

## **CHAPTER V**

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**CASE STUDY**

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#### 5.1 VALIDITY OF GIFT BY BOOK ENTRIES

The question of validity of gift by book entries has come up for determination before Supreme Court. Where a gift of money from one person to another is made by means of entries in the books of account maintained by the person making the gift or by an individual or a H.U.F. or a firm or an association of persons or body of individuals with whom he has business connection, the value of such gift will be included in the net wealth of the person making the gift unless he proves to the satisfaction of the Gift Tax Officer that the money had actually been delivered to the other person at the time entries were made from the assessment year 1976-77 onwards.

In this chapter, the designer has analysed decision rendered by the Supreme Court. This analysis shows that there is no general rule that the gifts by book entries are invalid. It is well settled that the transfer can be made by instructing the third parties, with whom the donor has an account, to transfer the amount to the account of donee.

It is also essential that there should be credit balance in the account of the donor sufficient to cover the

gifted amount if he is otherwise empowered to overdraw.

It is good to advise that a letter of acceptance by the donees or on their behalf, should be obtained and kept on record. It also stresses that it should be ensured that the donees are allowed to withdraw out of the amount transferred to their credit.

## 5.2 INTRODUCTION

The question of validity of gift by book entries has been tested by the judicial decision of Supreme Court. For discussing judgement, consider the definitions of gift and allied terms which have been discussed in earlier topics.

### Acceptance when to be made

Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

According to Section 123 of the Transfer of Property Act, the transfer should be effected as follows:

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

"For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery; such delivery may be made in the same way as goods sold may be delivered".

Section 33 of the Sale of Goods Act, 1930 provides delivery - Delivery of goods sold may be made by doing anything which the parties agree 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.

### 5.3 LEGAL DECISIONS

Commissioner of Income Tax, Kanpur

Vs

Dr.R.S.Gupta (1987) (165 ITR 36)

There are many cases on gift by book entries. Here is taken only one case which is decided by Supreme Court. This case is very good for research study because it is recent and it covers Gift Tax, Wealth Tax, as well as Transfer of Property Act.


In this gift is made through book entries in company which is not carrying banking business and which has no

overdraft facility. Gift will be valid only to the extent of cash balance of company on date of gift.

In order to constitute a valid gift there must be an existing property. In case of entries in the books by Credit and Debit, the sums should be available on the date of gift in the account of the firm whose accounts are said to be credited or debited.

In the cases of non-banking companies which do not have overdraft facilities, it is not possible to make valid gift if funds are not available. The circumstances must be such as to make it clear that there were sufficient funds at the disposal of the donor by reason of which he could make the gift by such book entries. The firm in which the donor may have account may or may not have sufficient cash balance but it must have sufficient provision for overdraft with the bank on the basis of which it could honour instructions given by the assessee.

In case there was no sufficient cash balance from out of which the amount gifted could be physically given to the donee, mere entries in the books of account in the form would not constitute delivery of possession over the gifted amount to the donee and gift in such case will not be valid.



The assessee had maintained an account in the books of a company Mr.T. On 1.1.1957, that account showed a credit of Rs.1,50,740/-. On that day, the assessee addressed a letter to M/s T & Sons stating that he had decided to gift his two sons and two grandsons a total amount of Rs.1,50,000/- and directed to that company to debit his account to the extent of Rs.1,50,000/- and credit the amounts in proportion as mentioned by him in the name of the aforesaid persons. Admittedly, T had a cash balance of Rs.4,000/- only on 1.1.1957 and it did not have any overdraft facilities with any bank. There was no evidence that T and Sons were carrying on any banking business.

The Tribunal held that they were not carrying on banking business. The main question, therefore, that falls for consideration is whether gifts in question made by the transfer entries in the books of the debtor-company were valid gifts even though the debtor company was not carrying on the business of banking and had no cash in hand for the amount in question on that date. 'Gift' is defined in Section 122 of the Transfer of Property Act, 1882, as, "the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee". Section 123 of the

said Act deals with how transfers are effected and stipulates, inter-alia, that for the purpose of making a gift of movable property as in this case, the transfer must be effected either by a registered instrument signed by the donor and attested or by delivery. Such delivery may be made in the same way as goods sold may be delivered. In such case the sum that could be taken by the donee was only Rs.4,000/- and there was no overdraft facility to T and Sons with any Bank. In that view of the matter, there were no existing goods to be parted. Accordingly, except to the extent of Rs.4,000/-, the entries in the books of account could not effectuate gifts.

The appeal is allowed in the above case.

Cases referred to -

1. CED Vs Kamalavati (1979) 120 ITR 456 (SC)
2. Bardi Prasad Jagan Prasad Vs CIT (1985)  
156 ITR 430, (S.C.)

5.4 CONCLUSION

From the study of the aforesaid cases it can be concluded that there is no general rule that the gift by book entries is invalid. The question of validity or invalidity of such gifts depends mainly on the facts and evidences, in each particular case.

It is, however, well settled that the transfer can be made by instructing the third parties with whom the donor has an account to transfer the amount to the account of donee. The actual or physical delivery is not essential requirement.

It is also not essential that there should be credit balance in the account of the donor sufficient to cover the gifted amount, if he is otherwise empowered to overdraw.