
(1968) 11 MAD CK 0015

In the Madras High Court

Case No : Tax Case No's. 103 and 104 of 1965 (Ref. No's. 39 and 40 of 1965)

Controller of Estate Duty

APPELLANT

Vs

C.R. Ramachandra Gounder

RESPONDENT

Date of Decision : 25-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : AIR 1970 Mad 335 : (1969) 73 ITR 166

Hon'ble Judges : Veeraswami, J; Ramaprasadarao, J

Bench : Division Bench

Advocate : V. Balasubramaniam, J. Jayaraman, in T.C. 103 of 1965 and K.R. Ramamani, for T.S. Krishnamurthi Iyer, in T.C. No. 104/65, for the Appellant; K.R. Ramamani, for T.S. Krishnamurthi Iyer in T.C. No. 103/65 and V. Balasubramaniam and J. Jayaraman, in T.C. 104 of 1965, for the Respondent

Judgement

Veeraswami, J.—In the first of these references arising out of the Tribunal's order, the question substantially is whether the property in

Avinashi Road, Coimbatore, as well as a sum of Rs. one lakh passed at the death of one C. S. Ramaiah Gounder on 5-5-1957 and, as such, are

dutiable under the provisions of the Estate Duty Act, 1953. He was 3 partner of a firm, called N. Desi Gounder and Co., at Coimbatore, and the

property was in the occupation of the firm as a tenant. In August 1953 by a registered document, he settled the property absolutely and

irrevocably on his two sons, C. R Lingiah and C. R. Krishnan. Even thereafter the firm continued to be in occupation of the premises, but the rents

accruing were thenceforward credited in equal shares to the relative accounts of the donees in its books. The partnership came to an end on 30-4-

1957. On 30-3-1953, long before its dissolution, the firm was asked by Ramaiah Gounder to transfer from his loan account with it a sum of Rs.

one lakh to the credit of each of his five sons in equal shares of Rs. 20,000 by opening separate accounts in their individual names in the firm's

books. The Tribunal, differing from the Revenue, held that the Immovable property as well as the sum of Rs. one lakh did not pass on the death of

Ramaiah Gounder. The Tribunal was of opinion that there was no ground for holding that the gift had not been made without the donor retaining

any interest in the Immovable property, and that it was the firm that had the benefit of the sum of Rs. one lakh given to the sons, and the mere fact

that the father was a partner of the firm would not mean that he had the benefit of the money.

2. The two questions which arise under the reference are:

1. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the house property in Avinashi Road,

Coimbatore, is not liable to estate duty as property deemed to pass on the death of the deceased u/s 10 of the Estate Duty Act, 1953?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sum of Rs. one lakh gifted to his sons

in 1953 is not liable to estate duty as property deemed to pass on the death of the deceased u/s 10 of the Estate Duty Act, 1953?

3. We are of the view that the Tribunal was right in its conclusion and that both the questions should be answered against the Revenue. The scope

and effect of Section 10 of the Estate Duty Act are no longer in doubt. Collector of Estate Duty, Madras Vs. Estate of Janab S. Ibrahim Rowther,

Madras, and M. Ranganatha Sastri and Another (Executors to the Estate of the Late Dewan Bahadur R. Subbaiah Naidu) Vs. Controller of Estate

Duty, Madras, cover the matter and we think it unnecessary to traverse the same field. We have also George Da Costa Vs. Controller of Estate

Duty in Mysore, Bangalore, which explains the purport of Section 10. It is in two parts, the first providing that to the extent of non-exclusion of the

donor from possession and enjoyment of the subject-matter of the gift, the property shall be deemed to pass on the donor's death. The second

covers benefit secured or available to the donor by contract or otherwise in respect of the whole or any part of the subject-matter of the gift and to

the extent of such benefit, the property gifted shall be deemed to pass. We do not think that the second limb of this section has any application.

Nor is there room to hold, on the view we take of the facts, that there was non-exclusion to any extent of the donor in respect of the premises

forming the subject-matter of the gift. The property was subject to a lease in favour of the firm before and after the gift, but, after the gift deed, the

rents were credited to the separate accounts of the donees in the books of the firm. So far as the donor was concerned, at the time of the gift he

could not transfer possession and enjoyment of the premises which were actually with the firm. He had at the time only the lessor's interest which

he transferred by way of a gift and divested himself of it as completely as he could. The subject-matter of the gift thus being the donor's interest as

a whole, it cannot be said that by reason of the fact that the firm of which the donor was a partner continued to be in possession and enjoyment of

the premises as a lessee by paying rents therefore to the donee, there was non-exclusion of the donor to any extent. On this ground, we accept the

conclusion of the tribunal that Section 10 is not attracted to the gift of the premises but not on the ground which prevailed with it that there was

exclusion of the donor because the firm was a different, body.

4. As to the sum of Rs. one lakh, the Tribunal's view was that after gift, it was the firm that had the benefit of the money and not the donor. In our

view, this is not the right way to look at it. But the Tribunal's conclusion, we think, can still be supported on the view that the subject-matter of the

gift was not money itself, but an actionable claim. The donor had lent moneys to the firm and from out of the credit in his favour with the firm, he

directed it in writing signed by him to transfer a sum of Rs. 20,000 to each of his sons by way of a gift. An "actionable claim" as defined by Section

3 of the Transfer of Property Act, means a claim to any debt, other than a debt secured by mortgage of Immovable property or by hypothecation

or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive of the

claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional,

or contingent. Here moveable property was the money which had been lent by the donor to the firm. That transaction created but an actionable

claim in favour of the donor. It was part of such claim that he directed the firm in effect to transfer in favour of his sons. The transfer in favour of the

sons was not money itself but his actionable claim to the extent of the gift. Section 130 of the Transfer of Property Act prescribes the procedure

for transfer of an actionable claim which has been complied with in this case, for, the direction by the donor to the firm was in writing signed by

him. Once we hold, as we do, that the subject-matter of the gift was not the sum of Rs. one lakh as money but an actionable claim of that value, it

follows that the donor was completely excluded from it.

5. The two questions in the first of these references are therefore answered against the Revenue with costs. Counsel's fee Rs. 250.

6. The other reference raises this question: ""Whether on the facts and in the circumstances of the case, the inclusion of Rs. 81,356 in the estate of

the deceased was justified?"" The Tribunal proceeded on the basis that to start with the assessee was treated, for purposes of Income Tax, as the

owner, notwithstanding the fact that the amount stood in the name of his wife in the books of the firm of which he was a partner, and that

subsequently from 1946 to 1950 he himself included the sum in his wealth tax statements. In 1953 the sum of Rs. 81,356 was withdrawn from the

firm and was Invested in certain banks and a different firm, but in the names of his wife and son under "either or survivor"" accounts. The Tribunal

on these facts was not satisfied that there was any gift at all of the sum by the deceased to his wife.

7. It is argued before us that the Tribunal's conclusion is not supported by any material. In our view, that is not correct We start with the fact that

the amount initially belonged to the deceased. Unless, therefore, facts are established which would show that there was a subsequent gift of the

money to the wife, the Inference must follow that the property passed on the death of the deceased. No doubt it would appear to have been taken

as a ground in the appeals before the Revenue and perhaps before the Tribunal that the control and use of the money were with the deceased's

wife and son. But this remains to be an assertion without any material to support it. We do not think that the fact that the money was withdrawn

from the firm of which the deceased was a partner, and it was subsequently invested in the name of the wife and her son in "either or survivor"

accounts established any such control or use of the property by them or either of them. The wife's name was there before and after the withdrawal

of the money from the firm and the "either or survivor" account in her name and that of her son does not, in our opinion, advance the matter further in favour of the accountable person.

8. We, therefore, answer the question against the accountable person with costs. Counsel's fee Rs. 250.