. On appeal, the CIT(A) held that the assessee has executed a deed of family arrangement under which the conveyancing in respect of immovable property had taken place and accordingly the assessee was not liable to gift-tax in respect of transfer of the assets involved. On appeal, the Tribunal held as under:

> In the instant case the assets transferred by the assessee were self-acquired assets. The other members had no rights over such assets. When read as a whole, the deed of settlement was to bypass the provisions of the Act. There was no dispute amongst the members of the family and everything was going on fine when the assessee, perhaps due to his old age, thought of transferring the aforesaid two assets to some of his family members without consideration. The family settlement must be bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between various members of the family and the said settlement must be voluntary and should not be induced by fraud, coercion or undue inference. Further, the members who may be parties to the family arrangement must

have some antecedent title, claim or interest, even a possible claim, in the property which is acknowledged by the parties in the settlement. In the instant case, the family of the assessee, as per the deed of settlement, consisted of as many as 28 members but the benefits of the so-called arrangement went to only a few. The distribution of assets in the instant case could not be called a bona fide family arrangement. In all the judgments relied upon by the assessee, there were real disputes and bona fide family settlements were arrived at so as to resolve such disputes and rival claims by a fair and equitable division. Therefore, the reliance placed by the assessee on the judgments cited by him was of no assistance to him.

In N. Durgaiah's case (supra) the assessee executed a registered deed of settlement on March 26, 1962, conveying certain immovable properties to his five sons and two daughters out of whom one of the sons was a minor in whose favour a house worth Rs. 64,800 was settled. The assessee contended before the GTO that the transaction was in the nature of a family arrangement which did not amount to a taxable gift under the Act. The GTO rejected this contention. On appeal, before the A AC, the assessee further contended that the gift made to his minor son at the time of the settlement should be exempted. The AAC negatived the claim of the assessee. On further appeal, the Tribunal also rejected the contention of the assessee. On a reference, the Hon'ble Andhra Pradesh High Court held that in order to constitute a family arrangement, there must be an agreement or arrangement amongst the members of the joint family who wish to avoid any plausible or possible disputes and secure peace and harmony amongst the members as well as the properties belonging to them. The Hon'ble High Court after quoting the ratio laid down by the Supreme Court in the case of Maturi Pullaiah (supra) relied upon by the assessee's counsel, reproduced (supra) in para 7.1, held as under :

The aforesaid dictum would establish beyond doubt that in order to constitute a family arrangement, there must be an agreement or arrangement amongst the members of the joint family who wish to avoid any plausible or possible disputes and secure peace and harmony amongst the members as well as the properties belonging to them. Unless and until the existence of an arrangement or agreement is established, there can be no family arrangement. Where one of the parties executes a document styled as settlement deed whereunder some of the properties exclusively belonging to him as his self-acquired properties are settled in favour of the other members of the family, the terms of such document, do not by any stretch of reasoning amount to a family arrangement. There is no essence of a family arrangement in such a transaction as the same is only a unilateral one. Indisputably for such a document the other parties who are only beneficiaries cannot be called parties to the transaction in the sense that they have entered into such an agreement or arrangement.

In Kale's case (supra), the Hon'ble Supreme Court has laid down the following propositions in the matter of the binding effect and the essentials of a family

settlement, which are as follows : (P. 812 of AIR):

In other words, to put the Binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions :-

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment or properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.;

(3) The family arrangement may be even oral in which case no registration is necessary ;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the mischief of Section 17(2) (sic) [section 17 (1)(b)] of the Registration Act and is, therefore, not compulsorily registrable. ;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim of interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same ;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement;

8.2. We do admit that the Courts lean in favour of family arrangement but at the same time the Courts have laid down guidelines as detailed in the preceding paragraphs. Every family arrangement has to be scanned in the light of such guidelines, the most important of which is that the family arrangement must be bona fide one so as to resolve family disputes and rival claims by a fair and eq uitable division or allotment of properties between various members of the family and that the members who may be parties to the family arrangement must have some antecedent title, claim or

interest or even a possible claim in the property which is acknowledged by the parties to the settlement.

In the instant cases before us, Shri Bipinbhai Vadilal Mehta transferred a sum of Rs. 4,25,000 out of HUF funds to his mother Smt. Vimlaben Vadilal. Obviously the funds belonged to the HUF of which Bipinbhai Vadilal Mehta was the Karta and Smt. Vimlaben Vadilal did not have any claim or interest or even a possible claim in the property of the HUF. Similarly, Shri Bipinbhai Vadilal Mehta transferred a sum of Rs. 1,00,000 to his mother Vimlaben Vadilal from his individual funds which were his self-acquired assets and Smt. Vimlaben Vadilal Mehta had no antecedent title, claim or interest therein. Again Shri Bipinbhai Vadilal Mehta transferred a sum of Rs. 4,30,000 out of his self-acquired funds to Suhas Chhaya Family Trust. It cannot be said that Suhas Chhaya Family Trust which was a trust created for the benefit of the members of Suhasbhai Vadilal Mehta, the brother of Bipinbhai Vadilal Mehta, had some antecedent title, claim or interest or even possible claim in his individual property. Shri Priyambhai Bipinbhai Mehta transferred a sum of Rs. 6 lacs to his grand mother Vimlaben Vadilal Mehta out of his self^acquired funds. It cannot be said that Smt. Vimlaben had an antecedent title, claim or interest in the amount so transferred. Similarly, Smt. Nirmayaben B. Mehta wife of Bipinbhai Vadilal Mehta transferred a sum of Rs. 4,29,857 to Suhas Chhaya Family Trust, a trust which was created for the benefit of the family members of Shri Suhasbhai and which trust was not a member of the family. A perusal of the Memorandum of Understanding, the relevant portions of which have been reproduced (supra), reveals that it was between two separate families viz. the family of Bipinbhai Vadilal Mehta and Suhasbhai Mehta and the donees viz. Smt. Vimlaben Vadilal Mehta and Suhas Chhaya Family Trust are not the parties to the said Memorandum of Understanding. The donees are not parties to the agreement but are only beneficiaries of the agreement. A perusal of the Memorandum of Understanding further reveals that there were no disputes between different members of the family and was entered into "for increasing love and peace in the family". It has nowhere been mentioned in the Memorandum of Understanding how the amounts transferred have been arrived at for making the gifts and accordingly even if it is assumed that the amounts were transferred in pursuance of the family arrangement/settlement, it cannot be said that the distribution was fair and equitable. Under the circumstances, it cannot be said that the settlement contemplated in the Memorandum of Understanding is a bona fide one so as to resolve family disputes and rival claims between various members of the family. In fact, the settlement contemplated in the Memorandum of Understanding is of a private and personal nature and was entered into between the two families (not one) with the object of bypassing the provisions of the Gift-tax Act. The Gift-tax Act was brought on the statute book in the year 1958 with a specific purpose. While introducing the Finance Bill, 1958, the then Hon'ble Finance Minister explained "the object of imposing gift-tax" said as under :

> The idea of a gift-tax is not new. Many Honourable Members have stressed both in this House and the other House the need for introducing such a measure at an early date. The transfer of properties through gifts to one's near relations or associates is one of the commonest forms of avoidance of not only Estate Duty but also of Income-tax, Wealth-tax and even Expenditure-tax. The only way of effectively checking this practice is to levy a tax on gifts. Such a tax is already being levied in other countries, for example, U.S.A., Canada, Japan and Australia. The Taxation

> Enquiry Commission also had accepted the gift-tax as theoretically an attractive proposition.
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> In our considered opinion the provisions of the Gift-tax Act must be interpreted in consonance with the avowed aims and objects of the Legislature in enacting these provisions and to further these and not to defeat these provisions. The whole arrangement entered into by the assessees by way of enacting a Memorandum of Understanding is to defeat the provisions of the Gift-tax Act.

9. While reversing the findings of the GTO, the learned CGT(A) has heavily relied upon the judgment of the Gauhati High Court in the case of Ziauddin Ahmed (supm) without appreciating the fact that the facts of that case are distinguishable from the facts of the case before us. In that case the assessee belonged to Muslim Community who had children from different wives "not having good relations and there were family quarrels". When the matter took serious turn in 1959, certain family arrangements were devised as a result of which certain shares were transferred by the assessee and his children to other children. It was under these circumstances and peculiar background, that the Hon'ble Gauhati High Court held that it was a bona fide family arrangement; but in the case before us as pointed out (supra), there was no real dispute amongst various members of the family. The ratio laid down by the Gauhati High Court will accordingly not apply to the facts and circumstances of the present case.

10. In the light of the above discussion, we reverse the findings of the CGT(A) and restore those of the GTO.

11. In the result, the appeals are allowed.