
(1967) 08 CAL CK 0016

In the Calcutta High Court

Case No : Income-tax Reference No. 188 of 1963

Badri Pr. Khemka

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 08-08-1967

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1970) 77 ITR 552

Hon'ble Judges : K.L. Roy, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : B. Chakravarti Thakur and Deb, for the Appellant; S. Mukharji and B. Gupta, for the Respondent

Judgement

K.L. Roy, J.—This reference u/s 64(1) of the Estate Duty Act, arises out of the assessment to estate duty on the estate passing on the death of Gourdhandas Khemka. The deceased was a partner in the firm of Messrs. Gourdhandas Badri Prasad Khemka with a ten annas share therein, the other partner being his son, Badri Prasad, who had a six annas share. On the 18th April, 1956, the deceased's capital account in the books of the firm was debited with the sum of Rs. 50,000 and two sums of Rs. 25,000 each were credited to the accounts of his two grandsons, Shri Narayan Khemka and Laxminarayan Khemka, opened in the books of the firm. On the 19th April, 1956, a deed of partnership was entered into between the deceased, Badri Prasad, Shri Narayan and Laxminarayan wherein it was recited that the gift of Rs. 25,000 each made by Gourdhandas to Shri Narayan and Laxminarayan would be treated as their respective capital contribution to the firm constituted under that instrument and that the business formerly carried on by the firm of two partners would now be carried on by the firm of four partners. The shares in the new firm were described as follows :

Rs. As. Ps.

Gourdhandas 0 6 0

Badri Prasad 0 6 0

Shri Narayan 0 2 0

Laxminarayan 0 2 0

2. On the 9th April, 1957, two further amounts of Rs. 20,000 and Rs. 5,000, respectively, were purported to have been gifted by the deceased to his two other grandsons, B. K. Khemka and R. C. Khemka, by debiting his capital account in the firm and crediting the account of the two grandsons in the firm's books. Gourdhandas died on the 30th October, 1959.

3. The Assistant Controller of Estate Duty held that the two gifts of Rs. 50,000 and Rs. 25,000 made by the deceased on the 18th April, 1956, and the 9th April, 1957, respectively, were not genuine and valid gifts as mere entries in the books of accounts could not complete a gift. He also found as a fact that when these entries were passed there was not sufficient cash balance in the books of the firm to have made the transfers possible. The Assistant Controller was also of the opinion that even if the gifts were held to be valid gifts by the deceased in favour of the donees, as the amounts of the gifts were credited in the books of the firm in which the deceased was a partner up till the date of his death, the deceased was not entirely excluded from the possession and enjoyment of the gifts and as such the entire sum of Rs. 75,000 would be deemed to pass on the deceased's death u/s 10 of the Estate Duty Act. For this proposition he relied on the decision of the Privy Council in the case of Clifford John Chick v. Commissioner of Stamp Duties, [1958] A.C. 435 ; [1959] 37 ITR 89 ; 3 E.D.C, 915 (P.C.). He, therefore, included the amount of Rs. 75,000 in the principal value of the estate passing on the death of the deceased.

4. On appeal by the accountable person against the order of assessment, the Appellate Controller of Estate Duty recorded an admission by the authorised representative of the accountable person that the deceased did not execute anything in writing directing the firm to transfer the amounts of the alleged gifts from his account to the accounts of the alleged donees and also that there was no sufficient cash balance with the firm at the time of the alleged gifts. The Appellate Controller held that the property sought to be gifted was only the deceased's share in the firm. As this was an actionable claim, no transfer of such property could be made without an instrument in writing signed by the transferor as provided for in Section 130 of the Transfer of Property Act. In his opinion the mere fact that the firm had opened separate accounts in the names of the deceased's grandchildren would not prove that the gifts were valid. Mere entries in the account, books could not create or destroy any rights unless the transactions themselves which created such rights were complete. In his opinion, the gifts alleged to have been made by the deceased in favour of his grandsons were not genuine and valid under the law. The Appellate Controller also endorsed the view of the Assistant Controller that in any event the amount of the gifts would be deemed to pass on the death of the deceased u/s 10 of the Estate Duty

Act.

5. On further appeal by the accountable person against the order of the Appellate Controller, the Tribunal observed that even the transfer entries in the books of the firm were not preceded by any letter of authority signed by the deceased and the donees had not indicated the acceptance of the gifts. Mere entries in the account books could not create or destroy any right unless the transactions which created such rights were completed. The Tribunal referred to the decision of the Madras High Court in *E. M. Vs. MUTHAPPA CHETTIAR v. COMMISSIONER OF Income Tax, MADRAS.*, and *HANMANTRAM RAMNATH Vs. COMMISSIONER OF Income Tax BOMBAY.*, and held that there were no genuine and valid gifts made by the deceased to his grandsons. In view of the aforesaid finding, the Tribunal did not consider whether the amount should be included in the estate passing on the death of the deceased u/s 10 of the Estate Duty Act.

6. At the instance of the accountable person the following questions of law had been referred to this court by the Tribunal :

"(1) Whether, on the facts and in the circumstances of the case, valid gifts to the tune of Rs. 75,000 were made by the deceased in favour of his four grandsons by merely effecting transfer credit entries in the books of the firm ?

(2) If the answer to the above question is in the affirmative, then whether, the aforesaid sum of Rs. 75,000 or any part thereof was liable to be included in the principal value of the estate of the deceased under the provisions of Section 10 of the Estate Duty Act, 1953 ? "

7. Mr. Chakraborty, learned counsel appearing on behalf of the accountable person, submitted that the Tribunal was in error in holding that the gifts had not been accepted by the donees. In coming to that finding the Tribunal had ignored the fact that immediately after the gift, the donees had entered into a deed of partnership along with the donor and in the deed of partnership there was a recital of the gift. It must, therefore, be held that the deed of partnership constituted sufficient evidence of the fact that the gifts were accepted by the donees. Mr. Chakraborty also contended that all the authorities below had failed to take into consideration the other factors subsequent to the date of the gift, namely, whether the partnership deed had been acted upon, whether interest had been paid to the donees in respect of the amounts credited in their accounts in the books of the firm, etc., and in failing to take such further facts into consideration the authorities below and the Tribunal had come to the wrong conclusion. But, unfortunately, for Mr. Chakraborty's client, the first question that has been referred to this court is a very limited one and it is confined only to the enquiry as to whether a valid gift could be made by mere entries in the books of account. The question as framed and referred to this court is capable of only one answer, which must be in the negative. If the question was wide enough for us to take into consideration the subsequent events, we would have been bound to hold that the deed of partnership itself would constitute an act of

acceptance by the donees of the gifts. Mr. Chakraborty referred us to the decision of the Madras High Court in P.A.C. Ratnaswamy Nadar and Sons Vs. Commissioner of Income Tax, Madras, , where the Madras High Court had held that the entries in the account books could be relied upon as affording cogent evidence of the gift. Though the entry as such might not conclusively establish a real and effective gift, it was evidence in support of the gift. The subsequent acts and conduct of the parties taken along with the entries of credit in the books of account together cumulatively established a valid gift. We are in entire agreement with the aforesaid observations of the learned judges of the Madras High Court. The provisions of Section 34 of the Evidence Act are also to the same effect. Undoubtedly, entries in the books of account are relevant but are not sufficient, without other evidence, to prove the gifts. In the absence of any finding by any of the authorities below as to the subsequent acts and conduct of the parties, it is not possible for us to hold that valid gifts had been made by the donor to the donees by mere entries in the books of account. The restricted question referred to us in question No. 1 could only be answered in one way and that is against the assessee.

8. In view of our answer to the first question, it is unnecessary, for us to answer the second question. We, therefore, decline to answer it.

9. There will be no order for costs.

Banerjee, J.

10. I agree.