COMMISSIONER OF WEALTH-TAX

v.

SMT. HASHMATUNNISA BEGUM

JANUARY 17, 1989

[R.S. PATHAK, CJ & M.N. VENKATACHALIAH, J.]

Wealth Tax Act, 1957: Section 4(1)(a) Proviso—Wealth tax—Assets transferred by way of gift—Exemption—Whether gifts made before assessment year commencing after March 31, 1964 entitled to benefit of exemption—For any assessment year commencing after March 31, 1964—Interpretation of.

Statutory Interpretation: Literal rule—Meaning of statute is plain—Court must apply regardless of result—Court not entitled to read statute in another way anxious to avoid its unconstitutionality.

Words and Phrases: 'Interpretation'—'Construction'—Meaning of.

In Civil Appeal No. 1118 of 1975 the respondent—assessee's husband gifted certain lands and buildings to his two spouses by three gift deeds dated 26.4.1962, 26.5.1962 and 17.8.1962. The gifts were chargeable to gift-tax and were accordingly assessed to gift-tax in the assessment year 1963-64.

In the proceedings for assessment to wealth for the assessment year 1967-68, it was claimed on behalf of the estate of the assessee's husband, who had later died on 16.12.1968 that as the gifts were chargeable to gift-tax, the proviso to s. 4(1)(a) was attracted and the assets so transferred were not includible in the net wealth of the deceased for any assessment year commencing after the 31st day of March, 1964. The Wealth Tax Officer rejected this claim. On appeal, the Appellate Assistant Commissioner confirmed the assessment. Allowing the assessee's further appeal, the Appellate Tribunal, on a particular construction of the proviso, held that the assets transferred, which had attracted gift-tax, were not includible in the net wealth of the deceased for the assessment year 1964-65 onwards.

On a reference made at the instant of the Revenue, the High Court agreed with the construction placed on the proviso by the Tribunal. The Revenue filed an appeal, by Special leave in this Court.

A The appellant-assessee in Civil Appeal Nos. 1226 and 1227 of 1975, made a gift of certain amount to her minor daughter on 7.10.1959. The assets so transferred were included in the assessee's wealth for the two assessment years 1964-65 and 1965-66 under s. 4(1)(a)(ii) of the Wealth-tax Act. The claim of the assessee that the proviso to s. 4(I)(a) operated to exclude the asset from the net wealth of B the assessee as the transfer was chargeable to gift-tax was not accepted by the Wealth-tax Officer. The Appellate Assistant Commissioner rejected the assessee's appeal.

However, the Appellate Tribunal, accepting the contention of the assessee, allowed the assessee's appeal and held that, on a true construction of the proviso, so long as the gift was chargeable to or exempt under C s. 5 from gift-tax, to that extent s. 4(1)(a) ceased to have operation and the statutory fiction embodied in it was not attracted and that since, the gift was chargeable to gift-tax, at the relevant time, the exemption was to operate from the assessment year commencing after 31-3-1964.

The High Court, on a reference made at the instance of the D Revenue reversed the Tribunal's view. Hence, the assessee filed the appeal, by certificate, in this Court.

In the appeals before this Court, it was submitted on behalf of the Revenue that the words "for any assessment year commencing after the 31st day of March, 1964" could, in the context only refer to the gift and E gift-tax assessments, that only that class of gifts which were chargeable to gift tax for any assessment year 1964-65 or thereafter (but subject to the time limit fixed by the 1971 amendment) which would otherwise fall under s. 4(1)(a) were eligible for the benefit of exemption, and that where the enactment was clear and admitted of only one meaning, and did not admit of two or more meanings, it would be the plain meaning F that should be given effect to and no resort could be had to any rules of construction which would denude the provision of its plain and ordinary meaning.

On behalf of the assessees, it was contended that the date of the gift was immaterial and as long as the transfer was chargeable to gift G tax or was exempted under s. 5 whatever may be the year in which the gift was made, the exemption from a gift-tax must commence for any assessment year commencing after the 31st day of March 1964", that these words should not be read as part of the first part of the proviso relating to gift-tax assessments but as part of the second part denoting the commencement of the operation from Wealth-tax, and that a con- H struction which promoted its constitutionality has to be preferred to the

one which, if accepted, would expose the proviso to the vice of discrimination and unconstitutionality. A

Allowing the appeal of the Revenue and dismissing the appeal of the assessee.

HELD: 1. On a reading of the plain words of the proviso to s. 4(1)(a) of the Wealth-tax Act, 1957, the clause "for any assessment year commencing after 31st day of March, 1964" can only be read as relating to gift-tax assesssments and not to the wealth-tax assessments. [165E] B

The amendment introducing the proviso was brought about by an amending Act of 1964, but the date of the commencement of its operation was left to be fixed by a Notification. If the construction that the clause should be read as part of the second part, denoting the commencement of the operation of exemption from Wealth tax is accepted, effect of the Notification issued bringing the proviso into effect from 1.4.1965 would be wholly ignored, and the introduction of the words "but before the 1st day of April, 1972", by a later amendment would operate to take away the benefit of the exemption after 1.4.1972 and the exemption confined only to the assessment years between 1964-65 and 1972-73. [165C-D] C D

Therefore, the gifts in question though chargeable to gift-tax would not attract the benefit of exemption and would be liable to be included in the net wealth of the assessees. [163A] E

T. Saraswathi Achi v. *C.I.T.*, 104 ITR 195 (Mad); *C.W.T.* v. *Seth Nand Lal Ganeriwala*, 107 ITR 758 (Pun.); *M.G. Kollankulam* v. *C.I.T.*, ITR 160 (Kerala), *Malti Harseey* v. *C.W.T.*, 12 ITR 676 (MP) and *C.W.T.* v. *Rasesh N. Mafatlal*, 126 ITR 173 (Bom) approved. F

2.1 One of the pillars of statutory interpretation viz., the literal-rule, demands that if the meaning of the Statutory Interpretation is plain, the Courts must apply regardless of the result. [165G]

2.2 The very concept of interpretation connotes the introduction of elements which are necessarily extrinsic to the words in the statute. Though the words "Interpretation" and "construction" are used interchangeably, the idea is somewhat different. [165H] G

2.3 The rule of construction that if the statutory provision is susceptible or admits of two reasonably possible views, then the one H

A **which would promote its constitutionality should be preferred on the ground that the legislature is presumed not to have intended an excess of its own jurisdiction, is subject to the further rule that it applies only where two views are reasonably possible on the statutory language. If the words of the statute, on a proper construction, can be read only in a particular way, then it cannot be read in another way by a court of** B **construction anxious to avoid its unconstitutionality.** [166G-H]

2.4 In a case, as here, where a reference arises under 'Act', the question of the constitutionality of the Act cannot be examined and pronounced upon by this Court. That is the task of the Court in judicial-review. However, the rule of preference of a particular con- C **struction amongst the alternatives, in order to avoid unconstitutionality, is unavailable in the instant case.** [166H; 167A, F]

3. In a taxing measure, the legislature enjoys a wider latitude and its dispensations are based on an interaction of diverse economic, social and policy considerations. Further, if the proviso is bad for discrimina- D **tion, it would follow that the converse situation brought about by the later amendment, a discrimination as between gifts made as between the 31st of March, 1972 and on 1st April, 1972 might also become bad. This Court is required to notice the provision as it stood at the relevant time.** [167D-E]

E *State of Punjab* **v.** *Prem Sukhdas,* **[1977] 3 SCR 408 and** *Attorney General* **v.** *Carlton Bank,* **[1899] 2 Q.B. 158, referred to.**

Dr. Patrick Devlin: Samples of Law Making—Oxford University Press, **p. 70-71 and** *Max Radin "Statutory Interpretation"* **43 Har. L.R. 863 (868), referred to.**

F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1118(NT) of 1975.

WITH

G Civil Appeal Nos, 1226 & 1227(NT) of 1975.

From the Judgment and Order dated 18.9.1974 and 11.10.74 of the Andhra Pradesh and Calcutta High Court. In case referred No. 15 of 1973 and matter No. 710 of 1970 respectively

H B.B. Ahuja, Ms. A. Subhashini, K.C. Dua for the Appellant in C.A. No. 1118 of 1975.

Harish N. Salve, Vivek Gambhir and Preveen Kumar for the Appellant in C.A. No. 1226-27 of 1975. A

A. Subba Rao for the Respondent in C.A. No. 1118 of 1975.

B.B. Ahuja, K.C. Dua and Miss. A. Subhashini for the Respondent in C.A. Nos. 1226-27 of 1975. B

The Judgment of the Court was delivered by

VENKATACHALIAH, J. Civil Appeal No. 1118/NT/1975, by special leave, by the Commissioner of Wealth-tax, Andhra Pradesh, and CA Nos. 1226 & 1227/NT/1975, on a certificate, under Sec. 29(1) of the Wealth-tax Act, 1957, (Act) by the assessee raise a question as C to the proper construction of the proviso to Sec. 4(1)(a) of the Act, which provides for exemption respecting transferred assets which would otherwise be includible in the wealth of the assessee under sec. 4(1)(a) of the Act.

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The condition for the grant of the exemption under the proviso is that the transfer of the asset is either chargeable to gift-tax or is not chargeable under sec. 5 of the Gift-tax Act, 1958. The particular point for consideration is whether, on the language of the proviso, the exemption is attracted only to such gifts as were chargeable to tax for any assessment year commencing "after the 31st day of March, 1964," E as understood by the Revenue or whether the gifts even made earlier would attract the benefit of the exemption as claimed by the assessees.

2. There appears a divergence of judicial opinion on the point in the High Courts. In *C.W.T.* v. *Smt. Sarala Debi Birla,* 101 ITR 488 F (Cal.); *T. Saraswathi Achi* v. *C.I.T.,* 104 ITR 185 (Mad.); *C.W.T.* v. *Seth Nand Lal Ganeriwala,* 107 ITR 758 (Pun.); *M.G. Kollankulam* v. *C.I.T.,* 115 ITR 160 (Kerala) *Malti Harseey* v. *C.W.T.,* 12 ITR 676 (MP) and C.W.T. v. *Rasesh N. Mafatlal,* 126 ITR 173 (Bom) several High-Courts have construed the provision in the manner suggested by the Revenue. *C.W.T.* v. *Hashmatunnisa Begum,* 108 ITR 98 (AP) has G taken the opposite view extending a wider benefit of the exemption.

The opinion of the Calcutta High Court in 101 ITR 488, which is representative of the view in favour of Revenue, is under appeal in CA 1226 and 1227 of 1985 and the opinion of the Andhra Pradesh High Court in 108 ITR 98 which is favourable to the assessee is under appeal H

No. CA 1118 of 1975 preferred by the Revenue.

3. In CA 1118 of 1975 the assessee Smt. Hashmatunnisa Begam, the legal representative of the late Nawab Zaheer Yar Jung Bahadur, claimed in respect of the assessment year 1967-68, that the value of the immovable properties gifted by the late Nawab to his wives before 1.4.1964 should not be included in the net wealth of the Nawab as on the valuation dated 31.9.1966. The Nawab under three deeds of gift one dated 25.5.1962, in favour of Smt. Hashmatunnisa Begum, his first wife, and two other deeds dated 17.8.1962 and 26.4.1962, in favour of Smt. Fareed Jehan Begum his second-wife, gifted in their favour certain lands and buildings of a total value of Rs.1,96,950. The gifts were chargeable to gift-tax and were accordingly assessed to gift-tax in the assessment year 1963-64. On behalf of the estate of the Nawab—who later dies on 16.12.1968—it was claimed in the proceedings for assessment to wealth for the Assessment Year 1967-68. That though the gifts were otherwise includible as belonging to the Nawab under sec. 4(I)(a)(i), as the transfers made to the spouses otherwise than for adequate consideration, however, as the gifts were chargeable to gift-tax, the proviso to sec. 4(I)(a) was attracted and that the assets so transferred were not includible in the net wealth of the Nawab "for any assessment year commencing after the 31st day of March 1964". The Wealth-tax Officer rejected this claim. The Appellate Asst. Commissioner, in the assessee's appeal, confirmed the assessment. In the assessee's further appeal before the Appellate Tribunal, the Tribunal, on a particular construction of the proviso, allowed the appeal and held that the assets transferred, which had attracted gift-tax, were not includible in the net wealth of the Nawab for the assessment year 1964-65 onwards. At the instance of the Revenue, the following question of law was referred to the High Court for its opinion:

> "Whether, on the facts and in the circumstances of the case, the assessee was entitled to exclude, under the proviso to section 4(1)(a) of Wealth-Tax Act, 1957, the value of the assets gifted to his wives in the Wealth-tax assessment for the assessment year 1967-68?"

The High Court agreed with the construction placed on the proviso by the Tribunal and answered the question in the affirmative and against the revenue. The revenue has come up in appeal by special leave.

4. In CA 1226 and 1227 of 1975 the assessment years concerned are 1964-65 and 1965-66 corresponding to the valuation dates

31.3.1964 and 31.3.1965. On 7.10.1959 Smt. Sarladevi Birla, the assessee, made a gift of Rs.1,00 ,011, to her minor daughter Smt. Manju Rani Birla. The assets so transferred were included in the assessee's wealth for the two assessment years 1964-65 and 1965-66 under sec. 4(I)(a)(ii) of the Wealth-tax Act. The claim of the assessee that the proviso to sec. 4(I)(a) operated to exclude the asset from the net wealth of the assessee as the transfer was chargeable to gift-tax was not accepted by the Wealth-tax Officer, who completed the assessment including the transferred-asset in the assessee's net-wealth. The assessee's appeal before the Appellate Asst. Commissioner was unsuccessful.

However, the Appellate Tribunal accepted the contention of the assessee and by its appellate order dated 11.5.1970 allowed the assessee's appeal holding that on a true construction of the proviso, so long as the gift was chargeable to or exempt under sec. 5 from gift-tax to that extent sec. 4(I)(a) ceased to have operation and the statutory fiction embodied in it was not attracted and that as at the relevant time the gift was chargeable to gift-tax. The exemption was to operate from the assessment year commencing after 31.3.1964. At the instance of the revenue, the Appellate Tribunal referred the following question of law for the opinion of the High court:

> "Whether on the facts and in the circumstances of the case and on a proper interpretation of section 4(1)(a) of the Wealth-tax Act as amended by the Wealth-tax (Amendment) Act, (Act 46) of 1964, the sum of Rs.1,00,011 gifted by the assessee to her minor daughter could be included in computing her net wealth"?

The High Court of Calcutta in reversal of the view taken by the Tribunal answered the question in the affirmative and against the assessee. The assessee has come up in appeal by certificate.

5. We have heard Shri B.B. Ahuja, learned counsel for the revenue and Shri Harish Salve and Shri Subba Rao, for the assessees.

The controversy generated on the point leading to the divergence of the judicial opinion on the point is attributable to the somewhat inelegant and inappropriate phraseology of the provision. To appreciate the relevant contentions it is necessary to notice the words of the proviso:

A "Provided that where the transfer of such assets or any part thereof is either chargeable to gift-tax under the Gift-tax Act 1958 (18 of 1958), or is not chargeable under Section 5 of that Act, for any assessment year commencing after the 31st day of March, 1964, (but before the 1st day of April, 1972), the value of such assets or part thereof, as the case B may be, shall not be included in computing the net wealth of the individual;"

The words "but before the 1st day April 1972" was later introduced by the Financee (No. 2) Act 1971 with effect from 1.4.1972.

C This was introduced by the amending Act of 1964, but given effect to from 1.4.1965 by the notification. Under the various clauses of Sec. 4(1)(a) certain transfers of assets made by an individual in favour or for the benefit of the spouse or a minor child, not being a married daughter, of such individual, are required to be ignored and the transferred-assets included in the wealth of the assessee, as belong- D ing to him. Section 4(1)(a) aims at foiling an individual's attempt to avoid or reducing the incidence to wealth tax by transferring the assets to or for the benefit of the spouse or the minor child of the individual by requiring the inclusion of such transferred assets in computing the net wealth of the individual.

E However, the proviso makes the provision inoperative where and in so far as the transferred asset is either chargeable to gift-tax under or is exempt under sec. 5 of the Gift-tax Act. The controversy surrounds the question whether the expression "for any assessment year commencing after 31st day of March 1964", occurring in the proviso should be read with the first part and as referring to the eligi- F bility of the gifts for exemption with reference to the point of time at which the gifts were made or whether that expression does not condition the identity of the eligible gifts but only signifies the starting point for the exemption from wealth tax. Assessees contend that the date of the gift is immaterial and as long as the transfer is chargeable to gift-tax or is exempt under sec. 5,—whatever may be the year in which the G gift was made,—the exemption from gift-tax must commences "for any assessment year commencing after the 31st day of March 1964".

If the expression "for any assessment year commencing after the 31st day of March, 1964" is intended to qualify and determine the gifts, the subject-matters of which are eligible for exemption, then the H literal construction, would be that the gifts made earlier to that period,

though chargeable to gift-tax would not attract the benefit of exemption. But the assessees say that the clause must be read as part of the second part of the proviso which contemplates the exemption. So read, the clause would qualify the commencement of the benefit of the exemption and not the point of time when the Gift is required to be made to be eligible for the exemption from wealth-tax. The learned Judges of the High Court of Andhra Pradesh in the course of the Judgment under appeal in CA 1118 of 1975 observed:

> "..... The words 'for any assessment year commencing after the 31st day of March, 1964' are referable to the assessment to be made under the Wealth-tax Act. They render the provisions of section 4(1)(a) inoperative irrespective of the fact whether the transferred asset was chargeable to gift-tax or not chargeable to gift-tax. The proviso specifies the period of exemption upto 31st March, 1964. Irrespecive of the year of the gifts when the assets were gifted, they will not be included in the computation of the net wealth of the individual till the assessment year 1964-65. We are, therefore, of the view that the intention of Parliament was to exempt transfers made under clauses (i) to (iv) of section 4(1)(a) from being computed in the net wealth of the individual upto the wealth-tax assessment year commencing after 31st day of March, 1964 ....."

7. Sri Ahuja submitted that the words "for any assessment year commencing after the 31st day of 1964" could, in the context, only refer to the gift and gift-tax assessments. The proviso, he said, which was introduced by way of an amendment, was brought into force with effect from 1.4.1965 by a notification which specified the commencement of the operation of the proviso and that, quite obviously, it would be redundant to read the clause under consideration as again referring to the commencement of the operation of the proviso. While the clause under consideration related to and qualified the Gift tax assessments, the commencement of the exemption of the subject-matter of the Gifts for purposes of wealth-tax was controlled and determined by the commencement of the operation of the proviso, which, by notification was specified as 1.4.1965.

Sri Ahuja submitted that the proviso was intended to effectuate the legislative policy that in respect of certain gifts made in favour of a spouse or a minor child, during a specified period, the assets transferred under the Gifts would have the benefit of exemption from the

operation of Section 4(1)(a). This was because the legislature took into consideration that from 1.4.1964 onwards there was a sharp ascent in the rates of gift-tax and that the assets which constituted the subject matter of such gifts attracting such high rates of gift-tax should not also be included in the net-wealth of the donor for wealth-tax purposes which would otherwise be the consequence under Section 4(1)(a) of the Act. As the proviso originally stood, gifts chargeable to gift-tax for any assessment year commencing after 31st March, 1964, attracted the benefit of exemption. The outer limit for the period of such eligible gifts was later fixed by the amendment made by Finance (No. 2) Act, 1971, w.e.f. 1.4.1972 which introduced the words 'but before the 1st day of April, 1972'. Accordingly, Sri Ahuja contends that only that class of gifts that were chargeable to gift-tax for any assessment year 1964-65 or thereafter (but subject to the limit fixed by the 1971 amendment) which would otherwise fall under Section 4(1)(a) were eligible for the benefit of the exemption. According to Sri Ahuja the plain words of the proviso leave no room for doubt and where the enactment is clear and admits of only one meaning and does not admit of two or more meanings, it would be the plain meaning that should be given effect to. When the meaning is plain, says counsel, no resort could be had to any rules of construction which would denude the provision of its plain and ordinary meaning.

8. Sri Harish Salve presenting the case of the assessees sought to point out the intrinsic anomaly of the cases between a gift made, say, on 31st of March 1963 and one made the very next-day i.e. 1st of April, 1963 on the other, to show that while in the first case even for the assessment year 1965-66 the transferred asset is includible in the wealth of the assessee, in the latter case it is exempt for all time to come thereafter. Learned counsel pointed out that the criterion of higher rates of Gift-tax as a justification supporting the classification also fails in view of the fact that under the proviso it is not only the gifts chargeable to tax but also those exempt under sec. 5 that attract the exemption with the result that between two gifts which are both exempt under sec. 5 of the Gift-tax Act, one is for ever exempt from wealth-tax in the hands of the donor while the other is includible in his wealth for purposes of wealth-tax depending solely on the criterion of the date of gift—whether the gift was made prior to 31st March 1963 or thereafter. Here the criterion of classification of gifts on the basis of the exigibility for higher rates of tax, says Sri Salve, collapses and the cut-off date determining the difference in consequences in the two different class of cases become wholly arbitrary. Shri Salve submitted that a construction which promotes its constitutionality has to be pre-

ferred to the one which, if accepted, would expose the provision to the vice of discrimination and unconstitutionality.

The essential basis of Sri Salve's suggested construction rests on the requirement that the words "for any assessment year commencing after the 31st day of March 1964" should not be read as part of the first part of the proviso relating to gift-tax assessments but as part of the second part denoting the commencement of the operation of exemption from wealth-tax.

9. This, we are afraid, will imboggle itself in the quagmire of irreconcilable constructional contradictions. The amendment introducing the proviso was brought about by an amending Act of 1964; but the date of the commencement of its operation was left to be fixed by a Notification. The effect of the Notification issued bringing the proviso into effect from 1.4.1965 would be wholly ignored by the construction suggested by Sri Salve. Secondly, the introduction of the words "but before the 1st day of April, 1972" would, if the construction suggested by Sri Salve is accepted, operate to take away the benefit of the exemption after 1.4.1972 and the exemption confined only to the assessment years between 1964-65 and 1972-73. On a reading of the plain words of the proviso, the clause "for any assessment year commencing after 31st day of March, 1964" can only be read as relating to gift-tax assessments and not to the wealth-tax assessments.

10. But, Sri Salve contends that this literal construction would expose the provision to an attack on its constitutionality on the ground that it brings about a discrimination between two classes of assessees on nothing more than an arbitrary cut off date. The cases of gifts exempted under sec. 5, he says, illustrate the point as according to Sri Salve there could be no rational basis for discriminating between a gift exempted under sec. 5 made on 31.3.1963 on the one hand and 1.4.1963 on the other.

11. One of the pillars of statutory interpretation viz., the literal-rule, demands that if the meaning of the Statutory Interpretation is plain and the Courts must apply regardless of the result.

12. The very concept of interpretation connotes the introduction of elements which are necessarily extrinsic to the words in the statue. Though the words "interpretation" and "construction" are used interchangeably, the idea is somewhat different. Dr. Patrick Devlin says:

A

> "..... A better word, I think, would be construction, because construction, although one often used it alternatively with interpretation, suggests that something more is being got out in the elucidation of the subject matter than can be got by strict interpretation of the words used. In the very full sense of the word 'construction' the judges have
B set themselves in this branch of the law to try to frame the law as they would like to have it .....".
> [See: Samples of Law Making—Oxford Universiy Press—p. 70-71]

"A statute" says Max Radin "is neither a literary text nor a
C divine revelation. Its effect is, therefore, neither an expression laid on immutable emotional over-tones nor a permanent creation of infallible wisdom. It is a statement of situation or rather a group of possible events within a situation and as such it is essentially ambiguous." [See "Statutory Interpretation"—43 Har. L.R. 863 (868)].

D The observations of Lord Russel of Killowen in *Attorney General* v. *Carlton Bank,* [1899] 2 Q.B. 158 though an early pronouncement, is refreshing from its broad common-sense:

> "I see no reason why special canons of construction should be applied to any Act of Parliament, and I know of
E no authority for saying that a Taxing Act is to be construed differently from any other Act. The duty of the Court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature, as that intention is to be gathered from the language em-
F ployed, having regard to the context in connection with which it is employed ..... Courts have to give effect to what the Legislature has said."

The rule of construction that if the statutory provision is susceptible or admits of two reasonably possible views then the one which
G would promote its constitutionality should be preferred on the ground that the legislature is presumed not to have intended an excess of its own jurisdiction, is subject to the further rule that it applies only where two views are reasonably possible on the statutory language. If the words of the statute, on a proper construction, can be read only in a particular way, then it cannot be read in another way by a court of
H construction anxious to avoid its unconstitutionality. In a case, as here,

a reference arises under 'Act', the question of the constitutionality of the 'Act' cannot be examined and pronounced upon. In *State of Punjab* v. *Prem Sukhdas,* [1977] 3 SCR 408 this Court made the point clear:

> ".....This amounts to nothing short of legislation. *We think that the view is an impossible one. The principle that, where a provision is capable of one of two interpretations, the interpretation which validates rather than one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to, in effect, repeal statutory provisions by making them useless without holding them to be void."*
> [p. 410]
>
> (Emphasis Supplied)

Even in regard to constitutionality of the classification, it is not possible to rule out arguments as to the validity of classification as wholly unstateable. In a taxing measure the legislature enjoys a wider latitude and its dispensations are based on an interaction of diverse economic, social, and policy considerations. Further, if the proviso is bad for discrimination, it would follow that the converse situation brought about by the later amendment, a discrimination as between gifts made as between the 31st of March 1972 and on 1st April, 1972 might also become bad. It is true that we are required to notice the provision as it stood at the relevant time.

We, however, should not be understood to have pronounced on the question of constitutionality. That is the task of the Court in judicial-review but the rule of preference of a particular construction amongst the alternatives, in order to avoid unconstitutionality is unavailable here.

Accordingly, while Civil Appeal No. 1226 and 1227 of 1975 preferred by the assessee are dismissed, CA No. 1118 of 1975 of the revenue is allowed and in reversal of the order dated 18.9.1974 of the Andhra Pradesh High Court the question referred is answered in the negative and in favour of the revenue.

In the circumstances, the parties are left to bear and pay their own costs in these appeals.

N.P.V. C.A. Nos. 1226 & 1227/75 are dismissed
C.A. No. 1118/75 is allowed.