

(1980) 01 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 125 of 1976 (Reference No. 71 of 1976)

Controller of Estate Duty

APPELLANT

Vs

B.S. Venkataraman

RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64(3)

Citation : (1980) 126 ITR 84

Hon'ble Judges : V. Sethuraman, J; V. Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Mrs. Nalini Chidambaram, for the Appellant; S.V. Subramaniam, Padmanabhan and Ramamani, for the Respondent

Judgement

V. Sethuraman, J.—Pursuant to a direction of this court under s. 64(3) of the E.D. Act, the following question has been referred by the

Tribunal:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 2,29,430 is not includible

in terms of s. 10 of the Estate Duty Act, 1953?

The reference arises as a result of the assessment to estate duty on the death of one V.S. Balasubbaraya Chettiar on 29th September, 1968. He

was a partner in a firm known as M/s. V.S. Balasubbaraya Chettiar and Sons. He made gifts of certain amounts specified in the statement of the

case to his daughter and grandchildren. The amounts as such are not really very material and, therefore, there is no need to refer to them. These

gifts were effected by transferring the amounts from the current account in the books of the firm and crediting the said amounts in the accounts of

the donees opened in the books of the partnership firm. The Assistant Controller

considered the question of inclusion of the relevant amounts in the estate duty assessment in the context of s. 10 of the E.D. Act. He came to the conclusion that there was no valid gift and that even if there was any valid gift, the gifted amount continued to remain in the firm in which the deceased was a partner till the date of his death, and that since the deceased was not thus entirely excluded from the subject-matter of the gift, the gifted amount should be deemed to pass on the death of the deceased under s. 10 of the Act. The Appellate Controller confirmed the assessment. On further appeal, the Tribunal, following the decisions of the Supreme Court in *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, and *Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others*, held that the relevant amount could not be included in the principal amount of the estate of the deceased, and that the benefit to the donor was not a benefit referable to the gift and that it was, in fact, totally unconnected with the gifts made by the donor. It is this order of the Tribunal that has given rise to the question extracted already.

2. Learned counsel for the CED submitted that this is a case where there was a transfer from the current account in the name of the deceased in the books of the firm and that the principle applicable to this case is to be found in a decision of this court in *Controller of Estate Duty Vs. S.M.M.*

Subramanian Chettiar, . He, however, quite fairly, brought to our notice the latest decision of the Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, . In his submission, the Supreme Court has not doubted or rejected the view taken by this court and, therefore, the question has to be answered in favour of the department.

3. We are unable to agree with this submission. The question whether the amount gifted was an actionable claim or was a transfer from the current account, does not appear to be material in the light of the latest decision of the Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, . In that case, the deceased was a partner in a firm with a half share. He made a gift of Rs. 1 lakh to his son and Rs. 50,000 to his wife on 27th March, 1957, during his lifetime. In the books of the firm, the

two sums totalling Rs. 1,50,000 were debited to the account of the deceased and credited to the accounts of the son and wife respectively. On the very next day, the son was taken as a partner and he was given 1/4th share out of the half share which was till then available to his father. A few months thereafter, the donor died and, in his place, his widow was also taken as a partner with 1/4th share. It was on these facts that the question arose whether the sum of Rs. 1,50,000 credited to the accounts of the son and the wife could be included in the estate duty assessment of the father. The Supreme Court reviewed the earlier decisions and at page 463 summed up the law on the point as follows:

To avoid the conflict in the application of the ratio of the various Supreme Court cases as seems to have been done by some of the High Courts, we would like to clarify and elucidate some of the aspects and facets of the matter a bit further. When a property is gifted by a donor the possession and enjoyment of which is allowed to a partnership firm in which the donor is a partner, then the mere fact of the donor sharing the enjoyment or the benefit in the property is not sufficient for the application of s. 10 of the Act until and unless such enjoyment or benefit is clearly referable to the gift, i.e., to the parting with such enjoyment or benefit by the donee or permitting the donor to share them out of the bundle of rights gifted in the property. If the possession, enjoyment or benefit of the donor in the property is consistent with the other facts and circumstances of the case, other than those of the factum of gift, then it cannot be said that the donee had not retained the possession and enjoyment of the property to the entire exclusion of the donor, or, to the entire exclusion of the donor in any benefit to him by contract or otherwise. It makes no difference whether the donee is a partner in the firm from before or is taken as such at the time of the gift or he becomes a creditor of the partnership firm by allowing it to make use of the gifted property for the purposes of the partnership.

4. At page 465, after referring to some of the decisions of the High Courts of which two are from this court, the Supreme Court points out:

It is not necessary for us to enter into the fine distinction drawn by the High Courts in each of the cases referred to above. But we want to

emphasise that the principles of law laid down by this court in several decisions which we have reviewed in this judgment with some further

clarification and elucidation should be carefully and broadly applied to the facts of each case without doing too much of dichotomy and hairsplitting

of facts so as not to easily apply or not to apply the provisions of law contained in s. 10 of the Act.

5. As a result of the judgment of the Supreme Court, the only aspect to be considered is whether the benefit or enjoyment of the property is

referable to the gift. If it is not referable to the gift, then, s. 10 would not apply, even if the property gifted was left with or brought into the firm in

which the deceased donor was a partner. The benefit or enjoyment in the present case is not traceable to the gift, and s. 10 does not apply.

6. The Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai*

Gopal Mehra, dealt with another decision of the Punjab and Haryana High Court in *Controller of Estate Duty Vs. Jai Gopal Mehra*, . In that case,

the deceased and his sons constituted a joint Hindu family governed by the Mitakshara school of Hindu law. In April and May, 1958, he made

gifts of Rs. 20,000 each in favour of his son and his four daughters-in-law, totalling Rs. 1 lakh. The donees thereafter invested the amounts in the

firm in which the deceased was a partner. The question which arose for consideration by the Supreme Court was, whether the sum of Rs. 1 lakh

gifted by the deceased to his son and daughters-in-law could be brought to tax under s. 10 of the E.D. Act, 1953? The Supreme Court pointed

out that this case stood on a stronger footing than the case of *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala*

Vs. Smt. Kamlavati and Shri Jai Gopal Mehra, which was dealt with earlier in the judgment. In other words, what is apparent from the judgment of

the Supreme Court is that when once the donee took possession of the property, s. 10 would not be attracted even if later on the donee brought

the amount into the firm in which the deceased-donor was a partner because the enjoyment would not be referable to the gift at all. The question of

the donee becoming a partner in the firm was not found to be relevant. So long as the benefit and enjoyment cannot be traced to the terms of the

gift made by the deceased, the deceased would be excluded from enjoyment, so that s. 10 would not apply. The result is that the question referred

to us is answered in affirmative and in favour of the accountable person. There will be no order as to costs.