
(1976) 05 AHC CK 0054

In the Allahabad High Court

Case No : Estate Duty Reference No. 970 of 1972

Controller of Estate Duty

APPELLANT

Vs

Chaman Lal Bery

RESPONDENT

Date of Decision : 19-05-1976

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1977) 106 ITR 865

Hon'ble Judges : R.M. Sahai, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; A.C. Sinha and A.N. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—The following question has been referred for the opinion of this court by the Income Tax Appellate Tribunal, Allahabad Bench:

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 60,000 gifted by the assessee to his SODS is includible in the estate of the deceased as property deemed to pass on his death u/s 10 of Estate Duty Act, 1953?"

2. The deceased, late Sri B. C. Bery, was originally carrying on a business known as London Machinery Company. On November 1, 1951, he gifted to two of his sons who were majors Rs. 20,000 each and took them as partners in his business with the above sum as their capital. The sons were given one-fourth share each and he retained half share. Again, on April 1, 1956, when a third son became major he was also given a gift of Rs. 20,000 and taken as a partner in the business with that money as his capital. He was given one-fourth share and the deceased retained the remaining share till his death which took place on March 14, 1963. The Assistant Controller of Estate Duty was of the opinion that the deceased was not entirely excluded from the benefits of the gifted amount of

Rs. 60,000, inasmuch as the amount was invested in the firm in which the deceased was also a partner and the firm had been deriving benefits from the use of this amount. Aggrieved by the decision of the Assistant Controller of Estate Duty the assessee filed an appeal which was dismissed and it was found by the Judicial Appellate Controller of Estate Duty that the deceased admitted his sons into the partnership without charging any premium in lieu of the goodwill of the business without payment of any consideration in this behalf. But, by admitting his sons into the partnership, the deceased unilaterally surrendered his rights to enjoy the profits of the said business into the partnership. He was of the opinion that since the deceased surrendered three-fourths of the profits in favour of his sons without receiving any consideration it would be deemed that the gift was made of the goodwill of the firm to that extent without receiving any consideration. It was further found that since the deceased continued to be a partner in the firm in which his sons also joined as partners he would be deemed to have been not wholly and entirely excluded from the beneficial enjoyment of the shares of the goodwill so transferred to him by his sons. The assessee further took the matter before the Tribunal and its contention was accepted. The Tribunal found it as a fact that the gifts made by the deceased to his sons were absolute and the investment was made by the sons on their own and for their own benefit and not for the benefit of the deceased. Mr. A. C. Sinha, appearing for the assessee, has placed reliance on a Full Bench decision of our court in Controller of Estate Duty Vs. Thanwar Dass, and has urged that the principle laid down in this decision squarely applied to the question which we are required to answer. Mr. Deokinandan, on the other hand, has placed reliance on Controller of Estate Duty, Madras Vs. Parvathi Ammal, and Sakarlal Chunilal and Others Vs. Controller of Estate Duty, Gujarat, . He has read the decision given by the Gujarat High Court in extension and urged that this decision lays down the correct principle of applicability of Section 10 of the Estate Duty Act. Before a donee can escape the liability fixed u/s 10 he has to satisfy two requirements :

(a) That the donee assumed possession and enjoyment of the property which is subject-matter of the gift bona fide to the exclusion of the donor.

(b) The assumption of possession immediately upon the gift was retained by him and possession and enjoyment of property was to the exclusion of the donor or of any benefit to him by contract or otherwise.

3. Both these requirements are questions of fact. The applicability of law depends on facts and circumstances found in each case. So far as the principle is concerned there is unanimity in the decisions given by the Supreme Court, the Privy Council and the High Court although there has been divergence of opinion in its applicability. So far as the decision in Sakarlal Chunilal and Others Vs. Controller of Estate Duty, Gujarat, is concerned on which strong reliance has been placed by the department we find that the basic decision which has been relied on in our Full Bench decision in Controller of Estate Duty Vs. Thanwar Dass, , i.e.. Commissioner of Income Tax and Controller of Estate Duty, Madras

Vs. N.R. Ramarathnam and Others, does not appear to have been noticed. In view of this we do not propose to discuss this case in any detail. So far as the Supreme Court decision in Controller of Estate Duty, Madras Vs. Parvathi Ammal, is concerned, the facts were that the deceased executed a deed whereby he gave the property in which he was carrying on business of boarding and lodging absolutely to his five sons in equal shares. Thereafter, on June 25, 1955, he took the property on lease from the sons and carried on business as before. Later on, the deceased gave the boarding house on sub-lease to a third party. These facts would show that the possession and enjoyment of Mayavaram Lodge was not, subsequent to the gift, retained by the donees "to the entire exclusion of the donor or of any benefit to him by contract or otherwise". The facts of this case are entirely different. Here, admittedly, the donor made a gift of Rs. 20,000 to each of his sons who invested their money in the business. The argument of Mr. Deokinandan that as they were not partners of the firm originally the investment by the sons of the money which was gifted to them would amount to enjoyment by the donor of the subject-matter of the gift, is not acceptable to us. The distinction drawn from the case of Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others, on the basis that the deceased and the donee were partners in the same firm whereas in this case the gift was executed in favour of the sons who were not partners does not appear to be correct. The crucial question is whether the possession was assumed by the donee and whether the donor was excluded from the subject-matter of the gift. From the findings it is clear that the donees assumed possession over the subject-matter of the gift. The sons when they invested the amount gifted to them in their business were deriving profit of their own investment and no part of it was being enjoyed by the donor. The finding recorded by the Tribunal that the donor in the circumstances was excluded appears to be correct. As both the ingredients as contemplated in Section 10 are satisfied, we think that the view taken by the Tribunal is correct.

4. In the result we answer the reference in the negative, against the department and in favour of the assessee, by saying that the sum of Rs. 60,000 gifted by the assessee to his sons is not includible in the estate of the deceased. The assessee shall be entitled to his costs which we assess at Rs. 200.