

(1973) 05 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Estate Duty Reference No. 46 of 1967

Controller of Estate Duty

APPELLANT

Vs

N.K. Sanghi

RESPONDENT

Date of Decision : 08-05-1973

Acts Referred:

Partnership Act, 1932 — Section 14

Citation : (1974) 97 ITR 119 : (1973) WLN 372

Hon'ble Judges : V.P. Tyagi, J; L.S. Mehta, J

Bench : Division Bench

Advocate : S.K. Mal Lodha, for the Appellant; D.P. Gupta, for the Respondent

Judgement

This Judgment has been overruled by : N.K. Sanghi, Partner of Sanghi Brothers Vs. Controller of Estate Duty, Rajasthan, (1988) 70 CTR 120 : (1988) 172 ITR 413 : (1988) 2 JT 481(1) : (1988) 1 SCR 210 Supp : (1988) 2 UJ 210

1. This is a reference made by the Income Tax Appellate Tribunal at the instance of the Controller of Estate Duty, Jaipur, u/s 64(1) of the Estate Duty Act, 1953, and it refers a question to be answered by this court in the following form:

"Whether, on the facts and in the circumstances of the case, the provisions of Section 10 of the Estate Duty Act, 1953, were applicable to this case ?"

2. The facts giving rise to this reference are, in a nutshell, as follows :

Shri Motilal Sanghi made a gift of Rs. 1 lakh on 1st of September, 1955, in favour of his four sons, each one to get Rs. 25,000. This amount was invested by the sons in a firm known as Sanghi Brothers of which Motilal Sanghi was a partner to the extent of 8 annas and each donee had a share to the extent of annas 2 in the firm. We are told by learned counsel appearing on behalf of the accountable person, Shri N. K. Sanghi, that the said firm was managed not by Shri Motilal Sanghi but it was managed by Shri N. K. Sanghi, the eldest son of the donor. Shri Motilal Sanghi died on 21st of July, 1961. The Assistant Controller of Estate

Duty while assessing the properties of Shri Motilal Sanghi under the provisions of the Act gave a show cause notice to the accountable person why the amount of Rs. 1 lakh given by the deceased to his 4 sons as gift be not added to the estate of the deceased as that amount was not retained by the donees to the entire exclusion of the donor. The Assistant Controller after hearing the accountable person held that Section 10 of the Estate Duty Act was clearly applicable in this case and accordingly he added Rs. 1 lakh to the estate of the deceased. An appeal was preferred against this order before the Appellate Controller of Estate Duty, who set aside the order of the Assistant Controller and, relying on a decision of the Assam High Court in SP. AV. AN. Kannappa Chettiar Vs. Commissioner of Income Tax, Madras, held that Section 10 was not attracted to the circumstances of the present case. This judgment of the Appellate Controller of Estate Duty was also upheld by the Appellate Tribunal. The department, therefore, applied for making a reference to this court u/s 64(1) of the Act and it is in these circumstances that the above-mentioned question has been referred to us.

3. Mr. S. K. Mal Lodha, appearing on behalf of the revenue, urged that the amount of Rs. 1 lakh which was donated by Shri Motilal Sanghi to his four sons was on that very day invested in a firm constituted by the father (donor) and his four sons (donees) in which the share of the father was that of 8 annas and that of the sons was of 2 annas each. His contention, therefore, is that in these circumstances, when the amount gifted was utilised for carrying on the business of a partnership firm with the donor as a major partner, it cannot be said that the donees retained the possession of that amount gifted to them in total exclusion of the donor. In support of this argument he placed reliance on the following decisions: Clifford John Chick v. Commissioner of Stamp Duties [1959] 37 ITR 89 which has been approved by the Supreme Court in George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, SATYANARAYAN S. MODY Vs. CONTROLLER OF ESTATE DUTY, NEW DELHI., , which was also affirmed by the Supreme Court in Satyanarayana Modi Vs. Controller of Estate Duty Delhi and Rajasthan, New Delhi, , Abdul Alim and Another Vs. Controller of Estate Duty, , Kikabhai Samsuddin Vs. Collector of Estate Duty, Gujarat, Ahmedabad, .

4. In this connection reliance has also been placed on the Supreme Court authority in Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others, , to show that the amount invested in the firm of Sanghi Brothers was owned by each and every partner of this firm and not by the donees alone and, therefore, the donor, Shri Motilal Sanghi, had a full control over the amount donated to his sons in the form of a capital of the firm of which he was a partner.

5. Mr. Gupta, on the other hand, relying on the principles decided by the Privy Council in H. R. Munro v. Commissioner of Stamp Duties [1934] A.C. 61 : 2 E.D.C. 462 urged that the principle decided in Chick's case is not applicable to the circumstances of the present case and, therefore, the decision given by the Appellate Tribunal is a right decision. In support of this contention he placed).

reliance on Controller of Estate Duty Vs. N.R. Ramarathanam and Others, , Controller of Estate Duty Vs. C.R. Ramachandra Gounder, , Collector of Estate Duty, Madras Vs. Estate of Janab S. Ibrahim Rowther, Madras, and Suggala Veera Raghaviah and Others Vs. Controller of Estate Duty, . The case of Controller of Estate Duty v. C. R. Ramachandra Gounder, went in appeal to the Supreme Court and it was upheld by the Supreme Court, vide Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, .

6. In order to understand the controversy raised by the parties, it will be relevant to look to the provisions of Section 10 of the Estate Duty Act. The portion of Section 10, which is relevant for our purpose, reads as follows:

"10. 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 enjoyment 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."

7. The scope of Section 10 of the Estate Duty Act has been considered by the Supreme Court in George Da Costa v. Controller of Estate Duty⁸. In that case the deceased had made a gift of a house in favour of his son. It was found that even after making the gift the donor continued to reside in the house as the head of the family and he used to look after its affairs till death. The Supreme Court analysing the provisions of Section 10 of the Act observed that the crux of the section lay in two parts :

(1) the donee must bona fide have assumed possession and enjoyment of the property which is the subject-matter of the gift to the exclusion of the donor immediately upon the gift, and

(2) the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

8. The second part of this section according to the Supreme Court has two limbs : the deceased must be entirely excluded--(1) from the property, and (2) from any benefit by contract or otherwise. Their Lordships held that in the context of this section the word "otherwise" should be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation or some transaction in law or in equity which though not complete may confer a benefit on the donor. As a matter of construction, the words "by contract or otherwise" in the second limb of the section do not control the words "to the entire exclusion of the donor" in the first limb. The first limb of this section may be infringed if the donor occupies or enjoys the property or its income, even though he has no right to do so, which he could legally enforce against the donee. In other words, in order to attract the section, it is not necessary that the possession of the donor of the gifted property must be referable to some contractual or other arrangement enforceable in law or in equity even if the donor is content to rely upon the mere filial affection of his sons with a view to enable him to continue to

reside in the house which he has given to them, it cannot be said that he was "entirely excluded from possession and enjoyment" within the meaning of the first limb of the section, and, therefore, the property will be deemed to have" passed on the death of the donor and will be subject to levy of estate duty.

9. While arriving at the aforesaid conclusion their Lordships of the Supreme Court thoroughly considered the principles laid down by the Privy Council in Chick's case as well as in Munro's case.

10. The principles as enunciated by the Privy Council in Chick's case have been approved by the learned judges of the Supreme Court in the aforesaid authority. In order to resolve the controversy raised by the parties in the present case, it will be worthwhile to examine the principles laid down by the Privy Council in Chick's case as different from the principles laid down in Munro's case. In Chick's case one John Chick made a gift of his pastoral property to his son, This was an absolute gift of property without any reservation. Subsequently, John Chick and his sons entered into an agreement to carry on the business of graziers and stock dealer in partnership. This business was to be carried on on the respective holdings of the partners which were to be used for the purpose of partnership only. The property gifted by John Chick was so used in connection with the partnership business. After the death of John Chick, a question arose whether the value of the property gifted by him was liable to be included in the dutiable estate u/s 102(2)(d) of the Stamp Duties Act of New South Wales which provision was analogous to the provisions of Section 10 of the Estate Duty Act. The Privy Council held that although the donee assumed bona fide possession and enjoyment of the property immediately on the gift to the entire exclusion of the deceased or of any benefit to him u/s 102(2)(d), but since after the partnership agreement, the partners and each of them were in possession and enjoyment of the property so long as the partnership subsisted, the son did not retain the possession and enjoyment of the property to the entire exclusion of the deceased, its value was, therefore, liable to be included in the dutiable estate of the donor.

11. Mr. Gupta relied upon the principle laid down by the Privy Council in H. R. Munro v. Commissioner of Stamp Duties. In that case the deceased had four sons and two daughters. He possessed three holdings, the total area being 33,501 acres. After one of his sons attained majority, the father and his six children entered into a partnership agreement (verbal) in the year 1909 and the partnership was to carry on the business of graziers on the aforesaid land. Subsequently, the father transferred, by way of gift, to each of his four sons all his rights, title and interest in a part of the land comprised in the three holdings. Some more land was transferred for being held in trust for his two daughters, Thereafter, the father and his children executed a formal partnership deed incorporating the oral agreement under which the partnership business was already being run. After the death of the father a question arose whether the value of the land gifted by him could be included in the value of the estate left by

him. While considering this question their Lordships of the Privy Council observed as follows:

"It is unnecessary to determine the precise nature of the right of the partnership at the time of the transfers. It was either a tenancy during the term of the partnership or a licence coupled with an interest. In either view what was comprised in the gift was, in the case of each of the gifts to the children and the trustees, the property shorn of the right which belonged to the partnership, and upon this footing it is in their Lordships' opinion plain that the donee in each case assumed bona fide possession and enjoyment of the gift immediately upon the gift and thenceforward retained it to the exclusion of the donor. Further, the benefit which the donor had as a member of the partnership in the right to which the gift was subject was not, in their Lordships' opinion a benefit referable in any way to the gift. It was referable to the agreement of 1909 and nothing else, and was not, therefore, such a benefit as is contemplated by Section 102, Sub-section (2)(d) of the Stamp Duties Act of New South Wales."

12. From these observations it is clear that their Lordships of the Privy Council while considering the nature of the property transferred by means of a gift examined the question as to what type of right was transferred by the gift and by continuing to carry on the partnership business over the land in question whether the partners exercised any possession or dominion over the property gifted, that is, the interest of a licensor or a lessor which interest alone had been gifted by the donor. It was in the light of this type of interest which was transferred that their Lordships of the Privy Council came to the conclusion that the donee retained the interest (property) gifted to him to the entire exclusion of the donor and thus the provisions of Section 102(2)(d) were not attracted. The distinction that can be pointed out in the principles laid down in Munro's case and in Chick's case is that in Munro's case the property comprised in a gift consists only of some of the rights from out of the entire bundle of rights in a tangible property, it has to be seen whether the donor has anything to do with those rights. If it is found that after making the gift the donor had nothing to do with such rights, it would be considered that the property gifted was retained to the entire exclusion of the donor irrespective of the fact that the donor exercised some control over the tangible property by virtue of the bundle of rights which did not form part of the gift. In Chick's case, the matter stood differently. In that case, the donor made gift of his entire interest in the property and thereafter the property was brought in as an asset of the partnership business in which the donor was himself a partner. As soon as the property was brought in as partnership asset, the donor as a partner acquired dominion over the property (interest) gifted, and it could not be said that the same was retained by the donee to the entire exclusion of the donor. In Munro's case the bundle of rights in the land donated by the donor passed on to the donees irrespective of the partnership business carried on by the father (donor) and his sons (donees) which came into existence much before the gift was made by the donor.

13. It is in the background of this distinction in the principles laid down by the Privy Council in Chick's case and Munro's case that we have to find out as to whether in the circumstances of this case it can be said that the donees, viz., the sons of Shri Motilal Sanghi, retained the possession of the property to the entire exclusion of Shri Motilal Sanghi even though the amount donated to the sons was invested in a firm of which Shri Motilal Sanghi was a partner.

14. In this connection, we shall have to refer to the provisions of the Partnership Act. According to Section 14 of the Indian Partnership Act, all property and rights and interest in property originally brought into the stock of the firm becomes, subject to a contract between the parties, property of the firm. The whole concept of a partnership is to embark upon a joint venture and for that purpose to bring in as capital money or other property including immovable property. Once this is done, whatever is brought in ceases to be the exclusive property of the one who brings it in. The property had become a trading asset of the partnership in which all the partners acquired interest in proportion to their shares in joint venture in the business of partnership. A partner who brings in the asset cannot claim to exercise any exclusive right over such property. Capital contribution becomes an asset of the partnership in which every partner gets an interest and the asset ceases to exclusively belong to the person who contributes the same. In the circumstances, it is difficult to say that a person contributing the asset enjoys the right of ownership to the exclusion of other partners of the firm.

15. While examining the scope of the provisions of the Partnership Act vis-a-vis the nature of the capital employed in the partnership business their Lordships of the Supreme Court in Addanki Narayanappa v. Bhaskara Krishnappa referred to various provisions of the Act and after thoroughly discussing the scope of those provisions observed as follows :

"From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) and Sub-clauses (i), (ii) and (iii) of Clause (b) of Section 48."

16. These observations of the learned judges make it clear that as long as the

partnership business is going on an individual partner cannot claim exclusive ownership or possession on the assets of the partnership firm. The only right which a partner can claim during the existence of the partnership is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution to a share in the money representing the value of the property. In this view of the law, if the amount gifted to the sons was ploughed back into the partnership business of the donor and the donees, then it is difficult to say that the donees enjoyed the possession of that property during the continuance of the partnership to the entire exclusion of the donor. The donor in one sense or the other had a dominion over that property and that property was utilised both for the benefit of the donor and the donees. In these circumstances, we feel that Section 10 of the Estate Duty Act is attracted to the circumstances of the present case.

17. The Allahabad High Court in *Abdul Alim v. Controller of Estate Duty*, where the facts and circumstances were the nearest to the present one, have, after discussing all the cases cited before that court, held that the property gifted, if brought in as the capital of a firm in which the donor was also a partner, the donor had similar possession and control over that money as any other partner had over any other asset of the firm.

18. In *George Da Costa v. Controller of Estate Duty*, the donor had gifted his house to his children, but he continued to stay in that house as the head of the family and looked after the affairs of that house. Their Lordships of the Supreme Court held that the possession of the donor was on account of the filial relationship between the donor and the donee but since he was living in that property and looking after it as the head of the family, it cannot be said that the donees enjoyed the possession of the gifted property to the entire exclusion of the donor and in that view it was held that the property was liable to estate duty u/s 10 of the Act. In that case, the learned judges thoroughly discussed the principles laid down by the Privy Council in *Chick's* case, and approved that principle. In view of this judgment of the Supreme Court, we feel that we are left with no alternative but to hold that the amount donated by Shri Motilal Sanghi to his sons cannot, in the circumstances of the present case, be deemed to have been possessed and enjoyed by the donees to the entire exclusion of the donor.

19. No useful purpose will be served in dealing individually with the authorities relied upon by Mr. Gupta as the decision in each case is based on the principle laid down by the Privy Council in *Munro's* case which has been distinguished by the same court while deciding the *Chick's* case. The decision based on *Munro's* case will not apply to the circumstances of this case which is obviously governed by the decision of the Privy Council in *Chick's* case. However, we may refer to a Supreme Court authority in *Controller of Estate Duty v. C.R. Ramachandra Counter*, which according to Mr. Gupta is directly applicable to the case in hand. In that case a property was gifted by the father to his sons. The gifted property was leased out to the firm in which the donees and the donor were partners.

There was a dispute that the ownership in the property had been transferred by the donor to the donee subject to the tenancy at will granted to the firm. The firm, after the gift was made, attorned to the donees as their tenants by crediting the rent of Rs. 300 per month to the respective accounts of the donees, in equal moiety. The donor, it is said, could only transfer the possession of the property which the nature of that property was capable of, and which in that case was subject to the tenancy. According to their Lordships of the Supreme Court, the donor could do nothing else except to transfer the possession in any other manner unless he was required to effectuate the gift for the purpose of Section 10 of the Act by getting the firm to vacate the premises and handing over possession of the same to the donees leaving the donees thereafter to lease it out to the firm. Their Lordships observed that: "Such an unreasonable requirement the law does not postulate. The possession which the donor can give is the legal possession which the circumstances and the nature of the property would admit" and this was done. Their Lordships also observed that the benefit the donor had, as a member of the partnership, was not a benefit referable in any way to the gift but is unconnected therewith. In our view, the circumstances of that case were quite different from those of the present one and, therefore, this decision of the Supreme Court is not applicable to the circumstances of the present case.

20. For the reasons given above, we are of the opinion that the donees in the present case did not enjoy the possession of the donated amount of Rs. 1 lakh to the entire exclusion of the donor as long as it formed the part of the capital of the firm of which the donor was a partner.

21. In view of the aforesaid discussion, we answer the question in the affirmative.

22. No order as to costs.