
(1982) 03 BOM CK 0031

In the Bombay High Court

Case No : Estate Duty Reference No. 7 of 1973

Controller of Estate Duty

APPELLANT

Vs

Ratanlal Budhamal Taki

RESPONDENT

Date of Decision : 20-03-1982

Acts Referred:

Estate Duty Act, 1953 — Section 10, 5

Citation : (1983) 32 CTR 112 : (1983) 142 ITR 151 : (1983) 12 TAXMAN 98

Hon'ble Judges : M.N. Chandurkar, J; M. Jagannatha Rao, J

Bench : Division Bench

Judgement

Kania, J.—This is a reference on a case stated under s. 64(1) of the E.D. Act, 1953 (referred to hereinafter as "the said Act").

2. The following two questions have been referred to us for our determination :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that the sum of Rs. 2,82,000 (Rupees two lakhs and eighty-two thousand only) is not includible in the dutiable estate of the deceased u/s 10 of the Estate Duty Act, 1953 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in holding that the sum of Rs. 58,000 (Rupees fifty-eight thousand only), being the value of the goodwill of the business run by the partnership was wrongly included in the principal value of the estate of the deceased partner ?"

3. The facts giving rise to this reference are as follows :

4. The deceased had a proprietary business of the manufacture of bidis. At the end of the Samvat year 2011, that is, on Diwali 1957, he transferred an amount of Rs. 1,60,000 each his son and minor grandson by way of gifts. With effect from the beginning of Samvat year 2012, the said proprietary business of manufacturing bidis was converted into a business run by a partnership consisting of the deceased itself and the two donees.

5. Although it is not quite clear from the statement of the case, it is common ground that an amount of Rs. 1,17,000 was brought into the firm as contribution of capital by the son and Rs. 1,65,000 were brought in as contribution of capital by the grandson of the deceased. The deceased died on 15th June, 1966, that is, more than two years after the Diwali of 1957. In the assessment of the estate of the deceased under the said Act, the Asst. Controller came to the conclusion that, since, in his capacity as a partner, the deceased was not excluded from the possession and enjoyment of the property he had gifted, the provisions of s. 10 of the said Act were attracted. The Asst. Controller valued the goodwill of the business at Rs. 58,000. He held that originally the asset was owned by the deceased in its entirety. On account of the admission of the son and the grandson, the goodwill had come to be shared amongst the three partners. He applied the provisions of s. 10 of the said Act to this asset and included an amount of Rs. 58,000, being the value of the goodwill in the estate of the deceased for the purposes of determining the property of the deceased which passed under s. 5 of the said Act. An appeal preferred by the accountable person to the Appellate Controller against the order of the Assistant Controller, to the aforesaid extent, was dismissed by the Appellate Controller. There were some other additions and adjustments made by the Asst. Controller with which we are not concerned in this reference. On further appeal to the accountable person to the Tribunal, the Tribunal held that merely because a donee of a gifted property invested that property in a firm in which the donor was a partner it could not be said that the donor was interested in that property and consequently it could not be said that the property passed to the donee on the death of the donor, provided the requisite period of two years has passed. On this reasoning, the Tribunal allowed the appeal and held that the amount of Rs. 2,82,000 as well as the sum of Rs. 58,000 were wrongly included in the estate of the deceased. In coming to this conclusion the Tribunal placed strong reliance upon the decision of the Punjab and Haryana High Court in *Controller of Estate Duty Vs. Jai Gopal Mehra*,

6. The submission of Mr. Naik, learned counsel for the Controller, is that although the gifts in the present case were made more than two year prior to the death of the deceased, it could not be said that the deceased was excluded from the benefit of the amounts gifted as the amounts gifted or at least part thereof were brought in by the donees as their shares in the capital of the firm in which the donor continued to be a partner. We find that this contention of Mr. Naik must be negatived in view of two decisions of this court. In *Khatijabai Abdulla Soomar Vs. Controller of Estate Duty, Bombay*, , the facts were that the deceased gave a gift of Rs. 75,000 each to his minor grandson and his minor grand-daughter on 11th May, 1955, and 23rd July, 1955, respectively and the gifts were accepted on their behalf by their father. The donees in turn deposited these amounts, on 10th July, 1955, and 12th August, 1955, in a firm of which the deceased was a partner. The deceased retired from the firm on 12th November, 1958, and died on 25th March, 1960, that is, within two years of his retirement from the firm. The

question was whether the possession and enjoyment of the amount gifted were retained by the donees to the entire exclusion of the deceased. It was held that when a property is gifted by a donor, the possession and enjoyment of which is allowed to a firm in which a donor is a partner, then the mere fact of the donor sharing the enjoyment of the benefit in the property is not sufficient for the application of s. 10 of the said Act, unless and until such enjoyment or benefit is clearly referable to the gift, that is, to the parting with such enjoyment or benefit by the donee or permitting the donor to share them out of the bundle of rights gifted in the property. If the possession, enjoyment or benefit of the donor in the property is consistent with the other facts and circumstances of the case, other than those of the factum of the gift, then it can not be said that the donee had not retained possession and enjoyment of the property to the entire exclusion of the donor or to the entire exclusion of the donor in any benefit to him by contract or otherwise. It makes no difference whether the was a partner in the firm already or is taken as such at the time of the gift or he became a creditor of the firm by allowing it to make use of the gifted property. The rights of a partner in the properties and assets of the firm are wholly different from the rights which a person has in properties which belong to him alone. In *Controller of Estate Duty, Bombay City II Vs. Shantilal Mulchand and Others*, , the facts were that one Mulchand was a partner having a 12 per cent. share in a firm. Sharadkumar, a grandson of Mulchand, was admitted to the benefits of the partnership and was given a 6 per cent. share in the profits. The share of Mulchand was correspondingly reduced from 12 per cent. to 6 per cent. On the death of Mulchand, the Asst. Controller sought to assess an amount of Rs. 31,580, being the value of the share of goodwill of the firm received by Sharadkumar in the estate of Mulchand, under the provisions of s. 10 of the said Act. The Tribunal held that the sum was not liable to be included in the estate of Mulchand. On a reference, it was held by a Division Bench of this court that what the deceased continued to enjoy, after the gift was given, was his own 6 per cent. share in the firm, which had not been gifted at all, and his rights as a partner by virtue of his having such a share. It could not be said that the deceased took any benefit or share in the subject-matter of the gift or that the benefit or share enjoyed by the deceased after the gift was relatable to the property gifted.

7. It is clear to us that in view of these decisions, both the question referred must be answered against the Controller and in favor of the accountable person.

8. In the result, the question referred are answered as follows :

Question No. 1 : In the negative and against the Controller.

Question No. 2 : In the negative and against the Controller. The Controller to pay costs of this reference to the accountable person.