

(1971) 01 DEL CK 0010

In the Delhi High Court

Case No : Estate Duty Reference No. 2 of 1970

Controller of Estate Duty

APPELLANT

Vs

Prahlad Rai

RESPONDENT

Date of Decision : 01-01-1971

Acts Referred:

Citation : (1971) ILR Delhi 693 : (1972) 83 ITR 321

Hon'ble Judges : V.S. Deshpande, J; M.R.A Ansari, J; Hardayal Hardy, J

Bench : Full Bench

Advocate : G.C. Sharma, Randhir Chawla, V. Kumaria, C.S. Aggarwal and H.S. Dhir, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) The following question of law which was originally before a Division Bench of this Court has been referred to the Full Bench :-

"WHETHER on the facts and in the circumstances of the case, Estate Duty was liable to be paid on the sum of Rs. 35,824.00 as per provisions of Section 10 of the Estate Duty Act, 1953."

(2) The question arises out of the order of the Income Tax Appellate Tribunal in Estate Duty Appeal No. 72 of 1963-64. The facts lie in a narrow compass. The deceased was one Shri Kashmiri Lal who died on 21-10-1961 and the accountable person is his son Shri Prahlad Rai, who will hereafter be referred to as the assessed. On 17-3-1962 a return showing the net estate of the deceased which consisted of moveable assets and immovable properties was filed by the accountable person. It was claimed that the deceased gave gifts to his four minor grand-daughters (daughters of Shri Prahlad Rai) on 26-9-1954 of a sum of Rs. 6,250.00 each. He did so by making transfer entries in the books of account of the firm Messrs Sant Lal Kanhaya Lal in which the deceased was a partner holding a share of 28 nP out of 100 nP. On 12-3-1957 the deceased executed four memoranda on stamp papers confirming the gifts which were accepted by

the mother of said grand-daughters. All the four memoranda form part of the statement of case and are identical in terms. One of the said documents is reproduced here-under :-

"MEMORANDUM made on this 12th day of March, 1957. The undersigned Kashmiri Lal partner of M/s. Sant Lal Kanhaya Lal, Naya Bazar, Delhi in consideration of love and affection for his grand daughter Kumari Saria Daughter of Prahlad Rai gave a sum of Rs. 6,250.00 to her out of his personal funds in the books of M/s. Sant Lal Kanhaya Lal, Delhi on 26-10-54 and for which the necessary transfer entries have been effected in the books of the said M/s. Sant Lal Kanhaya Lal Delhi for the sole use and benefit of the said Kumari Saria absolutely and at the same time delivered possession thereof to her by the said transfer and relinquished all his control thereon. The said Kumari Saria being a minor, her mother Shrimati Rattan Kumari had accepted the gift of the said amount with full rights of possession and control thereon. This memorandum is executed to confirm the above gift having been made by me voluntarily of my own free will and accord so that no one in whatever capacity may hereafter claim the refund of the said amount from the said Kumari Saria or her legal representatives or assignee if any".

(3) On the day on which the gifts were actually made by the deceased, the deceased had a capital of Rs. 1,29,006.00 standing to his credit in the balance sheet of the firm although according to the order made by the Assistant Controller of Estate Duty, the cash balance of the firm on that date was 2,520/6/6. The Assistant Controller of Estate Duty held that the gifts were not valid as there was no sufficient cash available on the date of the gifts. He also held that the deceased was not entirely excluded from the benefit of the amount donated by him as the alleged gifted amounts remained with the firm in which he was a partner. Section 10 of the Estate Duty Act, 1953 was therefore held applicable to the case and the amount in question was includible in the estate of the deceased for the purpose of levying estate duty.

(4) The respondent took up the matter to the Appellate Controller of Estate Duty in appeal. The said authority accepted the factum of gifts as having been complete on the drawing up of the four memoranda mentioned above, but held that the provisions of S. 10 of the Estate Duty Act were applicable and as such the addition made by the Assistant Controller of Estate Duty was up-held.

(5) The respondent took up the matter in further appeal to the Income Tax Appellate Tribunal. The Tribunal did not disturb the conclusion reached by the Appellate Controller about the gifts being complete but held that in the particular facts of the case, Section 10 was not applicable at all. It held that merely because the donor happened to be a partner in the firm in question, it did not mean that he was deriving benefit contemplated u/s 10 in regard to the sums which had assumed the role of loans from the donees. In that view of the matter, the amount in question which consisted of Rs. 25,000.00 as principal and Rs. 10,824.00 as interest, was excluded from the computation of the sum on which

estate duty was payable.

(6) The Controller of Estate Duty moved the Tribunal and had the question of law re-produced above, referred to this Court. The question as is apparent, involves the construction of Section 10 of the Estate Duty Act. 1953 which will hereafter be referred to as the Act.

(7) The Section as it stood at the material time, runs as follows :-

"GIFTS whenever made where donor not entirely excluded. -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 : Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gifts, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years the death."

(8) According to this section, the gifted property shall be deemed to pass on the donor's death to the extent that :

(1) bona fide possession and enjoyment of it was not immediately assumed by the donee to the entire exclusion of the donor, and (2) thenceforward it was retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

(9) The proviso to the section explains that even if the exclusion of the donor is not complete from the date of the gift itself, the property shall not be deemed to pass it at least two years before the death of the donor, the donee enjoys it to the entire exclusion of the donor by means of surrender of the reserved benefit by the donor or otherwise. The proviso has however no application to the present case.

(10) The substantive part of section 10 itself is divisible into two parts, namely -

(1) the assumption of bona fide possession and enjoyment of the gifted property by the donee to the entire exclusion of the donor and thenceforward its retention by the donee to the entire exclusion of the donor; (2) such retention by the donee to the entire exclusion of the donor of any benefit to him by contract or otherwise.

(11) In the present case we are concerned with both parts of section 10 except the last part dealing with exclusion of the donor of any benefit to him by contract or otherwise.

(12) The gifts in the present case were not of money in specie. They were not of currency notes or coins. The cash balance of the firm on the date of the gifts was only Rs. 2,520/6/6. They were not, Therefore gifts of moveable property which could be made by delivery of possession u/s 123 of the Transfer of Property Act.

(13) On the other hand, the entries in the account books of the partnership followed up by the execution of the four memoranda by the donor in favor of the donees created claims in favor of the donees against the donor and/or the firm to debts. The subject-matter of the gifts was. Therefore, "actionable claim" as defined in section 3 of the Transfer of Property Act. The gifts of the actionable claims were valid u/s 130 of the Transfer of Property Act by the execution of the four instruments in writing signed by the transferor or the donor. The validity of the gifts under the ordinary law is however not sufficient to exclude the operation of section 10. Over and above the validity of the gifts, it is necessary to know if the gifts fall under both the parts of the substantive portion of Section 10. It is the nature of the gifted property which constitutes the test by which it is to be determined on the facts of each case whether the bona fide possession and enjoyment of the gifted property was assumed by the donee and thenceforward retained by him to the entire exclusion of the donor. This was the ratio of the decision in *John Long v. Thomas Front Webb* (1911) 13 C L R 503 which, with particular reference to the observations of Isaacs J., was referred to with approval by the Judicial Committee of the Privy Council in *Clifford John Chick v. Commissioner of Stamp Duties* 1958 A.C. 435 which in turn was referred to with approval by the Supreme Court in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, . The case before the Supreme Court relates to immovable property. It was there and that the crux of Section 10 of the Act lies in two parts : (i) the donee must have bona fide assumed possession and enjoyment of the property which is the subject-matter of the gift of the donor immediately upon the gift and (ii) 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. Part (ii) of the section has been described as consisting of two limbs. The first limb is that the donee must have retained such possession and enjoyment of the property to the entire exclusion of the donor while the second limb is that the donor should not have any benefit by contract or otherwise. It was found in that case that though the deceased gifted the house to his children four years before the date of his death he still continued to stay in the house till his death as the head of the family and was also looking after the affairs of the house. It was held that both the conditions were cumulative and unless each of those conditions was satisfied the property was liable to estate duty under S, 10 of the Act. It was also said that even if the donor was content to rely upon the mere filial affection of sons with a view to continue to reside in the house which he had given to them, it could not be said that he was "entirely excluded from possession and enjoyment" within the meaning of the section and Therefore the property was deemed to have passed on the death of the donor and was subject to levy of estate duty. Reliance was placed by the Supreme Court on a decision of the Judicial Committee of the Privy Council in *Clifford John Chick and another v. Commissioner of Stamp Duties* 1958 A C 435 and it is this decision of the Privy Council which has formed the basis of the various judgments in this country. The case arose u/s 102(2)(d) of the New South Wales Stamp Duties Act, 1920-56. In 1934 after transfer by way of gift to

one of his sons a pastoral property, the gift being made without reservation or qualification or condition, some 17 months thereafter, the father, the donee son and another son entered into an agreement to carry on in a partnership, the business of graziers and stock dealers. The agreement provided inter alia, that the father should be the manager of the business and that his decision should be final and conclusive in connection with all matters relating to its conduct; that the capital of the business should consist of the livestock and plant then owned by the respective partners; that the business should be conducted on the respective holdings of the partners and the said holdings 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 and could not on any consideration be taken into account as or demand to be an asset of the partnership, and any such partner should have the sole and free right to deal with it as he might think fit. Each of the three partners owned property that of the donee son being what had been given to him by his father in 1934 and each partner brought into partnership livestock and plant and their three properties were thenceforth used for the depasturing of the partnership stock. This state of affairs continued up to the death of the father in 1952. It was held that the value of the property given to the son in 1934 was to be included in computing the value of father's estate for the purposes of death duty.

(14) It would be seen that while it was not disputed that the son had assumed bona fide possession and enjoyment of the property immediately upon the gift, to the entire exclusion of the father, but 17 months thereafter he did not retain it to the father's exclusion, for under the partnership agreement the father was given the right to be the manager of the business and his decision was to be final and conclusive in connection with all matters relating to its conduct. Viscount Simonds who delivered the judgment of the Privy Council said that though the subsequent partnership deed was an independent commercial transaction for full consideration yet the sole question was one of fact i.e. whether the donor was excluded. If he was not excluded, it was not relevant to ask why he was not excluded. He also said that it might be that the donee could make no better use of the property given to him, than, for instance, by leasing it back to the donor; but the question still was whether as a fact the donor had been excluded and the only answer to it was that the possession and enjoyment by the donee of the property given to him in the manner most advantageous to himself, was by no means incompatible with the donor not being excluded from it and this applied even to a commercial transaction between the donee and the donor. In saying so, Viscount Simonds referred to the observations of Isaacs J. in *John Long v. Thomas prout Webb* (13 Commonwealth Law Reports 503) where the question was whether the donor had been entirely excluded from the subject-matter of the gift and it was said that that was the single fact to be determined. If he had not been so excluded," the eye need look no further to see whether his non-exclusion had been advantageous or otherwise to the donee.

(15) In the memoranda of gifts, it was said that they had been made out of the

"personal funds" of the donor in the books of Messrs Sant Lal Kanahya Lal. On the other hand in the statement of the Assistant Controller of Estate Duty and the Tribunal the whole sum of Rs. 1,29,006.00 has been shown as Kashmiri Lal's capital as per the balance-sheet of the partnership. But neither the deed of the partnership nor the balance-sheet of the firm are included in the paper-book. Even if it is assumed that the gifts were made out of the capital of Kashmiri Lal in the firm, it is not known what was agreed between the partners as to the right of Kashmiri Lal to withdraw the capital or any part of it at any time before the dissolution of the partnership firm. All that can be said, Therefore, is that on the date of the gifts the balance in the account books of the partnership firm was not sufficient for the physical transfer of possession and enjoyment of the gifts to the donees to the entire exclusion of the donor. There is nothing to show, however, whether the balance thereafter was not such that the donees could not assume the bona fide possession and enjoyment of the gifts to the entire exclusion of the donor and thenceforward retain them to the entire exclusion of the donor. Further the language of the memoranda of gifts is absolute. It is nowhere stated that the gifts were subject to pre-existing rights of the partnership firm to the continued use of the money which was the subjectmatter of the gifts. It was, Therefore, expected of the donees to have assumed possession and enjoyment of the gifted property to the entire exclusion of the donor as soon as this was permitted by the state of the cash balance of the partnership firm. Thereafter the donees were expected to retain the gifts to the entire exclusion of the donor. Actually the donees never assumed bona fide possession and enjoyment of gifted property. Further, the gifted property remained in the use of the partnership in which the donor was also a partner. The donor as a partner was not, Therefore, entirely excluded from the possession and enjoyment of the gifted property from the inception of the gifts. This continued till the death of the donor and even within two years of the death of the donor, the donor was not excluded from the possession and enjoyment of the gifted property. On the other hand the partnership credited Rs. 10,824.00 as interest to the account of the donees for the use of Rs. 25,000.00 which was the money belonging to the donees but kept with the partnership as loans given by the donees to the firm Sant Lal Kanahya Lal.

(16) According to the ratios decidendi of the decisions in Long Chick and George Da Costa referred to above, the donees in the present case failed to assume bona fide possession and enjoyment of the gifted property to the entire exclusion of the donor on the date of the gifts or thenceforward or at any time later. Nor did they retain these gifts in their possession and enjoyment to the entire exclusion of the donor. It is true that all these decisions related to gifts of Immovable property which is capable of physical delivery of possession and enjoyment and physical exclusion of the donor from the property. So were the decisions in Rajputana Textiles (Agencies) Private Ltd. Vs. Das Gupta, Income Tax Officer/excess Profits Tax Office and Another, . and Sunil Roy, Calcutta Vs. Controller of Estate Duty, Calcutta, . Moveable property is also capable of

physical delivery of possession and enjoyment and physical exclusion of the donor. But Section 10 is applicable to the gifts not only of Immovable and moveable property but also to gifts of actionable claims. For the possession and enjoyment of the gifted property by the donee to the entire exclusion of the donor is always expected to the extent according to the nature of the gifted property in the case of actionable claims also. The donees can take steps to convert their claims to the money gifted into money in possession. Had it been shown in the present case that the gifts made were subject to the pre-existing rights of the partnership to their use and further that such rights of the partnership to the use of the money contained till the death of the donor, then it would have been arguable that the possession and enjoyment of the gifted property was taken by the donees to the extent it was possible keeping with the nature of the gifted property and that the fact that the donor was not entirely excluded from the gifted property was not due to any inaction on the part of the donees but was due to the fact that the gifts themselves were subject to the pre-existing rights of the partnership to the use of the money so gifted and. that these rights of the partnership continued till the death of the donor.

(17) The distinction between an absolute gift as in the present case and a gift of the property shorn of the existing rights of the partnership in it may be forcefully illustrated by contrasting the decisions referred to above with the decision in *H. R. Munro v. Commissioner of Stamp Duties*, (1934) A.C. 61. In that case Munro, the owner of 35,000 acres of land, entered into a partnership with his six children in 1909. In 1913 he executed registered transfer deeds of all his right, title and interest in the portions of his land to each of his four sons and to trustees for each of his two daughters and their children. The evidence showed that the transfers were taken subject to the partnership agreement. The gifted property was held not to pass on the death of the donor because the donees had assumed and. retained possession thereof, and any benefit remaining in the donor was referable to the partnership agreement of 1909 and not to the gifts.

(18) The decision in Munro's case makes an exception to the general rule established by the decisions in *Lang*, *Chick* and *George Da Costa*. The exception is that the bona fide possession and enjoyment of the property by the donees to the entire exclusion of the donor and the retention thereof was expected only in respect of the gifted property. But if the pre-existing rights of the partnership were not gifted along with the property then the donee could not be expected to assume possession and enjoyment of what had been excluded from the scope of the gift.

(19) Such pre-existing rights of partnerships or of other persons are more commonly expected in gifts of actionable claims rather than in gifts of immovable and moveable property. Cases of gifts of actionable claims, therefore, fall into two clear groups. On the one hand are the gifts of actionable claims in which steps could be taken by the donee to assume bona fide possession and enjoyment to the entire exclusion of the donor immediately on the making of the

gifts or at some time later and to retain the same to the entire exclusion of, the donor. On the other hand we can conceive Of cases of which the pre-existing rights ever an actionable claim which is the subject-matter of the gift preclude the donee from taking physical possession and enjoyment of the gifted property to the entire exclusion of the donor at the time of the gift or even later till the death of the donor.

(20) The following decisions fall in the first group as physical possession and enjoyment of the gifted property by the donee to the entire exclusion of the donor and thenceforward retention of the same was possible and expected of the donee in these cases.

(21) In *Shantaben S. Kapadia Vs. Controller of Estate Duty, Gujarat*, , and *Controller of Estate Duty, Gujarat Vs. Chandravadan Amratlal Bhatt*, , decided by the High Court of Gujarat, gifts were made by partners of certain Sums which were decided in the accounts of the partners and credited to the account of the donees. In *Shantaben's* case, it was held that there was no valid gift for the condition laid down in section 123 of the Transfer of Property Act had not been satisfied, but all the same it was held that even if there was a valid gift section 10 of the Act was attracted,

(22) In *Chandravadan Amratlal Bhatt's* case the deceased was a partner along with other two persons in a partnership firm. On October 22, 1946 the account of the deceased was debited with Rs. 30,000.00 and each of his three minor sons was credited with a sum of Rs. 10,000.00 in the books of the partnership and the accounts were continued in their respective names. On January 1, 1958, the account of the deceased with the firm was debited with another sum of Rs. 24,000.00 and a sum of Rs. 12,000.00 was paid in cash to two of his sons who had attained majority by that time. Though the sum of Rs. 12,000.00 was originally deposited by the two sons with the State Bank of India, it was subsequently brought into their account with the firm before the death of the deceased. The Assistant Controller held that the two gifts of Rs. 30,000.00 and Rs. 24,000.00 were invalid and in any event, bonafide possession and enjoyment of the amounts had not been immediately assumed by the donees, since these amounts were retained in the firm in which the deceased was a partner and were Therefore brought to charge for levy of estate duty. The Appellate Controller confirmed his view. The Tribunal however deleted the inclusion holding the gifts to be valid gifts to which the provisions of Section 10 would not apply. On a reference to the High Court, it was held that since the subject- matter of the gift was made available to the partnership in which the deceased had interest as a partner and was placed at its disposal, the deceased was not entirely excluded from subject-matter of the gifts and hence the provisions of Section 10 applied to the case. The decision directly supports the view canvassed by the counsel for the Revenue in the case before us.

(23) Last year the High Court of Punjab and Haryana was concerned with a case which with slight variations has a direct bearing on the case before us. In

Controller of Estate Duty Vs. Ronaq Ram Bakshi Ram Gupta, the donor who had made a gift of Rs. 10,000.00 to the donee in April 1959 died on 9th February 1962. The donee had deposited the amount in a partnership in which the donor was a partner till 9th September, 1960.

(24) Thereafter the amount was withdrawn from the partnership and deposited in another partnership in which the donor was not a partner. On the question whether Section 10 of the Act would become applicable to the amount of the gift, it was held that up to 9th September 1960, the donee did not retain the property to the entire exclusion of the donor and the mere fact that the donee was getting interest on the amount deposited with the partnership did not amount to the entire exclusion of the donor from the donated amount.

(25) In Commissioner of Stamp Duties of New South Wales v. Permanent Trustee Co. of New South Wales (Davies Case) 1956 Appeal Cases 512, the donor transferred certain shares, property and investments to a trust company on trust for the benefit of his daughter in 1924. But from 1939 onwards the donor became the master of the income of the property paid over to him by the trustee and Therefore the bonafide possession and enjoyment of the donee to the entire exclusion of the donor were reduced and impaired and the property was deemed to pass on the death of the donor.

(26) All these cases go to show that whenever there is a valid gift and bonafide possession, and enjoyment of the gifted property is immediately assumed by the donor, the gift would still attract the provisions of Section 10 if at any time before the death of the donor of the property is not retained by the donee to the entire exclusion of the donor or of any benefit to him by contract or otherwise provided that the entire exclusion of the donor has not taken place at least for a period of two years before the death of the donor. The non-exclusion of the donor may take the form of the gifted property being used in the form of a loan with a partnership in which the donor is a partner or it may take the form of a loan given to the donor himself or it may take the form of a loan to a trust of which the donor is wholly or in part a beneficiary. In all such cases the sole question for consideration is—was the donor excluded ? If he was not excluded, it was not relevant to ask why he was not excluded and this applies equally with regard to the transaction being commercial and for full consideration. As was said by Viscount Simonds "their Lordships see no reason why a gloss should be put upon the plain words of the sub-section by exclusion from its operation such transactions."

(27) According to a Division Bench of the Madras High Court speaking through Veeraswami C.J., the decisions in Controller of Estate Duty Vs. C.R. Ramachandra Gounder, , and Controller of Estate Duty Vs. N.R. Ramarathanam and Others, , would fall into the second group though on the facts of those cases it is not quite clear that the donees could not take bona fide possession and enjoyment of the gifted property to the entire exclusion of the donor and thenceforward retain the same.

(28) In C. R. Ramachandra Gounder's case the donor who was a partner in a firm asked the firm long before its dissolution to transfer from his loan account a sum of rupees one lakh and credit it equally to the accounts of his five sons by opening separate accounts in their individual names in the firm's books. Here, the property gifted was the money which had been lent by the donor to the firm. It is true that the lender had only an actionable claim against the borrower firm. It was a part of this actionable claim which was gifted to the sons by the lender. His sons also got only an actionable claim against the firm. The transfer of the actionable claim was duly made u/s 130 of the Transfer of Property Act. But the matter does not rest there. The transfer may be valid but the question to be further considered was whether the donees could take steps to convert the actionable claim or chose in action into a chose in possession by realizing the claim by being paid the money by the firm when the money became due for payment. This question had not been considered in this decision.

(29) In N. R. Ramarathanam's case the donor, a partner in a firm of money-lending business, transferred by means of book adjustments in the accounts of the firm certain sums of money to his sons and daughter by way of gifts without physical handing over of the cash to them. The donor continued to be a partner in the firm which had the use of the moneys till the death of the donor. The money from which the gifts were made was said to be apparently profits earned by the donor and lying to his credit in the firm. It is not known, Therefore, why the donor could not handover physical possession of the moneys to the donees. Nor is it clear what right the partnership had to the use of these moneys. It cannot be said Therefore whether the subject-matter of the gift was capable of physical transfer of possession and enjoyment to the donees or whether such physical transfer was prevented by the pre-existing right of the partnership to the use of the said moneys. The decision of the Court however was that the donor being fully alive to the fact that there would be no handing over of these sums of money in cash to the donees and that these sums would be available for the continued use of the partnership, these amounts would be looked after, managed and controlled by the donor in his capacity as the managing partner and, Therefore, the total value of the gifts was not liable to estate duty being excluded from section 10 of the Act. With respect, it is not clear to us how this decision is supported by the decision in Munro's case particularly in the absence of a finding in favor of the pre-existing right of the partnership to the use of the money.

(30) On a review of the above decisions we find that the subject-matter of the gift in the present case was actionable claims which the donees should have realized by getting paid by the donor and/or the partnership firm. In the absence of anything on the record to show that the partnership firm had a pre-existing right to the use of the money gifted by the donor to the donees and that such right continued till the death of the donor or that the donees were disabled by some other reason from realizing the payment of the debts from the donor and/or partnership, we are unable to hold that the nature of the property gifted was

such that the donees should be deemed to have assumed possession and enjoyment thereof to the entire exclusion of the donor and thenceforward retained it. On the contrary, we find that the donees did not do so. u/s 10 of the Act, Therefore, the corpus of the gifted property, i.e., Rs. 25,000.00, passed on the death of the donor and became liable to payment of estate duty.

(31) The next question that arises is whether the entire sum of Rs. 35,824.00 should be held liable to estate duty or the gift should be confined to the sum of Rs. 25,000.00 which is the original amount of the gift. In *Rash Mohan Chatterjee*'s case the High Court of Calcutta confined the livable duty to that portion of the house which was in the occupation of the donor. It was said that the lease gave to the donor possession and enjoyment of the property which was a negation of exclusion and Therefore brought the case within the statutory liability, but it was the entire exclusion of the donor that was envisaged by section 10. The whole of the property was Therefore not included within the net estate of the deceased and it is only that part of the property which was on rent with him that was included in his estate.

(32) The view of Calcutta High Court was followed by a Division Bench of Kerala High Court in *K.E. Abdul Hameed Vs. Controller of Estate Duty, Kerala*, and it was said that the expression "to the extent" introduced into the Indian statute was a departure from the provisions in the British and Australian Acts. A reference was accordingly made to the statement of objects and reasons. The statement with respect to section 10 it as follows:

"THIS clause brings under charge property given in gift. but in which the donor retains some interests by contract or otherwise. Where the donor retains such interests in a part of the property only estate duty is payable on that part only".

(33) That clearly shows that where the donor retains such interest in a part of the property an estate duty is payable on that part only.

(34) A reference was also made to a decision of Madras High Court in *Smt. Parvathi Ammal Vs. Controller of Estate Duty, Madras*, , where it was held that it is only the value of the right to possession and enjoyment in the hands of the deceased as a lease that would pass on his death and would attract duty,

(35) In the present case what was gifted by the deceased was a sum of Rs. 25,000.00. The further right to earn interest on that amount was never gifted by the deceased. The subject-matter of a gift would invariably constitute a bundle of rights. If any one of more of the constituents' rights come within the mischief of the non-exclusion clause there is a benefit to the donor in respect of it by a contract or otherwise, such right or rights only pass and will attract duty. Accretion to the gifted property, which in the present case, has taken the form of interest, did not form part of the bundle of rights in the gifted property as it stood at the time the gift was made. Once the possession and enjoyment of the gifted property was taken over by the donees, they could invest the money either in the partnership or elsewhere. The right to earn interest Therefore did

not form part of the gifted property and whatever interest was earned by the donees. was credited to their accounts by the partnership firm. That amount cannot be held to form part of the net estate of the deceased.

(36) In the result the question is answered as follow :- Estate duty is payable only on the sum of Rs. 25,000.00 and not on the amount of Rs. 35,824.00. As the Revenue has not succeeded fully in this reference, we do not propose to make any order as to cost.

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