WEALTH TAX REFERENCE

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

M/S. SUKH LAL SHEO NARAIN,—*Applicant.*

versus

THE COMMISSIONER OF WEALTH TAX,—*Respondent.*

Wealth Tax Reference No. 4 of 1971

May 23, 1972.

Transfer of Property Act (IV of 1882)—Sections 122 and 123—'Gift'—Meaning of—Conditions for the validity of a gift—Stated—Sole proprietor of a firm making gift of money in the name of donee by book entries alone—Donor solely in control of the account books—Such gift—Whether valid.

Held, that the gift as defined in section 122 of the Transfer of Property Act, 1882, is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person to another and accepted by or on behalf of the latter. Such acceptance has to be made during the life time of the former and while he is still capable of giving. Section 123 of the same Act mentions the method by which the gift is effected. In the case of a gift of immovable property, the transfer has to be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. If the property gifted is movable, then the transfer is effected either by a registered instrument or by delivery of the gifted property. This delivery has to be made in the same manner as the goods are delivered when they are sold. The goods sold have to be actually put in the possession of the buyer or his authorised agent, so that the purchaser may have complete domain and control over them and the seller has nothing to do with them after the sale. Hence for the validity of a gift, it is necessary to establish that after the said gift, the ownership in the property completely vested in the donee, who got complete control over it and the donor was left with no interest in the same and was unable to get it back from the donees without the latter's consent.

Held, that where the sole proprietor of a firm makes a gift of money in the name of donee by book entries alone and no document registered or otherwise is executed in favour of the donee, it cannot be said that the donor divests himself of the gifted property and donees becomes full owners. The donor can himself deal with this entire money without taking the permission of the donees. The donees, even if they want to, cannot utilise the gifted property in any manner they like without permission of the donor. The money, therefore, is not completely transferred in favour of the donees and it is not a valid gift particularly when the books of accounts in which the entry is made is in sole control of the donor.

Reference u/s. 256/1 of the Income-tax Act made by the Income-tax Appellate Tribunal (Chandigarh Bench) vide his order dated 22nd July, 1971, to this Hon'ble Court for opinion on the following question of law in R.A. Nos. 66, 67 and 68 of 1970-71 arising out of W.T.A. Nos. 315, 316 and 317 of 1968-69 (for the assessment years 1964-65, 1965-66 and 1966-67) :—

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no valid gifts had been made by the assessee."

M. S. Jain, and C. S. Aggarwal, Advocates,—*for the appellant.*

D. N. Awasthy, Advocate, and B. S. Gupta, Advocate, *for the respondent.*

JUDGMENT

Pandit, J.—This order will dispose of three connected Wealth Tax Reference Nos. 4 to 6 of 1971, which relate to the assessment years 1964-65, 1965-66 ahd 1966-67 respectively.

(2) The following question of law has been referred to us for opinion by the Income-tax Appellate Tribunal :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no valid gifts had been made by the assessee."

(3) The assessee in this case is an individual Sheo Narain by name and he is carrying on the business in utensils in Rewari, district Gurgaon. On 21st May, 1955, he is alleged to have made a gift of Rs. 28,000 each in favour of his three sons Satya Narain, Radhe Sham and Suresh Chand. The latter two were minors. He made this gift by debiting his own account with Rs. 84,000 and crediting Rs. 28,000 each in the accounts of his three sons. In subsequent years, the income from interest on these amounts was also credited to the individual accounts of the sons. In the assessment year 1957-58, Sheo Narain claimed deduction of interest on Rs. 84,000 credited to the accounts of his sons, but the said claim was rejected by the Income-tax Officer. This order was confirmed by the Appellate Assistant Commissioner, who found that there was no evidence on the record to show that the donees, especially the minors, had accepted the gifts. The Appellate Assistant Commissioner was further of the opinion that the assessee had not divested himself of Rs. 84,000 by merely making transfer entries in the books of account while the said amount remained in his own business. As a result, he held that the gift was not a *bona fide* one. It

appears that the assessee did not claim any deduction of interest credited to the accounts of his sons in subsequent year. In the assessment year 1964-65, it appears that he again claimed such a deduction, but the Income-tax Officer held that a finding had already been given by the Appellate Assistant Commissioner for the assessment year 1957-58 against the aasessee, who had not brought any fresh material on the basis of which the grevious finding could be reversed. The Officer therefore, didsallowed the deduction of interest. This order was upheld on appeal by the Appellate Assistant Commissioner and thereafter by the Appellate Tribunal on 26th September, 1967, and the Tribunal held that there was no valid gift made by the assessee.

(4) It appears that Sheo Narain became asssesable under the Wealth Tax Act for the first time in the assessment year 1963-64 There he called in question the amount of Rs. 84,000, which was included in his wealth by the officers under that Act. The said authorities came to the conclusion that there was no valid gift effected by the assessee by making mere book entries. On appeal, the Tribunal, however on 25th November, 1967, held that the said gift was valid and in calculating the total wealth of the assessee, the gifted amount together with interest was, therefore, excluded. In arriving at this conclusion, the Tribunal simply followed the decision of this Court in *Balimal Nawal Kishore* v. *Commissioner of Income-tax, Punjab* (1), as the same was binding on it. When the assessee's appeals for the assessment years 1964-65, 1965-66 and 1966-67 came before the Appellate Assistant Commissioner of Wealth Tax, he followed the Tribunal's decision relating to the assessment year 1963-64. The Department then filed appeals before the Tribunal and contended that the decision in *Balimal Nawal Kishore's case* was distinguishable from the facts of the instant case, because the entries in that ruling had been made in the books of the firm, over which, apart from the donor, there were others, who exercised control. In the present case, however, the entries had been made in the assessee's own books of account, over which he alone had complete control and domain and he could later on delete or reverse them at any time he liked. The Department urged that the case was completely covered by the decision of the Allahabad High Court in *Commissioner of Income-tax,* U.P. v. *Smt. Shyamo Bibi* (2), and the Patna High Court in

(1) (1966) 62 I.T.R. 669.
(2) (1966) 59 I.T.R. 1.

S. P. Jain versus *Commissioner of Income-tax, Bihar and Orisa* (3). The Tribunal agreed with the view of the Department and held that the decision in *Balimal Nawal Kishore's case* (1) was distinguishable and that the present case was covered by the rule of law laid down by the Allahabad and Patna High Courts, referred to above. The Tribunal, consequently, held that there was no valid gift made by the assessee and accepted the Department's appeals.

(5) In order to answer the question, referred to us, it is first of all necessary to find as to what a 'gift' means and how it is effected. Gift is defined in section 122 of the Transfer of Property Act, 1882. It is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person to another and accepted by or on behalf of the latter. Such acceptance has to be made during the lifetime of the former and while he is still capable of giving. Section 123 of the same Act mentions the methods by which the gift is effected. In the case of a gift of immovable property, the transfer has to be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. If the property gifted is movable, then the transfer is effected either by a registered instrument or by delivery of the gifted property. This delivery has to be made in the same manner as the goods are delivered when they are sold. Section 33 of the Indian Sale of Goods Act, 1930, deals with the delivery of goods sold. It says that such a delivery may be made by doing anything, which the parties have agreed shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or any person authorised to hold them on his behalf. Thus, it would be seen that the goods sold have to be actually put in the possession of the buyer or his authorised agent, so that the purchaser may have complete domain and control over them and the seller has nothing to do with them after the sale. In other words, for the validity of the gift, it is necessary to establish that after the said gift, the ownership in the property completely vested in the donee, who got complete control over it and the donor was left with no interest in the same and was unable to get it back from the donee without the latter's consent. Applying these principles, let us see whether, in the instant case, the assessee had made a valid gift in favour of his sons.

(6) Concededly, the gift was not effected by any registered instrument. The property gifted was Rs. 84,000. The amount in

(3) (1964) 51 I.T.R. 6.

question should, therefore, have been actually put within the exclusive control of the donees, with the result that the donor would have nothing to do with it and not bring it to his use in any manner in future. It is common ground that the books of account, in which the entries were made regarding the alleged gift, belonged to Sheo Narain. They were not the books of any firm, of which the donor was only a partner. As I have said, he was the sole proprietor of this business, which was being carried on in the name of Messrs Sukh Lal Sheo Narain. It is to be noted that for determining the validity of the gift, the position has to be judged *on the date of the gift*. On 21st May, 1955, besides making the debit and credit entries in his own books of account, Sheo Narain did not do anything else. No other document registered or otherwise had been executed by him in favour of his sons on the date when the gift is alleged to have been made. By such entries alone, it could not be said that the assessee divested himself of this property and the donees became full owners thereof. Sheo Narain could, if he liked, himself deal with this entire money without taking the permission of the donees. The donees also, on the other hand, even if they wanted to, could not utilise the gifted property in any manner they liked without the permission of the donor. Under these circumstances, it could not be held that the money had been completely transferred in favour of the donees and, therefore, a valid gift had taken place. It may also be stated that there was nothing on the record to show that the alleged gift was accepted by or on behalf of the donees, especially by the minors, as required under the law.

(7) In *Balimal Nawal Kishore's case* (1) on which reliance has been placed by the assessee, it was held by a Bench of this Court:

> "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 on whether, in the circumstances, this is a natural method of transfer; it is not necessary for the donor to withdraw sums in cash from the firm to be reinvested by the donee or donees in the firm.
>
> A few days before he died, a partner of a firm made an entry in his own hand in the account books of the firm to the effect 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 to each of the four sons of partners A, B and C, and Rs. 15,000 to the only son of partner D. These sums were credited on the same day in the accounts of the donees in the firm's books and, at the close of the financial year, each donee was credited with the interest on the gifted sum due up to that date, as well as in the following year, during which some of the donees actually withdrew sums of money from the amounts standing to their credit.

On the 5th of December, 1956, when the gift entries were made, the cash balance 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. 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 and by the Appellate Tribunal on the ground that the gift was not valid because it did not comply with the provisions of section 123 of the Transfer of Property Act as 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.

Held, that, on the facts, there was a valid gift of the sum of Rs. 60,000 and the interest paid to the donees was deductible under section 10(2)(iii) of the Income-tax Act of 1922."

(8) It will be seen from the above that the books of account in which the entries were made in this case, were of a firm, of which the donor was only a partner. Such is not the position in the case in hand and this ruling is, therefore, distinguishable.

(9) The nearest case, on facts, is the one in *Commissioner of Income-tax, U.P.* v. *Smt. Shyamo Bibi* (2). There it was held:

"Section 123 of the Transfer of Property Act, 1882, lays down the law governing all gifts made for whatever purpose and is to be applied whenever and wherever the question arises whether there was a gift or not and under that section a gift of movable property may be effected either by a registered instrument or by delivery of possession.

The assessee, professing to make a gift of Rs. 1 lakh to her only grandson O. N., made transfer entries in her account books crediting the sum of Rs. 1 lakh in the account of O. N., and debiting her account by the same amount. A memorandum signed by her and O.N. recited that she had orally given Rs. 1 lakh to O. N. and delivered the amount to him by the transfer entries made in her personal 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. Her accounts showed a cash balance of only Rs. 15-10-0 on that date:

Held, there was no valid gift as there was no delivery of possession of the amount. Executing the memorandum and making entries in her own accounts were the only acts she had done and these two acts did not have the effect of putting the money in the possession of O. N. As the account books were in her possession, dominion and control, so were the entries, and simply by making entries in them she did not vest O.N. with possession, dominion and control over the money. Nor could it be said that making transfer entries in personal accounts is constructive delivery."

(10) At another place in this very judgment, it was pointed out that—"No money changed hands; whatever money the assessee had either in cash or in the form of assets or bank balance remained where it was. She was not authorised by Om Nath to receive the money on his behalf; consequently, by her detaining possession of the money even if she had in her possession Rs. 1,00,000, it could not be said that the money was put in possession of her as authorised to hold it on Om Nath's behalf."

(11) The distinction between the entries made by the donor in his own books and in his accounts in the books of a third party has been drawn in another Bench decision of the Allahabad High Court in *Bhau Ram Jawaharmal* v. *Commissioner of Income-tax, U.P.* (4), where it was observed:

"It is not necessary in every case for the validity of a gift that there should be physical delivery of the amount by the

(4) (1971) 82 I.T.R. 772.

donor to the donee. It is settled that a transfer can be effected in the books of the donor's firm by making a debit entry in the account of the donor and making a corresponding credit entry in the account of the donee. So long as the entries made in the respective accounts put the gifted amount beyond the control of the donor and result in his ownership in it being replaced by the ownership of the donee, there is no reason why a valid gift cannot be effected through such book entries. The adequacy of a cash balance in the books of the firm on the relevant date sufficient to cover the amount of the gift is of no moment when the financial resources of the firm are sufficient and the amount in the donor's account is large enough to cover the amount gifted by him.

A distinction must be drawn between cases where the entries are made in the accounts of the donor and donee in the books of a third party holding moneys to the credit of the donor and a case where the donor purports to effect the transfer by making entries in his own books."

(12) It may be mentioned that the learned counsel for the assessee made reference to two other decisions—(i) *Naunihal Thakkar Dass* v. *Commissioner of Income-tax, Punjab* (5) and (ii) *Gopal Raj Swarup* v. *Commissioner of Wealth-tax, Lucknow* (6). In the former it was held:

"The question whether on the admitted facts there is a valid gift is a question of law and when such a question is referred to the High Court, the court will be entitled to hold that there was a valid gift even when the Tribunal has held otherwise.

One of the partners of a firm transferred certain amounts from his capital account to three ladies and this was effected by debiting the books of account of the registered firm and crediting in the names of three ladies. On these credit balances certain amounts were paid as interest to each of the three laides and these payments of interest were claimed as deductions by the firm. The Income-tax Officer disallowed the claim on the ground that the firm had

(5) (1970) 77 I.T.R. 332.
(6) (1970) 77 I.T.R. 912.

neither sufficient cash balance nor bank balance on the date of the alleged gifts to cover the amounts gifted. On a reference:

Held, (i) that from the mere fact that there was no cash balances it could not be held that the gift was invalid when there is no allegation that the gift was a sham; and (ii) that the fact that interest was paid to the donees would itself indicate that the donees took the interest because they accepted the gift of the corpus. Therefore, there was a valid gift of the amounts by the donor and the interest paid by the firm could be allowed as admissible deductions in assessing the firm."

In the latter authority, it was observed:

"The assessee was the Karta of a Hindu undivided family. On November 20, 1956, the assessee purported to transfer a sum of Rs. 50,000 from his account to the account of his son, Keshav Kumar Swarup. The transfer was effected by debiting the assessee's personal account in the books of the Hindu undivided family with the sum of Rs. 50,000 and crediting the same amount in the personal account of his son, Keshav Kumar Swarup. On November 20, 1956, the date of the gift, the assessee had a substantial credit balance exceeding the sum of Rs. 50,000 which he purported to gift to his son. The adjustment of entries made in the books of the Hindu undivided family was in pursuance of a letter written by the assessee to the said Hindu undivided family on the same date to the following effect:

"I have decided to give, out of my free-will, a sum of Rs. 50,000 (rupees fifty thousand only) to my son, Keshav Kumar. Please pay to the said gentleman this amount. From today, I have no right, title or interest in the aforesaid amount."

The Wealth-tax Officer and the Assistant Controller rejected the contention of the assessee that he had made a gift of Rs. 50,000 to his son and this amount should be excluded from his taxable 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:

Held, on the facts, that the assessee had made a valid gift of the value of Rs. 50,000 to his son on November 20, 1956."

(13) Both these authorities have no application to the facts of the instant case.

(14) In view of what has been said above, the answer to the question referred to above would be in the affirmative.

DHILLON, J.—I agree.

K. S. K.

CRIMINAL WRIT

Before Ranjit Singh Sarkaria and S. C. Mittal, JJ.

SURJIT SINGH,—*Petitioner.*

versus.

THE STATE OF PUNJAB ETC.,—*Respondents.*

Criminal Writ No. 11 of 1971

May 26, 1972.

Prisons Act (IX of 1894)—Section 59—Punjab Jail Manual Paras 631 and 647—Code of Criminal Procedure (Act V of 1898)—Section 401—Life imprisonment—Whether equates with imprisonment to 20 years for all purposes—Prisoner sentenced to life imprisonment completing 20 years imprisonment—Whether entitled to be released without orders under section 401 of the Code—Persons convicted in other States of India transferred to Punjab jails—"Appropriate Government" competent to pass orders under section 401 of the Code for their pre-mature release—Whether the Government of Punjab.

Held, that no doubt the definition of 'life-convict' given in para 631(2) (f) of the Punjab Jail Manual equates life imprisonment to 20 years' imprisonment but this is only for the purpose of calculating the remissions earned and not for all purposes. A sentence of life imprisonment is one for the whole of the remaining life of the convict and there is nothing in the statutory rules contained in the Punjab Jail Manual, or any other law, which equates such a sentence to 20 years imprisonment or any other definite term for all purposes. The release of such a life-convict even on

WEALTH TAX REFERENCE

Before Prem Chand Pandit and Bhopinder Singh Dhillon, JJ.

M/S. SUKH LAL SHEO NARAIN,—*Applicant.*

versus

THE COMMISSIONER OF WEALTH TAX,—*Respondent.*

Wealth Tax Reference No. 4 of 1971

May 23, 1972.

Transfer of Property Act (IV of 1882)—Sections 122 and 123—'Gift'—Meaning of—Conditions for the validity of a gift—Stated—Sole proprietor of a firm making gift of money in the name of donee by book entries alone—Donor solely in control of the account books—Such gift—Whether valid.

Held, that the gift as defined in section 122 of the Transfer of Property Act, 1882, is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person to another and accepted by or on behalf of the latter. Such acceptance has to be made during the life time of the former and while he is still capable of giving. Section 123 of the same Act mentions the method by which the gift is effected. In the case of a gift of immovable property, the transfer has to be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. If the property gifted is movable, then the transfer is effected either by a registered instrument or by delivery of the gifted property. This delivery has to be made in the same manner as the goods are delivered when they are sold. The goods sold have to be actually put in the possession of the buyer or his authorised agent, so that the purchaser may have complete domain and control over them and the seller has nothing to do with them after the sale. Hence for the validity of a gift, it is necessary to establish that after the said gift, the ownership in the property completely vested in the donee, who got complete control over it and the donor was left with no interest in the same and was unable to get it back from the donees without the latter's consent.

Held, that where the sole proprietor of a firm makes a gift of money in the name of donee by book entries alone and no document registered or otherwise is executed in favour of the donee, it cannot be said that the donor divests himself of the gifted property and donees becomes full owners. The donor can himself deal with this entire money without taking the permission of the donees. The donees, even if they want to, cannot utilise the gifted property in any manner they like without permission of the donor. The money, therefore, is not completely transferred in favour of the donees and it is not a valid gift particularly when the books of accounts in which the entry is made is in sole control of the donor.

Reference u/s. 256/1 of the Income-tax Act made by the Income-tax Appellate Tribunal (Chandigarh Bench) vide his order dated 22nd July, 1971, to this Hon'ble Court for opinion on the following question of law in R.A. Nos. 66, 67 and 68 of 1970-71 arising out of W.T.A. Nos. 315, 316 and 317 of 1968-69 (for the assessment years 1964-65, 1965-66 and 1966-67) :—

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no valid gifts had been made by the assessee."

M. S. Jain, and C. S. Aggarwal, Advocates,—*for the appellant.*

D. N. Awasthy, Advocate, and B. S. Gupta, Advocate, *for the respondent.*

JUDGMENT

Pandit, J.—This order will dispose of three connected Wealth Tax Reference Nos. 4 to 6 of 1971, which relate to the assessment years 1964-65, 1965-66 ahd 1966-67 respectively.

(2) The following question of law has been referred to us for opinion by the Income-tax Appellate Tribunal :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that no valid gifts had been made by the assessee."

(3) The assessee in this case is an individual Sheo Narain by name and he is carrying on the business in utensils in Rewari, district Gurgaon. On 21st May, 1955, he is alleged to have made a gift of Rs. 28,000 each in favour of his three sons Satya Narain, Radhe Sham and Suresh Chand. The latter two were minors. He made this gift by debiting his own account with Rs. 84,000 and crediting Rs. 28,000 each in the accounts of his three sons. In subsequent years, the income from interest on these amounts was also credited to the individual accounts of the sons. In the assessment year 1957-58, Sheo Narain claimed deduction of interest on Rs. 84,000 credited to the accounts of his sons, but the said claim was rejected by the Income-tax Officer. This order was confirmed by the Appellate Assistant Commissioner, who found that there was no evidence on the record to show that the donees, especially the minors, had accepted the gifts. The Appellate Assistant Commissioner was further of the opinion that the assessee had not divested himself of Rs. 84,000 by merely making transfer entries in the books of account while the said amount remained in his own business. As a result, he held that the gift was not a *bona fide* one. It

appears that the assessee did not claim any deduction of interest credited to the accounts of his sons in subsequent year. In the assessment year 1964-65, it appears that he again claimed such a deduction, but the Income-tax Officer held that a finding had already been given by the Appellate Assistant Commissioner for the assessment year 1957-58 against the aasessee, who had not brought any fresh material on the basis of which the grevious finding could be reversed. The Officer therefore, didsallowed the deduction of interest. This order was upheld on appeal by the Appellate Assistant Commissioner and thereafter by the Appellate Tribunal on 26th September, 1967, and the Tribunal held that there was no valid gift made by the assessee.

(4) It appears that Sheo Narain became asssesable under the Wealth Tax Act for the first time in the assessment year 1963-64 There he called in question the amount of Rs. 84,000, which was included in his wealth by the officers under that Act. The said authorities came to the conclusion that there was no valid gift effected by the assessee by making mere book entries. On appeal, the Tribunal, however on 25th November, 1967, held that the said gift was valid and in calculating the total wealth of the assessee, the gifted amount together with interest was, therefore, excluded. In arriving at this conclusion, the Tribunal simply followed the decision of this Court in *Balimal Nawal Kishore* v. *Commissioner of Income-tax, Punjab* (1), as the same was binding on it. When the assessee's appeals for the assessment years 1964-65, 1965-66 and 1966-67 came before the Appellate Assistant Commissioner of Wealth Tax, he followed the Tribunal's decision relating to the assessment year 1963-64. The Department then filed appeals before the Tribunal and contended that the decision in *Balimal Nawal Kishore's case* was distinguishable from the facts of the instant case, because the entries in that ruling had been made in the books of the firm, over which, apart from the donor, there were others, who exercised control. In the present case, however, the entries had been made in the assessee's own books of account, over which he alone had complete control and domain and he could later on delete or reverse them at any time he liked. The Department urged that the case was completely covered by the decision of the Allahabad High Court in *Commissioner of Income-tax,* U.P. v. *Smt. Shyamo Bibi* (2), and the Patna High Court in

(1) (1966) 62 I.T.R. 669.
(2) (1966) 59 I.T.R. 1.

S. P. Jain versus *Commissioner of Income-tax, Bihar and Orisa* (3). The Tribunal agreed with the view of the Department and held that the decision in *Balimal Nawal Kishore's case* (1) was distinguishable and that the present case was covered by the rule of law laid down by the Allahabad and Patna High Courts, referred to above. The Tribunal, consequently, held that there was no valid gift made by the assessee and accepted the Department's appeals.

(5) In order to answer the question, referred to us, it is first of all necessary to find as to what a 'gift' means and how it is effected. Gift is defined in section 122 of the Transfer of Property Act, 1882. It is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person to another and accepted by or on behalf of the latter. Such acceptance has to be made during the lifetime of the former and while he is still capable of giving. Section 123 of the same Act mentions the methods by which the gift is effected. In the case of a gift of immovable property, the transfer has to be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. If the property gifted is movable, then the transfer is effected either by a registered instrument or by delivery of the gifted property. This delivery has to be made in the same manner as the goods are delivered when they are sold. Section 33 of the Indian Sale of Goods Act, 1930, deals with the delivery of goods sold. It says that such a delivery may be made by doing anything, which the parties have agreed shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or any person authorised to hold them on his behalf. Thus, it would be seen that the goods sold have to be actually put in the possession of the buyer or his authorised agent, so that the purchaser may have complete domain and control over them and the seller has nothing to do with them after the sale. In other words, for the validity of the gift, it is necessary to establish that after the said gift, the ownership in the property completely vested in the donee, who got complete control over it and the donor was left with no interest in the same and was unable to get it back from the donee without the latter's consent. Applying these principles, let us see whether, in the instant case, the assessee had made a valid gift in favour of his sons.

(6) Concededly, the gift was not effected by any registered instrument. The property gifted was Rs. 84,000. The amount in

(3) (1964) 51 I.T.R. 6.

question should, therefore, have been actually put within the exclusive control of the donees, with the result that the donor would have nothing to do with it and not bring it to his use in any manner in future. It is common ground that the books of account, in which the entries were made regarding the alleged gift, belonged to Sheo Narain. They were not the books of any firm, of which the donor was only a partner. As I have said, he was the sole proprietor of this business, which was being carried on in the name of Messrs Sukh Lal Sheo Narain. It is to be noted that for determining the validity of the gift, the position has to be judged *on the date of the gift*. On 21st May, 1955, besides making the debit and credit entries in his own books of account, Sheo Narain did not do anything else. No other document registered or otherwise had been executed by him in favour of his sons on the date when the gift is alleged to have been made. By such entries alone, it could not be said that the assessee divested himself of this property and the donees became full owners thereof. Sheo Narain could, if he liked, himself deal with this entire money without taking the permission of the donees. The donees also, on the other hand, even if they wanted to, could not utilise the gifted property in any manner they liked without the permission of the donor. Under these circumstances, it could not be held that the money had been completely transferred in favour of the donees and, therefore, a valid gift had taken place. It may also be stated that there was nothing on the record to show that the alleged gift was accepted by or on behalf of the donees, especially by the minors, as required under the law.

(7) In *Balimal Nawal Kishore's case* (1) on which reliance has been placed by the assessee, it was held by a Bench of this Court:

> "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 on whether, in the circumstances, this is a natural method of transfer; it is not necessary for the donor to withdraw sums in cash from the firm to be reinvested by the donee or donees in the firm.
>
> A few days before he died, a partner of a firm made an entry in his own hand in the account books of the firm to the effect 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 to each of the four sons of partners A, B and C, and Rs. 15,000 to the only son of partner D. These sums were credited on the same day in the accounts of the donees in the firm's books and, at the close of the financial year, each donee was credited with the interest on the gifted sum due up to that date, as well as in the following year, during which some of the donees actually withdrew sums of money from the amounts standing to their credit.

On the 5th of December, 1956, when the gift entries were made, the cash balance 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. 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 and by the Appellate Tribunal on the ground that the gift was not valid because it did not comply with the provisions of section 123 of the Transfer of Property Act as 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.

Held, that, on the facts, there was a valid gift of the sum of Rs. 60,000 and the interest paid to the donees was deductible under section 10(2)(iii) of the Income-tax Act of 1922."

(8) It will be seen from the above that the books of account in which the entries were made in this case, were of a firm, of which the donor was only a partner. Such is not the position in the case in hand and this ruling is, therefore, distinguishable.

(9) The nearest case, on facts, is the one in *Commissioner of Income-tax, U.P.* v. *Smt. Shyamo Bibi* (2). There it was held:

"Section 123 of the Transfer of Property Act, 1882, lays down the law governing all gifts made for whatever purpose and is to be applied whenever and wherever the question arises whether there was a gift or not and under that section a gift of movable property may be effected either by a registered instrument or by delivery of possession.

The assessee, professing to make a gift of Rs. 1 lakh to her only grandson O. N., made transfer entries in her account books crediting the sum of Rs. 1 lakh in the account of O. N., and debiting her account by the same amount. A memorandum signed by her and O.N. recited that she had orally given Rs. 1 lakh to O. N. and delivered the amount to him by the transfer entries made in her personal 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. Her accounts showed a cash balance of only Rs. 15-10-0 on that date:

Held, there was no valid gift as there was no delivery of possession of the amount. Executing the memorandum and making entries in her own accounts were the only acts she had done and these two acts did not have the effect of putting the money in the possession of O. N. As the account books were in her possession, dominion and control, so were the entries, and simply by making entries in them she did not vest O.N. with possession, dominion and control over the money. Nor could it be said that making transfer entries in personal accounts is constructive delivery."

(10) At another place in this very judgment, it was pointed out that—"No money changed hands; whatever money the assessee had either in cash or in the form of assets or bank balance remained where it was. She was not authorised by Om Nath to receive the money on his behalf; consequently, by her detaining possession of the money even if she had in her possession Rs. 1,00,000, it could not be said that the money was put in possession of her as authorised to hold it on Om Nath's behalf."

(11) The distinction between the entries made by the donor in his own books and in his accounts in the books of a third party has been drawn in another Bench decision of the Allahabad High Court in *Bhau Ram Jawaharmal* v. *Commissioner of Income-tax, U.P.* (4), where it was observed:

"It is not necessary in every case for the validity of a gift that there should be physical delivery of the amount by the

(4) (1971) 82 I.T.R. 772.

donor to the donee. It is settled that a transfer can be effected in the books of the donor's firm by making a debit entry in the account of the donor and making a corresponding credit entry in the account of the donee. So long as the entries made in the respective accounts put the gifted amount beyond the control of the donor and result in his ownership in it being replaced by the ownership of the donee, there is no reason why a valid gift cannot be effected through such book entries. The adequacy of a cash balance in the books of the firm on the relevant date sufficient to cover the amount of the gift is of no moment when the financial resources of the firm are sufficient and the amount in the donor's account is large enough to cover the amount gifted by him.

A distinction must be drawn between cases where the entries are made in the accounts of the donor and donee in the books of a third party holding moneys to the credit of the donor and a case where the donor purports to effect the transfer by making entries in his own books."

(12) It may be mentioned that the learned counsel for the assessee made reference to two other decisions—(i) *Naunihal Thakkar Dass* v. *Commissioner of Income-tax, Punjab* (5) and (ii) *Gopal Raj Swarup* v. *Commissioner of Wealth-tax, Lucknow* (6). In the former it was held:

"The question whether on the admitted facts there is a valid gift is a question of law and when such a question is referred to the High Court, the court will be entitled to hold that there was a valid gift even when the Tribunal has held otherwise.

One of the partners of a firm transferred certain amounts from his capital account to three ladies and this was effected by debiting the books of account of the registered firm and crediting in the names of three ladies. On these credit balances certain amounts were paid as interest to each of the three laides and these payments of interest were claimed as deductions by the firm. The Income-tax Officer disallowed the claim on the ground that the firm had

(5) (1970) 77 I.T.R. 332.
(6) (1970) 77 I.T.R. 912.

neither sufficient cash balance nor bank balance on the date of the alleged gifts to cover the amounts gifted. On a reference:

Held, (i) that from the mere fact that there was no cash balances it could not be held that the gift was invalid when there is no allegation that the gift was a sham; and (ii) that the fact that interest was paid to the donees would itself indicate that the donees took the interest because they accepted the gift of the corpus. Therefore, there was a valid gift of the amounts by the donor and the interest paid by the firm could be allowed as admissible deductions in assessing the firm."

In the latter authority, it was observed:

"The assessee was the Karta of a Hindu undivided family. On November 20, 1956, the assessee purported to transfer a sum of Rs. 50,000 from his account to the account of his son, Keshav Kumar Swarup. The transfer was effected by debiting the assessee's personal account in the books of the Hindu undivided family with the sum of Rs. 50,000 and crediting the same amount in the personal account of his son, Keshav Kumar Swarup. On November 20, 1956, the date of the gift, the assessee had a substantial credit balance exceeding the sum of Rs. 50,000 which he purported to gift to his son. The adjustment of entries made in the books of the Hindu undivided family was in pursuance of a letter written by the assessee to the said Hindu undivided family on the same date to the following effect:

"I have decided to give, out of my free-will, a sum of Rs. 50,000 (rupees fifty thousand only) to my son, Keshav Kumar. Please pay to the said gentleman this amount. From today, I have no right, title or interest in the aforesaid amount."

The Wealth-tax Officer and the Assistant Controller rejected the contention of the assessee that he had made a gift of Rs. 50,000 to his son and this amount should be excluded from his taxable 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:

Held, on the facts, that the assessee had made a valid gift of the value of Rs. 50,000 to his son on November 20, 1956."

(13) Both these authorities have no application to the facts of the instant case.

(14) In view of what has been said above, the answer to the question referred to above would be in the affirmative.

DHILLON, J.—I agree.

K. S. K.

CRIMINAL WRIT

Before Ranjit Singh Sarkaria and S. C. Mittal, JJ.

SURJIT SINGH,—*Petitioner.*

versus.

THE STATE OF PUNJAB ETC.,—*Respondents.*

Criminal Writ No. 11 of 1971

May 26, 1972.

Prisons Act (IX of 1894)—Section 59—Punjab Jail Manual Paras 631 and 647—Code of Criminal Procedure (Act V of 1898)—Section 401—Life imprisonment—Whether equates with imprisonment to 20 years for all purposes—Prisoner sentenced to life imprisonment completing 20 years imprisonment—Whether entitled to be released without orders under section 401 of the Code—Persons convicted in other States of India transferred to Punjab jails—"Appropriate Government" competent to pass orders under section 401 of the Code for their pre-mature release—Whether the Government of Punjab.

Held, that no doubt the definition of 'life-convict' given in para 631(2) (f) of the Punjab Jail Manual equates life imprisonment to 20 years' imprisonment but this is only for the purpose of calculating the remissions earned and not for all purposes. A sentence of life imprisonment is one for the whole of the remaining life of the convict and there is nothing in the statutory rules contained in the Punjab Jail Manual, or any other law, which equates such a sentence to 20 years imprisonment or any other definite term for all purposes. The release of such a life-convict even on