PETITIONER:
COMMISSIONER OFINCOME TAX, KANPUR

Vs.

RESPONDENT:
DR. R.S. GUPTA

DATE OF JUDGMENT03/02/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
NATRAJAN, S. (J)

CITATION:
1987 AIR 785 1987 SCR (2) 121
1987 SCC (2) 84 JT 1987 (1) 340
1987 SCALE (1)225
CITATOR INFO :
R 1987 SC 791 (6)
NF 1989 SC 640 (15)

ACT:
Sections 4, 27(1) and 29--Wealth tax--Gift--Assessee directing firm by a letter to debit his account of certain amounts and credit respective accounts of his sons and grandsons--Gifts made out of love and affection--Entries in account books--Whether constitute valid gift-Whether includible in net wealth of assessee--Absence of cash balance with the firm or overdraft facilities with the bank--Effect of.

HEADNOTE:
The Income Tax Officer included in the net wealth of the respondent-assessee for the assessement year 1957-58, two sums, viz., Rs. 1,50,000 and Rs.67,560/12/- which the assessee claimed to have gifted. It is stated that on January 1, 1957 the respondent-assessee, by a letter directed a company in which he maintained an account, to debit his account to the extent of Rs. 1,50,000 and credit in the names of his two sons and grandsons various sums, as he had decided to give away these amounts to them out of love and affection. The company carried out the instructions and relevant debit and credit entries were made in the respective accounts. On the same day, by two separate letters, the gifts were accepted by the sons and later on these amounts were withdrawn by the respective donees. In the case of second gift, oral instructions were given for transferring the amounts standing to his credit.

The respondent-assessee having failed before the Income Tax Officer and the Appellate Assistant Commissioner, appealed to the Income Tax Appellate Tribunal and contended that the first company was carrying on the business of banking and hence the gifts in question were valid, and that the Income Tax Officer and the Appellate Assistant Commissioner had wrongly included these amounts in his net wealth and in the case of second gift, the assessee claimed that the amounts were gifted by him by transfer entries.

The Tribunal found that there was no evidence that the first company was carrying on any banking business, and in

the case of second gift, the sum was available with the company. It, therefore, held that the first company was not carrying on banking business, and in the
122
second case, there was no valid gift. It, however, referred the matter to the High Court.

The High Court held that the Tribunal was not right in holding that the assessee did not make valid gifts and in holding that the amounts were rightly included in the net wealth of the assessee.

Allowing the appeal by the Revenue, this Court,

HELD: 1. In order to constitute a valid gift there must be an existing property. In case of entries in the books of account by credit and debit, the sums should be available on the date of gift in the account of the firm whose accounts are said to be credited or debited. In the case of banking companies or other firms and companies who have overdraft facilities, even if the sums are not in credit of the donor and are not with such companies or firms, gifts might be possible by adjustment of book entries. But in the cases of non-banking companies or firms, if these companies or firms do not have overdraft facilities, it is not possible to make valid gift if sums or funds are not available. [126E-G]

2. It is possible in certain circumstances for a donor to make a valid gift by instructing a firm or a company or H.U.F., in which the donor has an account to give effect to the gift by debiting his account and crediting the account in the name of the donee. But in such cases merely book entries would not suffice. The circumstances must be such as to make it clear that there were sufficient funds at the disposal of the donor by reason of which he could make the gift by such book entries. The firm in which the donor may have account may or may not have sufficient cash balance but it must have sufficient provision for overdraft with the bank on the basis of which it could honour instructions given by the assessee. [126H;127A-B]

3. Each case must be decided on the facts of that case. Where the assessee has a credit account with a firm or with a family or with a banking company and that sum is available to that firm or the company or H.U.F. on the date of the gift, then a valid gift by book entries might be possible. But where a sum was not available with the firm or the H.U.F. or a company which was not a banking company or which had no overdraft facility, by mere book entries, even though there was acceptance of that gift by the donee a valid gift would not be effectuated. [131D-E]

4. In the instant case, the entries in the books of account could not effectuate valid gifts. The only sum which could be taken by the donee was Rs.4,000 in the case of the first company, which had no
123
overdraft facility with the bank. Thus, there was no existing goods to be parted. The High Court was, therefore, in error in answering the questions against the Revenue. [132E-F]

[Appeal allowed. Order and Judgment of the High Court set aside.]

Gopal Raj Swarup v, Commissioner of Wealth-tax, Lucknow, 77 I.T.R. 9 12; Indian Glass Agency v. Commissioner of Income-Tax, New Delhi, 137 I.T.R. 245; New India Colour Co. v. Commissioner of Income Tax, New Delhi, 80 I.T.R. 206; Commissioner of Income Tax, West Bengal 111 v. Ashok Glass Works, 103 I.T.R. 379; Commissioner of Gift Tax, West Bengal 111 v. Tarachand Meghraj, 109 I.T.R. 775; Chimanbhai Lalbhai v. Commissioner of Income Tax (Central), Bombay, 34 I.T.R.

259; Commissioner of Income Tax, Ahmedabad v. Digvijay-singhji Tin Factory, 36 I.T.R. 72; Commissioner of Income-Tax, Bombay City-I1 v. Popatlal Mulji, 108 I.T.R. 4; Addl. Commissioner of Income-Tax, Poona v. Dharsev Keshavji, 143 I.T.R. 509; Commissioner of Income-Tax, Poona v. Devinchand Uttamchand, 148 I.T.R 530; Baliram Mathuradas (By his Legal Heir, Madanlal Paliram) v. Commissioner of Income-Tax, Bombay City-H, 59 I.T.R. 278; Virji Devshi v. Commissioner of Income-Tax, Bombay, 65 I.T.R. 291; E.M.V. Muthappa Chettiar v. Commisioner of Income-Tax, Madras, 13 I.T.R 311; Mrs. Ida L. Chambers and Three Others v. Kelland Huxford Chambers, 1941 I.L.R. 232; Balimal Nawal Kishore v. Commissioner of Income-Tax, Punjab, 62 I.T.R. 669; Sukhlal Sheo Narain v. Commissioner of Wealth-Tax, Haryana, 89 I.T.R. 157; Abba Dada and Company v. Commissioner of Income-Tax, Burma, 6 I.T.R. 470; K.P. Brothers v. Commissioner of Income-tax, New Delhi, 42 I.T.R 650; Commissioner of Income Tax, U.P.v. Smt. 'Shyamo Bibi, 59 I.T.R. 1; Commissioner of Wealth-Tax v. Gulab Rai Govind Prasad, 85 I.T.R. 308; Bhau Ram Jawaharmal v. Commissioner of Income Tax, ' U.P., 82 I.T.R. 772; Gopal Jalan v. Commissioner of Income-Tax, U.P., 86 I.T.R. 317; Phool Chand Gajanand v. Commissioner of Income-Tax, U.P., 89 I.T.R. 148; Controller of Estate Duty, Punjab, Haryana, J. & K., H.P. and Chandigarh v. Kamlavati, 120 I.T.R. 456, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1713(NT) of 1973.

From the. Judgment and Order dated 6.1.1971 of the Allahabad High Court in Wealth Tax Reference No. 285 of 1965

124

S.C. Manchanda and Ms. A. Subhashini for the Appellant.

Respondent-in-person. (Not present )

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. The appeal under section 29(1) of the Wealth-Tax Act, 1957 (hereinafter called the Act) is directed against the judgment and order of the High Court of Allahabad dated 6th of January 1971. The questions involved before the Allahabad High Court in the reference under section 27(1) of the Act were as follows:

> (1) Whether, on the facts and in the circumstances of the case, the Tribunal rightly held that the assessee did not make valid gifts aggregating Rs. 1,50,000 on 1.1. 1957?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal rightly held that the assessee did not validly assign Rs. 1,50,000 in favour of his sons and grand sons by his letter dated 1.1. 1957?
>
> (3) Whether, on the facts and in the circumstances of the case, the Tribunal tightly held that the sum of Rs. 1,50,000 was properly included in the assessee's net wealth?
>
> (4) Whether, on the facts and in the circumstances of the case, the Tribunal rightly held that the assessee did not make valid gifts aggregating Rs.67,560/-
>
> (5) Whether, on the facts and in the circumstances of the case, the Tribunal rightly held that the sum of Rs.67,560/12/- was rightly included in the net wealth of the

assessee?

The case relates to the assessment year 1957-58 and the relevant date of valuation was 31st March, 1957. The assessee, Dr. R.S. Gupta had maintained an account in the books of Messrs. Tika Ram and Sons Pvt. Ltd. On 1st January, 1957, the account showed a credit of Rs. 1,50,740. On that day, the assessee had addressed a letter to the Company stating that he had decided to gift away for love and affection various sums to the following persons:

125

Ved Prakash Gupta ... Rs.25,000
Om Prakash Gupta ... Rs.25,000
Hari Prakash Gupta ... Rs.50,000
Pravin Kumar Gupta .. Rs. 50,000

By that letter the assessee had directed the Company to debit his account to the extent of Rs. 1,50,000 and credit the respective amounts in the names of the aforesaid persons. It appears further that copies of this letter were sent to one Om Prakash Gupta and Ved Prakash Gupta. There was no dispute that instructions of the assessee were carried out by the Company and relevant debit and credit entries were made in the respective accounts. On the same day i.e. on ist January, 1957, Om Parkash Gupta wrote to the assessee, his father, thanking him for the gift of Rs.25,000 made in his favour and the gift of Rs.50,000 in favour of his son Pravin. A similar letter was written by Ved Prakesh thanking the assessee, his father, for the gift of Rs.25,000 made to him and Rs.50,000 gifted to his son. It must be mentioned, however, that the company i.e. Messrs Tika Ram and Sons. Pvt. Ltd. was stated to be running an oil mill and carrying on business as grain tillers. contractors and brick-kiln owners. It was also stated to be carrying on business of advancing money and taking money on loan when necessary. But it appears that it was admitted position that Tika Ram & Sons had a cash balance of Rs.4000 only on 1.1.1957 and it did not have any overdraft facilities with any bank. The respective donees were stated to have later on withdrawn amounts from the amounts so transferred to their accounts. The assessee contended that a total sum of Rs. 1,50,000 was validly gifted by him to his sons and grand sons and hence the amounts had been wrongly included in his net wealth by the Income-Tax Officer and the Appellate Assistant Commissioner. It was his contention that Tika Ram & Sons carried on the business of banking and hence the gifts were valid. But there was no evidence that Tika Ram and Sons were carrying on any banking business.

The Tribunal held that they were not carrying on banking business. The main question therefore that falls for consideration is whether gifts in question made by transfer entries in the books of debtor company were valid gifts even though the debtor company was not carrying on business of banking and had no cash in hand for the amount in question on that date. Gift is defined in section 122 of the Transfer of Property Act, 1882 as transfer of certain existing movable or immovable property made voluntarily and without consideration by

126

one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Section 123 of the said Act deals with how transfers are effected and stipulates, inter alia, that for the purpose of making a gift of movable property as in this case, the transfer must be effected either by a registered instrument signed by the donor and attested or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

The next contention was regarding the inclusion of net wealth a sum of Rs.67,560/12/- standing to the credit of the assessee in the books of M/s Pearls & Beads. The assessee claimed to have gifted the said amounts by transfer entries in the books of M/s Pearls & Beads on 30th March, 1957. No letter as in the previous case was addressed by the assessee but only oral instructions were said to have been given. The Tribunal held that there was no valid gifts. There was no evidence, it appears, that the said sum was available with the said firm of M/s Pearls & Beads.

The High Court in view of the decision of the Division Bench of the Allahabad High Court in the case of Gopal Raj Swarup v. Commissioner of Wealth-tax, Lucknow, 77 I.T.R. 912 answered the first question in the negative and so far as the second question is concerned, it declined to answer as it did not arise in view of the answer given to the first question and the questions Nos. 3,4 and 5 were answered in the negative. Aggrieved by the said decision, the revenue has come up in appeal.

In order to constitute a valid gift there must be an existing property. In case of entries in the books of account by credit and debit, the sums should be available on the date of gift in the account of the firm whose accounts are said to be credited or debited. In the case of banking companies or other firms and companies who have overdraft facilities, even if the sums are not in credit of the donor and are not with such companies or firms, gifts might be possible by adjustment of the book entries. But in the cases of non-banking companies or firms, if these companies or firms do not have overdraft facilities, it is not possible to make valid gift if sums or funds are not available. This question has been examined by the various High Courts.

It is possible in certain circumstances for a donor to make a valid gift by instructing a firm or a company or a H.U.F. in which the donor has an account to give effect to the gift by debiting his account and crediting the account in the name of the donee. But in such cases
127
merely books entries would not suffice. The circumstances must be such as to make it clear that there were sufficient funds at the disposal of the donor by reason of which he could make the gift by such book entries. The firm in which the donor may have account may or may not have sufficient cash balance but it must have sufficient provision for overdraft with the bank on the basis it could honour instructions given by the assessee. This position of law has been referred to and reiterated by the Bench decision of the Delhi High Court in the case of India Glass Agency v. Commissioner of Income-Tax, New Delhi, 137 I.T.R. 245. Justice Ranganathan of the Delhi High Court after referring to several authorities has observed that book entries may be sufficient only when circumstances make it clear that the gift was genuine and the firms where accounts transfer are effected must have sufficient cash in hand or sufficient provision for overdraft facility upon the basis of which it would honour the instructions given by the assessee. The assessee must also have sufficient credit balance to enable him to make the gift. Reference may also be made for this proposition to the decision of the Delhi High Court in New India Colour Co. v. Commissioner of Income:Tax, New Delhi, 80 I.T.R. 206

The effect of the two aforesaid decisions of the learned fudges of the Delhi High Court indicates that in case there was not sufficient cash balance from out of which the amount gifted could be physically given to the donee, more entries

in the books of account in the form would not constitute delivery of possession over the gifted property to the donee and gift in such case will not be valid. The position, however, might be different if such firms or companies or H.U.F. in whose accounts gifts are effected have overdraft facilities.

The Calcutta High Court had occasion to discuss this aspect in the case of Commissioner of Income-Tax, West Bengal 111 v. Ashok Glass Works, 103 I.T.R 379. There it was held on facts that the entries had been made contemporaneously showed that the transaction was genuine and there was no suggestion that the interests which were credited in the accounts of the minor donees by the firm which carried on money-lending business also were fictitious. The Tribunal therefore, it was found, tightly held that the gifts were valid and the interest paid in respect of the accounts standing in the name of the donees was allowable as a deduction in the hands of the assessee firm.

The Calcutta High Court had to consider this in the case of Commissioner of Gift-Tax, West Bengal 111 v. Tarachand Maghraj, 109 I.T.R. 775. There the High Court after discussing various decisions

128

including certain decisions of the Allahabad High Court which we shall presently note and the provisions of section 122 of the Transfer of Property Act, 1882, and the Sale of Goods Act. held that under section 123 of the Transfer of Property Act, in case of gift of movable property, the transfer may be effected by delivery. Such delivery may be in the same way as goods sold may be delivered. Section 33 of the Sale of goods Act permitted the parties to deliver by any manner or method which the parties agreed would be treated as delivery or which had the effect of putting the goods in the possession of the buyer. In that case, it was found that the effect of the transaction in that case was to put the amounts in the possession of the assessee who was authorised to hold the amounts on behalf of the donees which resulted in a delivery of the amounts within the meaning of the Sale of Goods Act. The Court, however, pointed out that it was held that there was no valid gift on the date of the entries, then it could not be held that, subsequently, when the money was transferred by further entries in the same books, it resulted in a valid gift.

In the instant case before us and we have noted and we reiterate only a sum which could be taken by the donees was Rs.4000 in Messrs Tika Ram & Sons Pvt. Ltd. and there was no overdraft facility of Tika Ram & Sons with any bank. In that view of the matter, there was no existing goods to be parted.

Before the Bombay High Court, in the case of Chimanbhai Lalbhai v. Commissioner of Income-Tax (Contral), Bombay, 34 I.T.R. 259 there were entries in the books of a Banking Company and gifts were held to be valid. In the case of Commissioner of IncomeTax, Ahmedabad v. Digvijaysinghji Tin Factory, 36 I.T.R. 72, on the contrary it was held that the gifts were valid though not sufficient cash with firm available but proper book entries were made. See also the cases of Commissioner of Income-Tax, Bombay City-H v. Popatlal Mulji, 108 I.T.R. 4 and also in the case of Addl. Commissioner of Income-Tax, Poona v. Dharsey Keshavji, 143 I.T.R. 509 and Commissioner of Income-Tax, Poona v. Devichand Uttamchand, 148 I.T.R. 530. In the background of facts of those cases the Bombay High Court held that the gifts were valid. In the case of Baliram Mathuradas (By his legal Heir, Madanlal Paliram) v. Commissioner of Income-Tax, Bombay

City-II, 59 I.T.R. 278 the Bombay High Court had occasion to consider this question and held that there was no evidence of acceptance. It was held by the Bombay High Court that there was no valid gift. Similarly, in the case of Virji Devshi v. Commissioner of Income-Tax, Bombay, 65 I.T.R. 291 the Bombay High Court held

129

"Just as the entries in his own account book by a person would not constitute a valid transfer even the entries in the accounts of the firm would not be sufficient."

The Madras High Court had also taken divergent views. It may be noted that in E.M.V. Muthappa Chettiar v. Commissioner of Income-Tax, Madras, 13 I.T.R. 311 the Madras High Court held that mere entries were not enough to constitute valid gifts particularly when gift of fund continued to be used in the donors' business.

The Madras High Court in the case of Mrs. Ida L. Chambers and Three Others v. Kelland Huxford Chambers, [1941] I.L.R. 232 was dealing with a case where C, proprietor of a business who had invested a large amount of capital in it, caused entries to be made in his account books crediting his wife and certain other members of his family with sums which were debited to his capital account. Separate accounts in their names were opened in the books and in their accounts the credits were entered. The entries were followed up by letters to the effect, inter alia, that the sums were entirely in the nature of personal gifts from C and would bear interest payable half-yearly. C was not in a position to make gifts in cash of the amounts credited in favour of his wife and relatives. He had large assets but these were represented by land, buildings, plant, machinery and stock-in-trade. Interest on the amounts was also credited in the accounts regularly for some time, until a bank from which C had obtained an overdraft objected to such crediting of interest. C's wife withdrew various sums of money from time to time from the interest account and whenever C desired to retransfer amounts to his capital account he obtained letters of consent from her. The principal amounts credited were shown as 'deposits" in the balance sheets of the business for some years and were thereafter referred to as "unsecured loans". On a question arising whether there was a valid gift or trust in respect of the said amounts, it was held by the Division Bench of the Madras High Court that there was no completed gift of the principal amounts as there was no registered deed and as there was no delivery of the property. Though C had the intention of making gifts, the entries in the books did not complete the gift. It was further held that there was no trust either and that there was nothing in the acts or conduct of C to show that he intended to create a trust or to constitute himself a trustee. Where moneys were actually paid by way of interest on the alleged gifts, those became completed gifts. This decision went up to the Privy Council but on the aspect of gift, no opinion was expressed by the Judicial Committee. The decision of the Privy Council is reported in ILR 1944 at page 617.

130

The Punjab and Haryana High Court in Balireal Nawal Kishore v. Commissioner of Income-Tax, Punjab, 62 I.T.R. 669 held that the credit cash balance of the donor was Rs.81,000 and cash balance with firm was only Rs.4,299 but the unutilised overdraft of the firm was Rs. 1,27,088. The gift was held to be valid.

In Sukhlal Sheo Narain v. Commissioner of Wealth-Tax, Haryana, 89 I.T.R. 157 the Punjab & Haryana High Court had

dealt with a case where the father had gifted Rs.84,000 i.e. Rs.28,000 to each of his sons. Father had complete control and dominion over that amount. There was no evidence that gifts were accepted on behalf of minors. It was held by the High Court that gifts were invalid.

Rangoon High Court in Abba Dada and Company v. Commissioner of Income-Tax, Burma, 6 I.T.R. 470 held that the mere book entries were not sufficient in that case to constitute valid gift.

The Rajasthan High Court in K.P. Brothers v. Commissioner of Income-Tax, New Delhi, 42 I.T.R. 650 held that there was a valid gift but in that case it was a banking company.

The Allahabad High Court in the case of Commissioner of Income-Tax, U.P.v. Smt. Shyamo Bibi, 59 I.T.R 1. had to deal with a case where the credit balance of 2-1/2 lakhs was with the firm. Balance of the firm was only Rs. 15. Memo of gift recorded on stamp paper. It was held that the gift was not valid.

In Commissioner of Wealth-Tax v. Gulab Rai Govind Prasad, 85 I.T.R. 308 there was an alleged gift of Rs.2 lakhs to minor son by book entries. Cash Balance was only Rs.7626. No interest was credited to donee's account. No acceptance was produced. Property purchased out of gift and income was used by the family. It was' held that there was no valid gift. But the Allahabad High Court in the case of Gopal Raj Swarup v. Commissioner of Wealth-Tax, Lucknow (supra) had to deal with the wealth-tax. There the assessee was the karta of a Hindu undivided family. On 20th November, 1956, the assessee purported to transfer Rs.50,000 from his account to the account of his son. The transfer was effected by debiting the assessee's personal account in the books of the Hindu undivided family with Rs.50,000 and crediting the same in the personal account of his son. On 20th November, 1956, the assessee had a substantial credit balance exceeding the sum of Rs.50,000 which he purported to give to his son. The adjustment of entries made in the books of account was in pursuance of a letter

131

written by the assessee to the said Hindu undivided family on the same date. The Wealth-Tax Officer and the Income-Tax Officer rejected the contention that he made a gift of Rs.50,000 to his son and this amount should be excluded from his taxable net wealth. The Tribunal never doubted that the transaction in question was bona fide but dismissed the appeal of the assessee on the sole ground that the transfer evidenced by the entries in the books of account and by the declaration, did not operate to bring into existence a valid gift. It was held on the facts of that case that the assessee had made a valid gift of the value of Rs.50,000. In the impugned judgment, the Allahabad High Court had followed the said decision. The said decision was also followed in Bhau Ram Jawaharmal v. Commissioner of Income Tax, U.P., 82 I.T.R. 772 in Gopal Jalan v. Commissioner of Income-Tax, U.P., 86 I.T.R. 317 and in Phool Chand Gajanand v. Commissioner of Income-Tax, U.P., 89 I.T.R. 148

We are of the opinion that each case must be decided on the facts of that case. Where the assessee has a credit amount with firm or with family or with a banking company and that sum is available to that firm or the company or H.U.F. on the date of the gift, then a valid gift by book entries might be possible but where a sum was not available with the firm or the family or a company which was not a banking company or which had no overdraft facility, by mere book entries even though there was acceptance of that gift by the donee would not effectuate a valid gift.

The Court in Controller of Estate Duty, Punjab, Haryana, J. & K., H.P., and Chandigarh v. Kamlavati, 120 I.T.R. 456 had to deal with gift by way of transfer in the account books. There this Court held that when the property was gifted by a donor the possession and enjoyment of which was allowed to a partnership firm in which the donor was a partner, then the mere fact of the donor sharing the enjoyment or the benefit in the property was not sufficient for the application of section 10 of the Estate Duty Act, 1953, until and unless such enjoyment or benefit was clearly referable to the gift, i.e. to the parting with such enjoyment or benefit by the donee or permitting the doner to share them out of the bundle or rights gifted in the property. If the possession, enjoyment or benefit of the donor in the property was consistent with the facts and circumstances of the case other than those of the factum of gift, it could not be said that the donee had not retained the possession and enjoyment of the property to the entire exclusion of the donor, or, to the entire exclusion of the donor in any benefit to him by contract or otherwise. There, M, the deceased, was a
132
partner in a firm having a half-share in the partnership. On 27th March, 1957, M made a gift of Rs. 1 lakh to his son, L, and of Rs.50,000 to his wife, K, by making debit entries in his account in the firm and corresponding credits to the accounts of L and K. With effect from 28th March, 1957, L was taken as a partner in the firm by giving L one-forth share out of the half-share of M. M died on 9th January, 1962. The Tribunal held that section 10 of the Estate Duty Act was not attracted and the sum of Rs. 1,50,000 could not be included in the property passing on the death of M; and the High Court, on a reference, affirmed the viewes of the Tribunal. This Court held affirming the decision of the High Court that section 10 did not apply to the gifts of Rs. 1 lakh and Rs.50,000 made by the deceased to his son and to his wife respectively. But in that case, the question in the present form in which it arises before us in the instant case did not arise.

This Court in the case of Badri Prasad Jagan Prasad v. Commissioner of Income-Tax, U.P., 156 I.T.R. 430 (judgment by one of us) had occasion to refer to the effect of book entries but this question which is present before us in the present appeal was not before this Court in that case. No useful purpose, therefore, will be served by reference to that case.

In that view of the matter, except to the extent indicated above, the entries in the books of account could not effectuate gifts. As we have discussed the facts on the principles, we are of the opinion that the High Court was in error in answering the question in the manner it did. The order and judgment of the High Court are therefore set aside. All the questions are answered in favour of the revenue. As the respondent is not appearing, there will be no order as to costs.

N.P.V. Appeal allowed.

133