(1983) 11 MAD CK 0022

In the Madras High Court

Case No : Tax Case No. 664 of 1978

Controller of Estate Duty APPELLANT

Vs

R. Arvamudham RESPONDENT

Date of Decision : 09-11-1983

Acts Referred:
Estate Duty Act, 1953 — Section 10

Citation : (1985) 156 ITR 341

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; K.R. Desabandhu, for the Respondent

Judgement

Ramanujam, J.—At the instance of the Revenue, the following question has been referred to us for opinion by the ITAT :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 85,000 being the

amount gifted by the deceased to his sons, wife, daughter and grandsons was not liable to be included under s. 10 of the E.D. Act ?

2. One Sri M. A. Ramanujam Pillai was running a rice mill in his individual capacity. In 1956-57, a sum of Rs. 85,000 was gifted by way of

transfer to the debit of capital account of the deceased and to the credit of th e account of his sons, wife, daughter and grandsons. Thereafter, the

donees were taken in as partner and the credit balances in their favour were credited to their capital account. The said Rammanujam Pillai died on

October 16, 1969. in the course of the assessment proceedings under the E.D. Act, the Asst. CED held that since the possession and enjoyment

of the funds gifted had not been retained by the donees to the entire exclusion of the deceased or of any benefit to him, s. 10 should be applied.

He, therefore, added the said sum of Rs. 85,000 as forming part of the estate of the deceased.

3. The accountable person appealed to the Appellate Controller, and he found that the gift was made on April 1, 1957, and on the same day, the

proprietary concern was converted into a partnership by making the donees as partners along with the deceased. He also found that gift tax has

been levied in respect of the gift relating to Rs. 85,000. He, therefore, did not agree with the Assistant Controller that s. 10 should apply. In this

view, he deleted the sum of Rs. 85,000 from the value of the estate of the deceased. The Revenue, aggrieved by the decision of the Appellate

Controller, went before the Tribunal The Tribunal found that the deceased was carrving on business in rice mill under the name and style of

Deshabandhu Rice Mill as sole proprietor thereof till March 31, 1957, that on April 1, 1957, he converted the business into a partnership by

taking his sons, wife and daughters as partners, that on the same date he gifted to them Rs. 85,000 in all and the said gifts were made by debiting

the capital account of the deceased in the books of the firm and crediting the respective ammounts gifted to the donees'' capital account. On these

materials, the Tribunal held that s. 10 of the E.D. Act was not applicable. According to the Tribunal, the gifts made to the donees were made

subject to the condition that the gifted amounts should be available for the carrying on of the business of the partnership, that though the deceased

had the benefit of the gifted amounts, the benefit should be traced to his capacity as a partner and not to his capacity as a donor and that,

therefore, since the benefit is not referable in any way to the gift and is, in fact, unconnected with the gift, s. 10 of the E.D. Act cannot be applied.

In support of that view, the Tribunal relied on the decision of the Supreme Court in Controller of Estate Duty, Madras Vs. C.R. Ramachandra

Gounder, . Aggrieved by the decision of the Tribunal, the Revenue has sought and obtained the reference on the question set out above.

4. The learned counsel for the Revenue refers to the decision of this court in CONTROLLER OF ESTATE DUTY, MADRAS Vs. V. S.

SURYANARAYAN., and submits that the said decision will apply on all fours to the facts before us. The learned counsel for the assessee, on the other hand, submits that the decision in CONTROLLER OF ESTATE DUTY, MADRAS Vs. V. S. SURYANARAYAN., relied on by the

Revenue is not in accord with the decisions rendered by the Supreme Court on similar set of facts in Controller of Estate Duty, Kerala Vs. R.V.

Viswanathan and Others, and in Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri

Jai Gopal Mehra, . It is no doubt true, as contended by the Revenue, that this court has held in CONTROLLER OF ESTATE DUTY, MADRAS

Vs. V. S. SURYANARAYAN., that the enjoyment of the gifted amount by the doer even as a partner will be sufficient to attract s. 10 and the

said decision proceeds on the basis that the factual possession and enjoyment by the donor of the gift amount is sufficient to attract s. 10 of the

E.D. Act, even though the possession or benefit is not traceable to the actual gift, but the Supreme Court has categorically ruled in Controller of

Estate Duty, Kerala Vs. R.V. Viswanathan and Others, that if the use of the gifted property or the receipt of any benefit by the donor is not

traceable to the gift, then s. 10 of the E.D. Act cannot be invoked. In Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and

Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra, . the Supreme Court has reiterated the principle laid down earlier in Controller of Estate

Duty, Kerala Vs. R.V. Viswanathan and Others, and has also in its earlier decision in Controller of Estate Duty, Madras Vs. C.R. Ramachandra

Gounder, and observed that where the donor makes a gift to his sons and using the amount gifted as capital, brings his children as partners and

continues to have the benefit of the amount gifted as a partner of the firm, such benefit to the donor is referable to his membership of the

partnership and it is not a benefit referable in any way to the gift but it is unconnected therewith. These decision in CED v. Ramachandra Gounder

[1973] 88 ITR 488 , Controller of Estate Duty, Kerala Vs. R.V. Viswanathan and Others, and Controller of Estate Duty, Punjab, Haryana, J. and

K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra, have uniformly laid down the principle that unless the benefit the

donor has on the amounts gifted is referable to the gift, s. 10 cannot be attracted

5. Following the Supreme Court decisions referred to above, we answer the question in the affirmative and against the Revenue. There will be no

order as to costs.

