

(1969) 03 MAD CK 0055

In the Madras High Court

Case No : Tax Case No. 128 of 1965 (Reference No. 60 of 1965)

Controller of Estate Duty

APPELLANT

Vs

N.R. Ramarathanam and Others

RESPONDENT

Date of Decision : 03-03-1969

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1969) 74 ITR 432

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K. Srinivasan, D.S. Meenakshishundaram and K.C. Rajappa, for the Respondent

Judgement

Veeraswami, J.—One Mr. N.S. Ramaswami Iyer died on October 17, 1960. He was a landlord owning agricultural lands, house properties and also investments. He was instrumental in starting a partnership styled as Ennessor and Company, at Coimbatore in 1947. Besides himself, the other partners were his three sons and daughter. The firm was engaged in money-lending business and was registered u/s 26A of the Income Tax Act, 1922. On March 31, 1953, and April 1, 1956, the deceased transferred, by book adjustments in the account of the firm, Rs. 52,042-7-3 and Rs. 77,881-11-8, respectively, to his sons and daughter. In the return for purposes of estate duty, the accountable persons excluded from the principal value of the estate the total of the two sums, namely, Rs. 1,29,924. The revenue disagreed with the accountable persons and included the same as dutiable, but the Tribunal was not prepared to accept that view. In doing so, the Tribunal felt supported by *Munro v. Commissioner of Stamp Duties*, [1934] A.C. 61 ; 2 E.D.C. 462. At the instance of the Commissioner of Income Tax who is the Controller of Estate Duty, the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 1,29,924 (sic) 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. The revenue's point of view was that there were no cash gifts of the two sums but they were brought about by mere adjustments in the books without physical handing over of the cash and further by being a partner in the firm, the deceased was not entirely excluded from the subject-matter and beneficial enjoyment of the gifts. The Assistant Controller noticed that this was not a case of the deceased parting with cash and thereafter the donees re-introducing such cash in the business at a later stage, but nevertheless he thought that this made no difference and he would add that the deceased had also beneficial enjoyment of the gifted properties. Confronted with *Munro v. Commissioner of Stamp Duties and Clifford John Chick v. Commissioner of Stamp Duties*, [1958] A.C. 435 ; [1959] 37 ITR (E.D.) 89 ; 3 E.D.C. 915 the Tribunal found that *Munro v. Commissioner of Stamp Duties* was nearer to this case.

3. In spite of the fact that the scope and intendment of Section 10 of the Estate Duty Act, 1953, have been considered and defined in numerous cases of the High Courts and of the Supreme Court, largely in the background of English cases decided both by the Privy Council as also the Court of Appeal and the House of Lords with reference to a section more or less similarly worded, it often raised in its application to particular facts subtle questions not always free from difficulty. The intention of Section 10 is that gifts with reservations passed to the extent of such reservations. The section has two parts, one relating to complete exclusion of the donor from the subject-matter of the gift and the other to his exclusion from any benefit from and out of the subject-matter of the gift arising by contract or otherwise. The first limb a fortiori presupposes, as has been indeed expressed by the section itself, that the donee assumes bona fide possession and enjoyment of the subject-matter of the gift. While this is clear, confusion is likely to arise in the application of the section if a clear view of the subject-matter of the gift is not formed at the outset.

4. Before proceeding further, a few more facts may be stated. The partners contributed each a sum of Rs. 101 towards his or her share capital and shared the profits equally. The amounts transferred to the donees were apparently profits earned by the partnership business and lying to the credit of the donor. But having regard to the fact that the transfer of the two amounts was effected by book entries, no cash was handed over and the amounts transferred continued to be in the firm's books and were available for purposes of the business of the firm. Whether the moneys so transferred were regarded as a loan to the firm or as surplus profits to the credit of the donor, they can be made use of by the firm. As the funds belonged to the donor, who was a partner, their repayment would be subject to the provisions of the partnership law. It is in this background we have to view what precisely was the subject-matter of the gift; was it, the two sums, free of any conditions or liabilities or subject to them ? We are inclined to think that, on a consideration of the entire facts, the book entries of the two amounts were made in effecting the transfer, the donor being fully alive to the fact that there would be no handing over of those two sums in cash to the donees and they would be available for the continued use of the

partnership in the business and in that contingency, therefore, the amounts, while being used in the firm, would be looked after, managed and controlled by the father in his capacity as the managing partner.

5. Mr. Balasubrahmanyam for the revenue heavily relied on *Clifford John Chick v. Commissioner of Stamp Duties* and suggested that as *Munro v. Commissioner of Stamp Duties* merely related to a case of reservation of benefits to the donor or rather non-exclusion of the donor from a benefit, it would be inapplicable to the facts of this case. *Clifford John Chick v. Commissioner of Stamp Duties* related to a transfer by a father by way of gift to one of his sons a certain pastoral property, the gift being without any reservation, qualification or condition. Months later, the donor, the donee and another son of the donor entered into a partnership agreement to carry on the business of graziers and stock dealers. The stipulation of the agreement between them was that the father should manage the business and that his decision should be final and conclusive in connection with all matters relating to the conduct of the business; the capital of the business was to consist of livestock and plant then owned by the respective partners. The business was to be conducted on the respective holdings of the partners which should be used for the purposes of the partnership only. That all lands held by any of the partners at the date of the agreement should remain the sole property of such partner was another interesting stipulation. The question was whether the value of the properties given to the son by way of gift was to be included in computing the value of the father's estate for purposes of estate duty. There was no dispute before the court that the son had assumed bona fide possession and enjoyment of the property immediately on the gift to the entire exclusion of the father. But the question was whether thereafter the donee retained to the exclusion of the father the subject-matter of the gift. His inclusion was sustained by the Privy Council and Viscount Simonds, delivering the judgment, pointed out that the section was clear that if possession and enjoyment were "thenceforth" to be retained by the donee, it was irrelevant to enquire whether there was any interval between the dates when the donor was excluded and ceased to be excluded. Viscount Simonds observed:

"But the sub-section says nothing about independent transactions. The sole question is one of fact--was the donor excluded? If he was not excluded, it is not relevant to ask why he was not excluded."

6. Their Lordships also repelled the contention that the transaction was in no way related to the gift and was but a mode of enjoyment by the donee of his property. In doing so. Viscount Simonds further observed :

"The words related to the "gift" are no doubt an echo of the words "referable to the gift" which are to be found in *Munro's* case and *St. Aubyn's* case, and are lucidly explained by Dixon C, J. in *Owen's* case, [1953] 88 C.L.R. 67, and at an earlier date by Owen A.J. in *Rudd v. Commissioner of Stamp Duties*, [1937] 37 S.R. (N.S.W.) 366,[1934] A.C. 61 ; 2 E.D.C. 462. They might become of importance if it was the second limb of the sub-section which was under

consideration and the question, therefore, was whether the donor had been entirely excluded from any benefit of whatsoever kind. But it is difficult to see what bearing they have when the simple question is whether the donor has been excluded from the subject-matter of the gift, a pastoral property known as "Mia Mia", and the clear answer is that he has not."

7. *Munro v. Commissioner of Stamp Duties* was cited before the Board but Viscount Simonds stated as to that :

"It follows that the decision of this Board in *Munro v. Commissioner of Stamp Duties* on which the appellants relied, has no application to the present case. It must often be a matter of fine distinction what is the subject-matter of a gift. If, as in *Munro's* case, the gift is of a property shorn of certain of the rights which appertain to complete ownership, the donor cannot, merely because he remains in possession and enjoyment of those rights, be said within the meaning of the section not to be excluded from possession and enjoyment of that which he has given."

8. It may be seen that in *Clifford John Chick v. Commissioner of Stamp Duties* the gift of the property made by the father to the son was as complete as it could be and there was no reservation whatever. But because of the requirement that the donor should be excluded even after the donee had assumed possession and enjoyment from the subject-matter of the gift, the decision in that case was that the section was attracted to the facts of that case, particularly the limb requiring the retention by the donee of the subject-matter of the gift to the exclusion of the donor. But in *Munro v. Commissioner of Stamp Duties* the position was different. That was a case of a gift, as Viscount Simonds pointed out, of property shorn of certain of the rights. The question in *Munro v. Commissioner of Stamp Duties* was decided not with reference to the applicability of any of the limbs of the section but more on the view as to what constituted the subject-matter of the gift. In *Munro v. Commissioner of Stamp Duties* a father entered into an agreement of partnership with his six children into which he brought a vast extent of land on which he had earlier carried on the business of graziers. During the currency of the partnership the father transferred, by way of gift, his right, title and interest in portions of his land to each of his four sons on the understanding that no partner would withdraw and work his land separately. The evidence showed that the transfers were taken subject to the partnership agreement. On the death of the father later, the land that had been transferred by him to his sons was included in his estate to death duties on the ground that it was dutiable. The Privy Council held that the property comprised in the transfers in favour of the sons was the land separate from the rights therein belonging to the partnership and was excluded by the terms of Section 102(2)(a) of the Stamp Duties Act, 1920-31. Under the terms of the partnership it was entitled to the use of the holdings which had been transferred to the sons and they were so used for the purposes of the partnership. In such circumstances the Privy Council observed :

"..... 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."

9. It is to be noted that the case was disposed of by the Privy Council entirely on its view as to what precisely was the subject-matter of the gift, that is to say, the gift was not of the entire land with all the rights going with it, but only shorn of the right which belonged to the partnership under the terms of the agreement between the father and the sons constituting the firm. That is precisely the case here.

10. The nature, extent and manner of enjoyment of the two sums gifted by the father to his sons and daughter were no different in the hands of the donees. At the time of making the gift, having regard to the facts, it has to be taken that the two sums transferred by book entries were still available for purposes of the business of the firm which mean that their user for that purpose would be controlled by the managing partner. In the very nature of things, therefore, the transfer of the two sums by way of gift should be taken subject to the rights of the firm and in the words of the Privy Council in *Munro v. Commissioner of Stamp Duties* the two sums were transferred to the donees shorn of the rights which belonged to their partnership. On that view, there can be no question that immediately on the making of the gift, the donees assumed such possession and enjoyment of the subject-matter of gifts as it was capable of at the time and also that they retained that to the exclusion of the donor. If the donor continued to have control over the two sums, that was not because of any reservation in him while making the gift but because the gift itself was made subject to the condition that the funds would be available for the use of the partnership business and, as such, they would be subject also to the control and management by the donor in his capacity as managing partner.

11. In *Munro v. Commissioner of Stamp Duties*, after deciding the scope of the subject-matter of the gift, the Privy Council went on to make further observations that the benefit which the donor in that case had as a member of the partnership in the right to which the gift was subject, was a benefit referable in no way to the gift but to the agreement and it was not such a benefit as is contemplated by Section 102(2)(d). A reference was made to this observation by Viscount Simonds in *Clifford John Chick v. Commissioner of Stamp Duties* * and it was stated:

"They might become of importance if it was the second limb of the sub-section which was under consideration and the question, therefore, was whether the donor had been entirely excluded from any benefit of whatsoever kind."

12. It seems to us that by these observations it is not to be taken that *Munro v.*

Commissioner of Stamp Duties, as is contended for the revenue, was decided with reference to the limb relating to the reservation of benefit. The observation above referred to in *Munro v. Commissioner of Stamp Duties*, should be understood in conjunction with the conclusion of the Privy Council as to the scope of the subject-matter of the gift itself. The observation aforesaid immediately followed that conclusion. All that was meant by the Privy Council by such observation was only that the benefit, if any, was not referable to the gift, that is to say, the gift was of the property less the right which belonged to the partnership.

13. Mr. Balasubrahmanyam invited our attention to *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, and contended that for the purposes of exclusion the factual position should be kept in view and if, as a matter of fact, the donor is in some way associated with or found to enjoy the benefit out of or in relation to the gift, that would attract the application of Section 10. But, as we pointed out, it would all depend upon what the subject-matter of the gift is. If the subject-matter of the gift is exclusive of what is regarded by the revenue as benefit or association, no question of exclusion can arise at all. In that case, the matter will have to be decided only on the basis of the subject-matter of the gift.

14. We are of the view that the question referred to us should be answered against the revenue and it is accordingly answered with costs. Counsel's fee Rs. 250.