(1978) 04 CAL CK 0084

In the Calcutta High Court

Case No : Matter No. 304 of 1969

Controller of Estate Duty APPELLANT

Vs

Gouri Prasad Goenka RESPONDENT

Date of Decision : 05-04-1978

Acts Referred:
Estate Duty Act, 1953 — Section 10

Citation : (1979) 117 ITR 346

Hon'ble Judges : Dipak Kumar Sen, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Ajit Sengupta, for the Appellant;K. Roy and R.N. Dutta, for the Respondent

Judgement

Sen, J.—This reference u/s 64(1) of the E.D. Act, 1953, was initiated by the CED and the Tribunal has drawn up a case and referred the following question:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 5 lakhs was not liable to be included in the estate of the deceased, Lakhi Prasad Goenka, u/s 10 of the Estate Duty Act ?"

2. The facts found and/or admitted are, inter alia, as follows:

3. Out of the assets received by him on partition of a HUF, one Lakhi Prasad Goenka made a gift of Rs. 5 lakhs to one Gouri Prasad Goenka on the 26th October, 1954. This gift was effected by transfer from the donor''s account in a firm known as Ram Dutt Ram Kishan Das Ram-chandra Goenka & Sons, in favour of the donee. Lakhi Prasad was a partner in the said firm and had 4/27ths share therein.

4. The entry effecting the transfer in favour of the donee was confirmed by the firm and subsequent thereto, the account was operated on by the donee, who used the money as and when necessary. The amount continued to stand to the credit of the donee in the books of the firm till the death of the donor.

5. On the 28th January, 1955, the donor adopted the donee as a son. The donor died subsequently on the 24th January, 1958.

6. The controversy in this case is whether the said sum of Rs. 5 lakhs should be included in the estate of the deceased donor u/s 10 of the E.D. Act for assessment of estate duty.

7. The material part of Section 10 of the E.D. Act, 1953, is as follows:

"Property taken under any gift, whenever made, shall be deemed to pass on the donor''s death to the extent that bona fide possession and enjoy ment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

8. The Dy. CED held that the donee did not possess and enjoy the gifted amount to the entire exclusion of the donor as the money remained at the disposal of the firm. On appeal, the Appellate CED upheld the decision of the Deputy Controller. On further appeal, the Tribunal accepted the contention of the accountable person and held that Section 10 of the E.D. Act did not apply to the facts. The appeal of the assessee was accordingly allowed.

9. It appears to us that the question stands covered by the decision of the Supreme Court in Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others, . The facts of the case were that the deceased, his three sons and a daughter were partners in a firm which carried on money-lending business. Prior to his death the deceased transferred to his sons and daughter various amounts by adjustment entries in the books of the firm against the balance to his credit in the firm. The amounts remained with the firm and were utilised in the business. The assessee continued to be a partner of the firm till his death. A question arose whether the sums transferred to the sons and daughter of the assessee would be included in the property passing on his death. The Supreme Court, following its earlier decision in Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, , held that the said amount would not be liable to estate duty and was not property deemed to pass on the death of the deceased.

10. Following the said judgment, we answer the question in the affirmative and in favour of the accountable person. There will be no order as to costs.

C.K. Banerji, J.

11. I agree.

