
(1972) 07 AHC CK 0014

In the Allahabad High Court

Case No : Estate Duty Reference No. 544 of 1969

Controller of Estate Duty

APPELLANT

Vs

Ramesh Chand Gupta

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1973) 92 ITR 307

Hon'ble Judges : R.L. Gulati, J;H.N. Seth, J

Bench : Division Bench

Advocate : R.R. Misra, for the Appellant; G.C. Bhattacharya and H.J. Hyder, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—The Income Tax Appellate Tribunal, Delhi Bench, has made this reference u/s 64(1) of the Estate Duty Act at the instance of the Controller of Estate Duty, U.P.

2. The case relates to the estate duty assessment in respect of the property of Sri Gaindamal who died on 14th October, 1964.

3. The deceased was a partner in a firm, Messrs. Gaindamal Sukhbir Singh. From out of his personal funds, deposited in the firm, he made a gift of an amount aggregating Rs. 65,000 to his grandsons on various dates. Out of this amount a sum of Rs. 25,000 was gifted within two years of 14th October, 1964, the date on which Gaindamal died. Whole of Rs. 65,000 was not included in the estate duty return filed by the accountable person.

4. The Assistant Controller of Estate Duty found that subsequent to the gift, the donees deposited the amount gifted to them with the firm, Gaindamal Sukhbir Singh, in which Gaindamal was also partner. The total amount of gift was, therefore, liable to be included in the estate left by the deceased as property deemed to pass on his death u/s 10 of the Estate Duty Act. He further estimated

that the firm must have paid a sum of Rs. 12,000 to the donees by way of interest on the amount deposited by them. According to him, this sum was also an amount which should be deemed to pass on Gaindamal's death. In the result he added a sum of Rs. 77,000 in the value of the property deemed to pass on Gaindamal's death.

5. In appeal before the Controller of Estate Duty, the accountable person did not dispute the addition of Rs. 25,000 (the amount gifted by Gaindamal within two years of his death) in the value of the property passing or deemed to pass on the death of Gaindamal. He, however, disputed the addition of Rs. 40,000, balance of the gifted amount, and interest amounting to Rs. 12,000 in the value of the property left by the deceased. The Controller found that from out of the amount of Rs. 40,000 a sum of Rs. 10,000 had been gifted by making book entries which was not valid and upheld its addition. Gift of remaining sum of Rs. 30,000 was made by the deceased by delivering cash to the respective donees. However, the donees deposited this amount with the firm, Gaindamal Sukhbir Singh, but subsequently withdrew a sum of Rs. 5,000 more than two years before Gaindamal's death. u/s 10 of the Estate Duty Act, only an amount of Rs. 25,000 could be the property deemed to pass on the death of Gaindamal. Consequent to this finding, the Appellate Controller retained the interest which appertained to Rs. 10,000 (the amount in respect of which the gift was held to be invalid) amounting to Rs. 3,000 in the estate of the deceased. In short the Appellate Controller upheld the inclusion of the gift amounting to Rs. 60,000 (Rs. 25,000 gift made within two years of Gaindamal's death, Rs. 10,000 invalid gift and Rs. 25,000 property deemed to pass on donor's death) and interest amounting to Rs. 3,000 in the estate of the deceased.

6. In second appeal, the accountable person objected to the inclusion of Rs. 25,000, the amount gifted in cash and deposited by the donees with the firm in which the deceased donor was also a partner, Rs. 10,000 the amount said to have been gifted by Gaindamal by making entries in the account books of the firm and the interest on this sum amounting to Rs. 3,000 in the estate of the deceased. It will thus be seen that the propriety of the addition of Rs. 35,000 in the value of properties passing or deemed to pass on the death of Gaindamal, which was questioned before the Appellate Tribunal, was made up of two amounts, viz., a sum of Rs. 25,000 cash said to have been gifted by the deceased to his grandsons who deposited the same with the firm, Gaindamal Sukhbir Singh, and Rs. 10,000 said to have been gifted by Gaindamal by making entries in the books of the firm. Somehow, the Appellate Tribunal has been under an impression that the amount of Rs. 35,000 was made up of Rs. 30,000, the amount said to have been gifted in cash and deposited by the donees with the firm, and Rs. 5,000 gifted by making book entries.

7. The Appellate Tribunal held that in view of the decision of this court in the case of Commissioner of Income Tax v. Shyamo Bibi, the gift of Rs. 5,000 by making transfer entries in the books of the firm was invalid. This amount and the interest

on it amounting to Rs. 1,500 had been rightly included in the estate of the deceased. So far as the sum of Rs. 30,000 was concerned, the revenue sought to justify its inclusion in the value of the estate of the deceased u/s 10 of the Estate Duty Act. It claimed that the deceased donor had not entirely excluded himself from possession and enjoyment of this amount as the same was deposited by the donee with the firm in which the deceased donor was also a partner. In this connection the Appellate Tribunal made the following observation :

"The question for our consideration is whether the respective donees can be said to have assumed bona fide possession and enjoyment of the gifted amounts immediately and to have retained the same to the entire exclusion of the donor or of any benefit to him by contract or otherwise. The contention of the revenue before us and the reasoning in the orders of the authorities below fails to take notice of the elementary position that once the gifted amounts came to be deposited by the donees with the firm, the latter used these deposits as funds belonging to it and not as funds belonging to the donees. Once a loan is advanced or a deposit is made the money ceases to belong to the depositor or creditor as the case may be who gets in return only an actionable claim and the money belongs to the borrower or the deposited. The creditor or the depositor loses all control and connection, authority and dominion over the money. He cannot object to the use of the money by the borrower or the deposited in any manner he likes. When the borrower or the depositor used such borrowed funds, he uses the funds as his own money and not as a trustee or an agent of the money belonging to some one else. In the present case, moreover, the firm paid interest on the deposits. In these circumstances, the contention of the revenue that the donor continued to enjoy the possession and benefit of the gifted amounts is completely untenable. The rulings cited before us by the revenue relate to gifts of immovable properties which have nothing in common with the case before us. We hold that the section is not applicable in the present case and we exclude Rs. 30,000 out of the disputed amount of Rs. 35,000."

At the instance of the Controller of Estate Duty, the Appellate Tribunal has now referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 30,000 represented gifts made by the deceased and was not includible in the estate of the deceased u/s 10 of the Estate Duty Act, 1953 ?"

Section 10 of the Estate Duty Act, 1953, provides that 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. It is contended that inasmuch as the donees deposited the amount gifted with a firm in which the donor was also a partner the donee did not retain the property gifted to the entire exclusion of the donor. At any rate the donor derived benefit from the

property gifted by reason of a contract, in pursuance of which the donees deposited the amount with the firm.

8. In the case of *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, the Supreme Court has pointed out that the crux of Section 10 of the Estate Duty Act lies 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.

Both these conditions are cumulative and unless both of them are complied with the, property gifted would be deemed to pass on the death of the deceased and its value would be liable to be included in the value of the estate left by the deceased for estate duty purposes.

9. In view of the finding that the gift in respect of Rs. 30,000 was made in cash by delivery of the gifted amounts to the donees and, subsequently, the donees voluntarily deposited the same in the firm, it may be assumed that the donees bona fide assumed possession and enjoyment over the subject-matter of the gift to the exclusion of the donor immediately upon the gift and that the first part of Section 10 did not operate so as to make the gifted property a property which is deemed to pass on the death of the deceased. The question, however, that remains to be considered is whether the donee retained possession and enjoyment of the amount gifted to the entire exclusion of the donor or of any benefit to him by contract or otherwise. As soon as the donees deposited the amount gifted with the firm the firm came into possession of that amount. The donor being a partner in that firm also came to possess and to have control over the amount as any other partner. At any rate the donor as a partner in the firm derived benefit from this deposit which was used for business purposes of the firm. The donor derived this benefit from the gifted property by reason of a contract entered into between the donee and the firm. It is, therefore, clear that the second part of Section 10, namely, that after obtaining bona fide possession over the property gifted the donee did not retain the subject-matter of the gift to the entire exclusion of the donor or of any benefit to him by contract or otherwise, has not been complied within the circumstances, the amount of Rs. 30,000 gifted to the grandsons of Gaidamal will be deemed to pass on Gaidamal's death u/s 10 of the Estate Duty Act.

10. A similar question arose for consideration by this court in E.D.R. No. 96 of 1966 (*Abdul Alim and Another Vs. Controller of Estate Duty*, , decided on 23rd September, 1971. In that case the deceased gifted a sum of Rs. 44,000 in cash to his minor sons. The minors were admitted to the benefits of a firm in which the deceased donor was also a partner. The money gifted to the minors was

brought in as capital of that firm. This court held that in such circumstances it could not be said that the donee retained control over the property gifted to the exclusion of the donor and the amount was liable to be included in the principal value of the estate left by the deceased as property deemed to pass on his death, u/s 10 of the Estate Duty Act. In this respect, a case where the donee contributes the amount gifted to him in cash, as capital of the firm, does not stand on a footing different from a case where they deposit it with the firm for being used for its business purposes. Ratio of the decision in Abdul Alim's case, therefore, fully applies to the facts of the present case and it has to be held that possession and enjoyment of the property was not retained by the donees to the entire exclusion of the donor.

11. The reasoning of the Appellate Tribunal that Section 10 of the Act did not apply to the facts of this case because the moment the amount gifted was deposited with the firm it ceased to belong to the donee, and instead the donee acquired an actionable claim against the firm, does not appeal to us. u/s 10 of the Act, the gifted property will be deemed to pass on the donor's death if after the gift the property was not retained by the donee to the entire exclusion of the donor or of any benefit to him under a contract. So long as the donee exercises some dominion over the gifted property or derives any benefit from it under a contract or otherwise, the case will come within the mischief of Section 10 of the Act. The capacity in which dominion over the gifted property is exercised by the donee or the benefit is derived by him is not material. Section 10 does not lay down that before a property can be deemed to pass under that section, it must continue to belong to the donee. In this case, on finding recorded by the Tribunal, there can be no doubt that the donee did not retain possession of the gifted property to the entire exclusion of the donor, and that the donor also derived benefit from the gifted property under a contract. Payment of interest on that amount also does not make any difference to the position that the donee did not retain the property to the entire exclusion of the donor or of any benefit to him.

12. We are, accordingly, of opinion that the Tribunal was not right in holding that the sum of Rs. 30,000 (Rs. 25,000) representing gifts made by the deceased was not includible in the estate of the deceased u/s 10 of the Estate Duty Act, 1953. The question referred to us is accordingly answered in the negative and in favour of the revenue.

13. The Controller of Estate Duty is entitled to receive costs of this reference which we assess at Rs. 200.