not preferring the appeal, though it was stated that it would neither be expedient nor proper to interfere in other cases, when the appeal had not been filed.

In view of what I have said above, this writ petition fails and is dismissed. There will, however, be no order as to costs.

Pandit, J.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

B.R.T.

INCOME-TAX REFERENCE

Before D. Falshaw, C. J., and D. K. Mahajan, J.

M/S BALLIMAL-NAWAL KISHORE,—*Applicant*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JUMMU & KASHMIR AND HIMACHAL PRADESH,—*Respondent*

Income-Tax Reference No. 24 of 1962

1966

January 17th.

Income-tax Act (XI of 1922)—S. 10(2)(iii)—Gift made by donor by debiting the amount to his account in the firm and crediting the same amount to the accounts of the donees without passing actual cash—Whether valid—interest paid to the donees on such amounts—Whether proper deduction.

Held, that the validity of a gift made by way of debit and credit entries in the account books of a firm of which the donor is a partner must depend entirely on whether in the circumstances this is a natural method of transfer, and it is certainly not necessary for the donor to withdraw sums in cash from the firm to be re-invested by the donee or donees in the firm. Once the *bona fides* of the gift or gifts is accepted, there remains little or no difficulty in accepting the validity in ordinary circumstances. The statement of facts in the present case shows that if the parties had wished, the cash could have been realised and given to the donees, but this was not necessary and the amounts of the gifts were credited in their already existing accounts, and sums had been withdrawn by some of the donees from the amounts standing to their credit in the year following the gifts. The interests paid to the donees on such gifted amounts is a proper deduction under section 10(2)(iii) of the Indian Income-tax Act, 1922.

Reference under section 66(1) *of the Income-tax Act,* 1922, *by the Income-tax Appellate Tribunal (Delhi Bench), dated* 28*th November,* 1960, *for the decision of the following question of law :—*

> *"Whether there was a valid gift of Rs* 60,000.00 *on* 5*th December,* 1956, *by merely transferring Rs* 60,000.00 *from the capital account of L. Nawal Kishore to the account of donees as mentioned in paragraph* 3(*c*), *above so that the interest on the various accounts comprises a proper deduction under section* 10(2)(*iii*) *of the Income-tax Act ?"*

BAL RAJ TULI, SENIOR ADVOCATE WITH S. K. TULI AND R. K. AGGARWAL, ADVOCATES, for the Applicant.

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the Respondent.

ORDER

Falshaw, C.J.

FALSHAW, C.J.—The following question has been referred to this Court by the Income-tax Appellate Tribunal under Section 66(1) of the Income-tax Act:—

> "Whether there was a valid gift of Rs. 60,000 on 5th December, 1956 by merely transferring Rs. 60,000 from the capital account of L. Nawal Kishore to the account of donees as mentioned in paragraph 3(c) above so that the interest of the various accounts comprises a proper deduction under section 10 (2) (iii) of the Income-tax Act?."

The case refers to the assessment of the partnership firm M/s. Bali Mal Nawal Kishore for the year 1957-58 for which the accounting year ended on the 31st of March, 1957. There were five partners in the firm, Nawal Kishore, his three sons, Jagan Nath, Deoki Nandan and Lal Chand, and also Atma Ram, who was apparently the natural son of Nawal Kishore, but was the adopted son of one Raja Lal. Nawal Kishore died on the 14th of December, 1956, but 9 days' before he died, on the 5th of December, 1956; he made an entry in his own hand in the account books of the firm to the effect

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that he was making a gift of Rs. 60,000 out of an amount of some Rs. 81,000 standing to his credit in his capital account with the firm in favour of 13 donees, the gift being Rs. 3,750 in the case of each of the four sons of partners Jagan Nath, Atma Ram and Lal Chand and Rs. 15,000 in the case of Krishan Kumar, the only son of the partner Deoki Nandan. These sums were credited on the same day, the 5th of December, 1956, in the accounts of the donees in the firm's books and at the close of the financial year each was credited with the interest on the gifted sum due upto that date, as well as in the following year during which, according to the copies of the accounts of the donees filed and made part of the case, some of the donees actually withdrew sums of money from the amounts standing to their credit.

It may also be mentioned that on the 5th of December, 1956, the cash balance shown in the books of the firm was Rs. 3,665 and the bank balance was Rs. 4,299, but at the same time the unutilised drawing power of the firm on its bank was Rs. 1,27,088.

In its assessment the firm claimed to deduct the sums paid as interest to the donees for the relevant period, but this was disallowed by the Income-tax Officer, the Appellate Assistant Commissioner and finally by the Appellate Tribunal which held that the gift was not valid because it did not comply with the provisions of section 123 of the Transfer of Property Act on the grounds that there was neither physical nor symbolic delivery and the cash available to the firm on the date of the gift was insufficient to satisfy the gift of Rs. 60,000.

It is to be noted that there is no suggestion at any stage of the proceedings of any taint of *mala fides* being attached to the disputed transaction and the gift was rejected as invalid purely on the technical ground that it did not meet the requirements of section 123 of the Transfer of Property Act which, in the case of a gift of moveable property, are that the transfer is either to be effected by a registered document or by delivery to be made in the same way as goods sold may be delivered. The only case cited before the Appellate Tribunal on behalf of the

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assessee, *Commissioner of Income-tax, Ahmedabad* v. *New Digvijaysinhji Tin Factory* (1), was not discussed in the order. In that case the assessee was a registered firm with two partners, Vithaldas Dhanjibhai and his son Harjivandas Vithaldas, and in certain documents executed in 1946—48 the father for the express purpose of assuring his son against any apprehension of his marrying a second wife made gifts of one quarter out of his half share of the firm's profits to his daughter-in-law and grandson and entries were made in the account books of the firm regarding the sums thus gifted and the donees from time to time withdraw sums from the amounts standing to their credit. Interest on the sums standing to the credit of the donees had been allowed by the Income-Tax authorities as deduction in the assessment years 1949-50 to 1951-52, but the Department objected to these deduction in the assessment year 1952-53. It was held by S. T. Desai, and K. T. Desai, JJ., that although mere book entries could not result in a valid gift or trust, since in that case the gifts were accepted by the donees, and the firm accepted the transaction, paid interest on the amounts of the gift and allowed the donees to withdraw moneys, there was ample material to satisfy the legal requirements of a completed and valid gift, that delivery could be symbolical and actual physical delivery was not essential and therefore the fact that there was not sufficient cash in hand when the gifts were made did not affect the validity of the gifts and that therefore the interest paid by the firm to the donee was an allowable deduction under section 10(2) (iii) of the Income-tax Act.

This case has aagin been cited before us and altohngh the facts are not altogether on all fours with those of the present case since, there were independent documents executed regarding the gifts, it my be of some assistnce on the question whether there can be a valid gift when the amount of the gift exceeds the actual cash in the hands of the firm at the time.

On this point reliance was also placed on the case of *Chimanbhai Lalbhai* v. *Commissioner of Income-tax (Central), Bombay* (2). In that case the assessee had made a gift of Rs. 5,00,000.00 to his son and of Rs. 2,00,000.00 to his

(1) 36 I.T.R. 72.
(2) 34 I.T.R. 259.

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daughter on the 17th of November, 1952, and had made the necessary entries in his account books on that date. On the 8th of November, 1953, he instructed the joint family firm which acted as his banker and with which he had an account to debit him with the two sums and interest earned upto that date and credit the accounts of his son and daughter with the corresponding amounts. The firm carried out the instructions and submitted a voucher which the assessee signed. Although it considered the transaction *bona fide* the Tribunal held that the gift was not effectuated on the grounds (i) that there was no transfer of possession, (ii) that the assessee did not have sufficient amount in credit with the firm on November 8, 1953, and (iii) that the firm itself did not have sufficient cash on that date to carry out the directions of the assessee. It was held by Chagla, C.J., and S. T. Desai, J.—

"(i) it was not necessary for the assessee to have drawn the cash amounts from the banker and handed them over to his son and daughter, and the gift was complete by the directions by the assessee and the firm making the transfers in its account books;

(ii) that there was not enough money to the assessee's account and the firm chose to allow overdraft facilities to the assessee was not relevant and did not affect the validity of the gift;

(iii) nor was it necessary that the firm should have had on the date of the transfers in its accounts sufficient funds to carry out the directions of the assessee; the transfer made in the firm's books was in accord with normal banking practice;

(iv) the fact that it was a joint Hindu family that was functioning as the banker was not relevant and did not affect the validity of the transaction;

(v) the transaction being considered *bona fide*, the considerations which weighed with the Tribunal were irrevelant, the gift was complete and valid

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and the interest on the amounts transferred to the son and daughter could not be included in the income of the assessee."

Before discussing further cases cited on behalf of the assessee I may mention the main argument advanced on behalf of the Commissioner, which is summed up in the dictum of Patanjali Sastri, J., in *S.A.S. Rn. Ramanathan Chettiar* v. *M. P. Palaniappa Chettiar and others* (3), (sitting with Wadsworth, J.), and repeated by him in *E. M. V. Muthappa Chettiar* v. *Commissioner of Income-Tax, Madras* (4), to the effect that mere credit entries in books of account without allocation of specific assets or funds corrseponding to such entries cannot operate as valid gifts or trust of the sums credited. The matter arose in the first of these cases in a suit instituted by certain persons for the removal of the defendants from the position of trustees of a temple on grounds of misfeasance and mismanagement, and the question arose whether certain entries made by the defendants in their own account books debiting themselves and crediting the temple with certain sums amounted to a dedication or a gift or a trust, and it was held that they did not amount to any of these things. The circumstances were very different from those of the present case, as they also were in the income-tax case in which the question of the interpretation of a will of the father of the assessee arose. Bequests of Rs. 25,000.00 each had been made to the sister and daughter of the assessee to be utilised for their marriage and similar purposes, but the amounts were left under the control and supervisor of the assessee to be agumented and utilised by him for these purposes and no assets or funds corresponding to the credit entries in the accounts were actually set apart or allocated at any time for the said purposes, the whole funds of the firm being used in the business as before. The facts were also very different in the case of *S. P. Jain* v. *Commissioner of Income-tax, Bihar and Orissa* (5), in which the assessee in his account books had credited a charitable institution with Rs. 3,00,000.00 in the accounting year ending the 31st of October, 1948, no cash payment being made

(3) A.I.R. 1945 Mad. 473.
(4) 13 I.T.R. 311.
(5) 51 I.T.R. 6.

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in relation to that entry, and then, in the following accounting year, the assessee had debited a sum of Rs. 3,00,000.00 to the account of the charitable institution as representing the then value of certain shares brought into his books originally at Rs. 5,07,930.00, and he claimed the difference of over Rs. 2,00,000.00 as a revenue loss arising out of his share dealing business on the ground that there was a valid gift of Rs. 3,00,000.00 to the charitable institution in the previous accounting years. It was held that by the mere credit entry in the account of the charitable institution of Rs. 3,00,000.00 in the accounting year ending 31st October, 1948, no debt was created in favour of the charitable institution and therefore the transfer of shares in the accounting year ending 31st of October, 1949, was not a transfer made in consideration of a previous liability and the transaction did not amount to a sale of shares in the eyes of law, nor could it be said that there was a valid gift of Rs. 3,00,000.00 as there was no evidence of acceptance on behalf of the institution. Another case relied on was *Chambers* v. *Chambers and others* (6). Here the assessee was the sole proprietor of a firm and in his accounts he credited a total amount of Rs. 2,00,000.00 to his wife and after his wife's death to certain persons in whose favour his wife had made a will. Ultimately he made entries in his accounts retransferring these sums to his own capital account. His actions were held to be quite inconsistent with the intention of creating a trust in favour of his wife. Obviously no principle was laid down in that case, which depended on its own facts.

Particular reliance was placed on a recent decision of Mr. M. C. Desai, C.J. and S. C. Manchanda, J., in *Commissioner of Income-tax, U.P., Lucknow* v. *Smt. Shyamo Bibi* (7). In that case the facts are summed up in the head-note as follows:—

> "The assessee deriving income from property and share income as partner in a firm (which is not a banking firm) on 22nd December, 1953, made entries in her personal account books, crediting her grandson and debiting her account with a sum

(6) A.I.R. 1944 P.C. 78.

(7) 1962 (2) Income-Tax Journal 450.

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of Rs. 1,00,000.00 professing to make a gift of that sum accompanied by a stamped memorandum signed by both and reciting that the assessee orally and on account of natural love and affection had given Rs. 1,00,000.00 to her grandson and delivered the amount to him by the transfer entries made in her perosnal accounts and placed him in possession and control of the amount and that he had accepted the gift and entered into possession and control of the money. On that date though her personal accounts showed a book balance of Rs. 2,00,000.00, the cash balance was only about Rs. 15.00. On 5th July, 1954, her personal account showed the gifted amount with interest and on the same day the assessee transferred her liability to her grandson to the firm and the firm at her instructions credited the amount with interest and the grandson was made a partner in the reconstituted firm and the amount credited towards his investment. In the assessment year 1954-55, the assessee claimed a deduction of Rs. 150 said to have been paid by her to her grandson as interest from her income."

The Appellate Tribunal had held that there was a valid gift, but the learned Judges held otherwise, holding that in the case of gift of money, if the money did not exist, transfer entries in the accounts do not amount to delivery merely because the donor has a claim for money against a third party and the mere fact of the recital of the delivery and acceptance is also not sufficient though the position of a banker stands on a different basis in regard to transfer made by entries in accounts.

What the learned Judges were considering in that case was whether the original entry by the assessee in her own account books, together with the execution of some kind of unregistered document, legally amounted to a gift or not and one passage in the judgment is claimed by the learned counsel for the assessee to support his case. This passage reads—

"This law does not support the assessee's contention that there was a gift. In the first place she did

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not have Rs. 1,00,000.00 at all which could be delivered by her to Om Nath. Her cash balance consisted of only a few rupees. She might have had assets in the partnership, but she did not transfer them or any interest in them. The partnership might have been owing money to her but she did not transfer any money out of that to Om Nath; she did not instruct the partnership to transfer Rs. 1,00,000.00 out of the money due to her to the account of Om Nath. If she wanted to make a gift of the money due to her from the partnership the most reasonable way was to instruct the partnership to debit her account, and credit that of Om Nath with the amount of the money. Simply making transfer entries in her own accounts cannot be said to be the most direct and effective method of vesting him with possession, dominion and control. As the account books were in her own possession, dominion and control, so were the entries, and simply by making entries in them she did not vest Om Nath with possession, dominion and control over the money. It was open to her to delete or reverse the entries at any time he liked subsequently."

It would certainly appear to be a permissible inference from this passage that if the assessee had made the transfer through the accounts of the firm it might have been held to be a valid gift.

On behalf of the assessee some decisions have been cited which appear to have more bearing on the present case. In *A. M. Abdul Rahaman Rowther & Co.* v. *Commissioner of Income-tax, Madras* (8), the assessee who was the sole proprietor of a business purported to make certain gifts to two married daughters of his by incorporating certain entries in his accounts by which he debited himself to the extent of Rs. 50,000.00 and credited his two daughters with Rs. 25,000.00 each. Subsequently a partnersihp deed was executed with the assessee and his two daughters as partners. The profits of the business were

(8) 56 I.T.R. 556.

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distributed in accordance with the terms of the partnership. The income-tax authorities, however, refused registration to the firm on the ground that the gifts were not valid and the partnership was not genuine. On these facts Srinivasan and Venkatadri, JJ., held that the gifts were valid and the firm was genuine and entitled to registration and they observed that the principle that possession of the thing gifted must be given physically to the donee depends on the nature of the subject-matter of the gift and where the subject-matter of the gift consists of assets of a firm, entries in accounts followed by such acts as would effectuate a divestment on the part of the donor would be sufficient. In *E. S. Hajee Abdul Kareem & Son* v. *Commissioner of Income-tax, Madras* (9), a Mohammadan who was a partner in the assessee firm desired to make a gift to his wife and children. As there was not sufficient cash balance in the partnership accounts, entries were made in the books of the partnership debiting the accounts of 'A' with certain amounts and crediting the accounts of his wife and children with corresponding sums of money. Interest was paid by the assessee to the wife and children in respect of the moneys credited in their accounts and the assessee claimed such interest as interest on borrowed capital under section 10(2) (iii) of the Income-tax Act. The claim was disallowed by the Income-tax authorities on the ground that there was no valid gift, but Jagadisan and Srinivasan, JJ., held that under the circumstances of the case the entries in the account books were sufficient to create a valid gift and the interest claimed was allowable under section 10(2) (iii). This case appears to be very nearly in *pari materia* with the present case. The only distinction which the learned counsel for the Commissioner could point out was that before the entries were made in the firm's accounts Abdul Kareem had made a declaration before his local Masjeed Committee regarding his intention to make gifts in favour of his wife and children, but to my mind this is no distinction at all. In fact the declaration of the donor of his intention before making the gifts through the firm's accounts has no bearing at all on the legality of the gifts and could only have some bearing on their genuineness', and, as I have said, the genuineness of the gifts is not disputed in the present case, and

(9) 50 I.T.R. 396.

indeed could hardly be disputed in view of the fact that the donor had himself made the entry in the account books declaring his intention of making the gifts to his grandchildren. In fact most of the argument advanced on behalf of the Commissioner appears to be due to the same confusion of thought which was noticed by Chagla, C.J., in *Chimanbhai Lalbhai's case* in the following words:—

> "The fallacy underlying the whole of the judgment of the Tribunal, with respect, is that it has taken into consideration aspects which may have been relevant if they wanted to decide whether the gift was a *bona fide* gift and whether the transaction was in reality effected. But having come to the conclusion that the transaction was genuine and the gift was *bona fide*, all these considerations which seem to have weighed with the Tribunal have nothing whatever to do with the question as to whether the gift was a valid gift in law."

In *P. A. C. Ratnaswamy Nadar & Sons* v. *Commissioner of Income-Tax* (10), there was again a gift by a father in favour of his children in the accounts of the firm of which he was the sole proprietor followed later by the creation of a partnership in which the children were made patners. It was held that the entries in the account books could be relied on as affording cogent evidence of the gift and though the entries as such might not conclusively establish a real and effective gift it was evidence in support of the gift and the subsequent acts and conduct of the parties taken along with the entries of credit in the books of account together cummulatively established a valid gift. Finally there is the case of *K. P. Brothers* v. *Commissioner of Income-Tax, New Delhi* (11). In that case the assessee firm was a private banking concern and one of the partners had a balance of Rs. 2,94,644.00 to his credit at the beginning of the relevant year during the course of which on the 30th of September, 1953, when the balance of the firm stood at Rs. 603.00, he instructed the firm to debit his account with a sum of Rs. 1,00,000.00 and

(10) 46 I.T.R. 1148.
(11) 42 I.T.R. 650.

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credit Rs. 60,000.00 in the current account of his father and Rs. 40,000.00 in the current account of his mother, which they already had with the firm. The father and mother were credited with certain sums as interest at the end of the year and the mother also withdraw a substantial amount from the sums standing to her credit. J. S. Ranawat and D. M. Bhandari, JJ., of the Rajasthan High Court held that in spite of the fact that there was only a cash balance of Rs. 603.00 with the firm, the debit of Rs. 1,00,000.00 in the account of the partner and the credit entries of Rs. 60,000.00 and Rs. 40,000.0 made in the accounts of his father and mother operated as valid gifts.

The principles deducible from the study of these decisions appear to be that the validity of a gift made by way of debit and credit entries in the account books of a firm of which the donor is a partner must depend entirely on whether in the circumstances this is a natural method of transfer, and it is certainly not necessary for the donor to withdraw sums in cash from the firm to be reinvested by the donee or donees in the firm. Once the *bona fides* of the gift or gifts is accepted, there remains little or no difficulty in accepting the validity in ordinary circumstances. The statement of facts in the present case shows that if the parties had wished, the cash could have been realised and given to the donees, but this was not necessary and the amounts of the gifts were credited in their already existing accounts, and sums had been withdrawn by some of the donees from the amounts standing to their credit in the year following the gifts. In the circumstances I am of the opinion that the question referred to us must be answered in favour of the assessee and in the affirmative. The assessee will receive his costs from the Commissioner. Counsel's fee Rs. 250.00.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and D. K. Mahajan, J.

BALWANT SINGH,—*Appellant*

versus

SODHI LAL SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 281 of 1963

1966

January 18th.

Punjab Security of Land Tenures Act (X of 1953)—S. 14-A—Tenant admitting arrears of rent due from him to the landlord to be less than the amount demanded by the landlord—Assistant