IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15TH DAY OF FEBRUARY 2008

PRESENT

THE HON'BLE MR. JUSTICE DEEPAK VERMA

AND

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

G.T.A. No.2 OF 2006

BETWEEN:

1. The Commissioner of
   Gift-Tax,
   No.55/1, Shilpashree,
   Vidhyaranya Complex,
   Vishveshwaranagara,
   MYSORE.

2. The Gift Tax Officer,
   Ward-2,
   MYSORE. .. **APPELLANTS**.

(By Sri. M.V.Seshachala, Adv.)

AND:

Smt. S.Parvathamma,
No.951, II Main,
Lakshmipuram,
MYSORE. .. **RESPONDENT**.

(By Sri S.Parthasarathi, Adv.)

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This G.T.A. filed under Section 27-A of the Wealth Tax Act, arising out of order dated 20.01.2006 passed in GTA No.3/BANG/2003 for the assessment year 1997-98 praying to allow the appeal and set-aside the order passed by the Income Tax Appellate Tribunal, Bangalore bearing GTA No.3/BANG/2003 dated 20.01.2006 and confirm the order of the Appellate Commissioner confirming the order passed by Gift Tax Officer, Ward-2, Mysore.

This G.T.A. coming on for Final Hearing this day, **Deepak Verma J.**, delivered the following:

JUDGMENT

Heard Sri.M.V.Seshachala, learned counsel for the appellants and Sri.S.Parthasarathi, learned counsel for the respondent.

2. Revenue feeling aggrieved by the order dated 20.01.2006 passed by the Income Tax Appellate Tribunal, Bangalore "B" Bench, Bangalore, in GTA No.3/BANG/2003 for the assessment year 1997-98, is before us challenging the same by filing this appeal under Section 27 of the Gift Tax Act read with Section 27-A of the Wealth Tax Act, (hereinafter shall be referred to in short as "the Act") on variety of grounds.

3. Facts, in short, are mentioned hereinbelow:

"One Sannappa was the owner of the properties bearing Nos.3 and 4 situated at New Santhepet, Mysore. He bequeathed the aforesaid properties to his daughter, respondent – assessee by executing a registered Will in her favour on 02.06.1966. After the death of Sannappa, the assessee having become the absolute owner of the said properties, executed a Sale Deed thereof in favour of the third party for a sum of Rs.80,000/-. Out of the aforesaid sale consideration so received by the assessee, she purchased property bearing No.646, Chamaraja, Double Road, Mysore, from her husband by a registered Sale Deed dated 14.06.1978 for a sum of Rs.95,000/-.

Sri.P.N.Subbarayappa, Manager of the family of the assessee died in November 1979. He had died intestate. According to the assessee since he had died intestate, all family members would have a right in the property left behind by him. The assessee's one of the daughters Smt.S.Vanajakshi filed a suit for partition against the assessee claiming her share in property bearing Door No.646, Chamaraja, Double Road, Mysore. In the said suit, it was mentioned that all the children of Sri.P.N.Subbarayappa, his wife and parties to the suit had effected a partition of all the joint family members among themselves under an oral partition said to have taken place on 01.11.1991. At the time of the partition, schedule mentioned property has been shown as jointly allotted to the share of the plaintiff and the defendant (the assessee) and each one of them has got an undivided half share thereon.

The said civil suit, O.S.No.372/1996 on the file of the II Additional Civil Judge, Mysore, was amicably compromised between the parties and a compromise decree came to be passed by the said Court on 30.11.1996. By the said compromise the assessee had relinquished her right in the said property to the extent of half share. It further appears that in the said compromise all other joint owners of the property had also given their no objections in favour of Smt.S.Vanajakshi, daughter of the assessee. Thus S.Vanajakshi became absolute owner of the property situated at No.646, Chamaraja, Double Road, Mysore.

The Assessing Officer was of the opinion that half share of the assessee's house property bearing No.646, Chamaraja, Double Road, Mysore, transferred on the strength of the compromise decree would amount to gift. As the assessee had admittedly not paid any gift tax, the Assessing Officer issued notice to the assessee calling upon her to file gift tax return for the assessment year 1997-98. In response to the same, the assessee filed a return of gift stating therein that she has not made any gift, taxable under the Gift Tax Act and therefore not liable to pay any gift tax. The Assessing Officer after considering the matter computed the chargeable gift at Rs.18,00,000/-.

The assessee feeling aggrieved by the said order, preferred an appeal to the Commissioner of Gift Tax (Appeals), Mysore. The Commissioner of Gift Tax (Appeals) confirmed the addition made by the Assessing Officer and dismissed the appeal.

The assessee was therefore constrained to file further appeal before the Income Tax Appellate Tribunal. The said appeal having been allowed by the Tribunal, this appeal has now been preferred by the Revenue."

4. In the memo of appeal the following substantial question of law has been formulated:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there was no element of gift in transfer of half portion of the property owned by the assessee independently without having any nexus with HUF in favour of her daughter without any consideration when the other half of the portion had been transferred

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to the same transferee for a consideration of Rs.18 lakhs?"

5. We have heard the learned counsel for the parties. Perused the records.

6. The relationship between the assessee and her daughter has been accepted by the Revenue being mother and daughter. It is also clear from the records that daughter of the assessee had dragged her mother to a Court of law for a partition and that suit ultimately ended into a compromise, whereby half share of house No.646 had fallen to the share of the daughter of the assessee. In the said compromise the other co-owners had also given their no objections for entering into a compromise. Since it was a family dispute and ultimately good sense prevailed amongst them, thus this compromise was entered into. The other co-owners specifically mentioned in their no objections filed before the Civil Court that since all are well off and therefore they are not interested to have their share in the property. In such an event, the circumstances under which half of the share fell to the daughter of the assessee can only be said to be a family arrangement, but it cannot be said that such a device was adopted

by the assessee so as to avoid payment of gift tax. Infact, Tribunal has also proceeded on the aforesaid ground only and found that for such a transaction no gift tax could have been levied.

7. We are in full agreement with the findings recorded by the Tribunal and there is no reason to doubt the correctness of the compromise decree entered into between the parties. In this view of the matter, we find that there is no merit or substance in this appeal. The appeal would stand dismissed accordingly.

The question of law is answered against the Revenue and in favour of the assessee.

Sd/-
Judge

Sd/-
Judge

AGV.