

(1970) 02 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 10 of 1966

Controller of Estate Duty

APPELLANT

Vs

Ronaq Ram Bakshi Ram Gupta

RESPONDENT

Date of Decision : 09-02-1970

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1972) 1 ILR (P&H) 179 : (1970) 76 ITR 682

Hon'ble Judges : S.S. Sandhawalia, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; G.C. Mittal and Parkash Chand Jain, for the Respondent

Judgement

Mahajan, J.—At the instance of the Controller of Estate Duty, the Income Tax Appellate Tribunal (Delhi Bench "A") has referred the following question of law for our opinion u/s 64(1) of the Estate Duty Act: "Whether, on the facts and in the circumstances of the case, the amount of Rs. 10,0.00 gifted to Sushila Devi in April, 1959, was not includible in the estate of the deceased for the purpose of the Estate Duty Act ?" The facts giving rise to this reference are as follows : Mam Chand died on the 9th February, 1962. Long before his death, he made a gift of Rs. 10,000 to Sushila Devi, In fact, this gift was in two parts. On the 14th April, 1959, Mam Chand withdrew Rs. 5,000 from his account in the partnership, Messrs. Ram Chand Ronaq Ram of Tohana and handed over this amount to Smt. Sushila Devi. On the 15th April, 1959, this amount was deposited in the partnership account by Sushila Devi through her husband, Bakshi Ram. Again, on the 16th April, 1959, another sum of Rs. 5,000 was withdrawn by Mam Chand from the partnership account and handed over to Smt. Sushila Devi. Again this amount was redeposited on the 17th April, 1959, by her through her husband in the partnership account. This amount was carrying interest and was paid to Sushila Devi. On the 22nd October, 1959, the entire amount of Rs. 10,000 was withdrawn by Sushila Devi and was deposited with Messrs. Ronq Ram Vinod Kumar, a partnership firm. Mam Chand was also a partner in this firm. Again, on

the 9th September, 1960, this amount along with interest was withdrawn by Sushila Devi and a sum of Rs. 10,845 was deposited with Messrs, Ashoka Industries, Tohana. Mam Chand was not a partner in this concern. Mam Chand died on the 9th February, 1962. The Assistant Controller, Estate Duty, Patiala, came to the conclusion that, in view of the provisions of Section 10 of the Estate Duty Act, this sum of Rs. 10,000 is to be treated as part of Mam Chand's estate. An appeal was taken against the decision of the Assistant Controller of Estate Duty to the Zonal Appellate Controller of Estate Duty, Delhi, by Sushila Devi. She claimed that the amount of Rs. 10,000 could not be treated as part of the deceased's estate u/s 10. It was also urged that there is no restriction on the donee to use the gifted amount in whatever manner she liked, and, therefore, she must be deemed to be enjoying the full benefit and possession of the gifted amount to the complete exclusion of the donor. The Appellate Controller rejected this contention and affirmed the decision of the Assistant Controller of Estate Duty. This led Sushila Devi to appeal to the Income Tax Appellate Tribunal which is the Tribunal for the purposes of estate duty. The Tribunal reversed the decisions of the two authorities referred to above and gave the following decision ;

"In our opinion, in cases of this kind for a gift to be got affected by Section 10, it has got to be seen whether what was gifted was possessed and enjoyed by the donee to the entire exclusion of the donor or of any benefit to him by contract or otherwise for at least two years before the death of the donor. In the present case, it cannot be stated that the donee did not enjoy what was gifted to her for a period of more than two years before the death of the deceased in the present case. Simply because the money came to be invested in a partnership in which the deceased was a partner, it cannot be stated that the gift in question came under the mischief of Section 10. The donee had to invest the money and it is an admitted fact that she was in full enjoyment of the interest that was derived from the deposit in question. In that case, simply because the firm in which the deceased was a partner became a debtor to the donee, it cannot be stated that a situation envisaged u/s 10 came into being. In that view of the matter, we hold that the provisions of Section 10 did not apply to the present gift and, hence, the amount has got to be excluded from estate duty. "

2. The Controller of Estate Duty being dissatisfied with the decision of the Tribunal made an application u/s 64(1) of the Estate Duty Act, asking it to refer the question of law already referred to, for the opinion of this Court. This application was allowed by the Tribunal. Hence, this reference.

3. The contention of the learned counsel for the Controller of Estate Duty is that the Tribunal went clearly against the decision of the Privy Council in *Clifford John Chick v. Commissioner of Stamp Duties*, [1958] A.C. 435; [1959] 37 I.T.R 89; 3.E.D.C. 915 and the decision of the Supreme Court in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, . On the other hand, the contention of the learned counsel for Smt. Sushila Devi is that, in the peculiar

facts and circumstances of this case, the decision of the Tribunal is correct. The learned counsel highlighted the fact that the money was taken out of the partnership account, handed over to the donee and later on by way of investment the donee redeposited the money through her husband with the partnership. It is argued that, in these circumstances, there will be no difference if the donee had deposited the money with a bank instead of depositing it with the partnership. In fact, the entire question hinges on the construction of Section 10 of the Estate Duty Act. Section 10 is reproduced below for facility of reference:

"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 gift, 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 before the death."

4. This provision was considered by the Supreme Court in George Da Costa's case and it will not be necessary to cover that ground again. In fact, it will be proper to refer straightaway to two decisions of the Gujarat High Court in Shantaben S. Kapadia Vs. Controller of Estate Duty, Gujarat, and Controller of Estate Duty, Gujarat Vs. Chandravadan Amratlal Bhatt, . It is the latter decision of the Gujarat High Court which really concludes the matter. I have taken the liberty to quote extensively from that decision because a decision taking a contrary view by the Andhra Pradesh High Court reported as MOHAMMED BHAI AND ANOTHER Vs. CONTROLLER OF ESTATE DUTY, A.P., was considered in it and it was pointed out that that decision ran counter to the decision in George Da Costa's case. The Andhra Pradesh High Court while dealing with George Da Costa's case, had observed as follows:

"The whole basis of this dicta is that there must be an enforceable right. Unlike in English law, there is no equitable right enforceable by a court of equity in India. That right, if enforceable, is at law only, and this requirement was only a condition of the second limb of Section 10 and would not control the words " to the entire exclusion of the donor" in the first limb. In our view, the ratio decidendi of the Supreme Court case rested on the question whether the donor was not entirely excluded from possession of the property as an infringement of the first limb of Section 10 and having regard to the facts of the case it was held that it was. That is not to say that in this case also the facts and circumstances justify the conclusion that merely because the wife and husband resided in the house after he gifted the property to his wife, he derived a benefit therefrom. "

5. Mr. Justice Divan of the Gujarat High Court, who spoke for the court in Controller of Estate Duty v. Chandravadan Amratlal Bhatt, observed as follows at

page 421:

"If this is the basis of the decision of the Andhra Pradesh High Court, with great respect to the learned Chief Justice, we are unable to agree with his conclusions, because it is clear in the light of the principles laid down in Chick's case and also in George Da Costa's case : that, so far as the first limb of the second part of Section 10 is concerned, what the court has to look at is whether there has been entire exclusion of the donor from possession and enjoyment of the property. In that connection whether there is any benefit derived from the property or not does not arise for consideration. It is only under the second limb or the second part of Section 10 that the question arises whether there was any exclusion from any benefit by contract or otherwise. If there is non-exclusion of the donor from the property that, is, if the first limb of the second part of Section 10 applies, as explained by the Supreme Court in George Da Costa's case there is no question of invoking the second limb of the second part of the section. With great respect to the learned judges of the Andhra Pradesh High Court, this aspect of non-exclusion from the property which is gifted by the donor has been overlooked by them and hence we are unable to accept the reasoning of the Andhra Pradesh High Court in this particular case.

In Chick's case, Viscount Simonds, delivering the opinion of the Judicial Committee, observed:".....The simple question is whether the donor has been entirely excluded from the subject-matter of the gift....." and in George Da Costa's case, Ramaswami J. has observed at page 503 of the report as follows :

" It appears from all these cases that the first limb of the section may be infringed if the donor occupies or enjoys the property or its income, even though he has no right to do so which he could legally enforce against the donee,"

Thus, the only question that has to be considered when one comes to the first limb of the second part from the point of view of the question of fact is, whether the donor has been excluded from the subject-matter of the gift.

In the instant case, as happened in Chick's case and also in Smt, Shantaben S. Kapadia v. Controller of Estate Duty, the subject-matter of the gift was made available to the partnership and placed at the disposal of the partnership in which the deceased had an interest as a partner; and that being the case, in the light of the decision of the Privy Council in Chick's case and also in the light of our decision in Estate Duty Reference No. 1 of the 1965 the deceased was not entirely excluded from the subject-matter of the gifts of Rs. 30,000, and Rs. 24,000. The fact that there was an interval of time between the gift of Rs. 24,000 in January, 1958, and the dates on which the amount of Rs. 12,000 were brought in by each, of the two sons, Jayantilal and Chandravadan, is again immaterial. In Chick's case, the subject-matter of the gift was brought into the partnership firm nearly 17 months after the date of the gift and even then it was held that the entire property inducted in the gift was liable to be included in the principal value of the estate of the deceased. In our opinion, the provisions of

Section 10 clearly apply in this case and the case clearly falls within the first limb of the second part of Section 10 of the Act. As regards the accumulated interest referable to the sum of Rs. 30,000, in our opinion, the view taken by the Tribunal is correct because Section 10 applies to that property which is the subject-matter of the gift and not the income from or subsequent accretion to that originally gifted property."

6. It will appear from what has been quoted above, that the crux of the matter lies in the fact whether the donee assumed immediate control of the donated property and thenceforward retained it to the entire exclusion of the donor. If these" words are given their true meaning, there is no doubt that the donee did not retain the property to the entire exclusion of the donor right up to 9th September, 1960. For instance, the donor was not completely excluded from possession or from enjoying all that property. The mere fact that the donee was getting interest on the amount, deposited with the partnership of which the donor was a partner did not amount to the entire exclusion of the donor from the donated amount. We entirely agree with the approach of the learned judges of the Gujarat High Court, and, with great respect, agree with their decision as laying down the correct rule of law in consonance with the decisions of the Privy Council and the Supreme Court.

7. For the reasons recorded above, we answer the question referred to us in the affirmative and hold that the amount of Rs. 10,000 was rightly taken into consideration as part of the estate of the deceased by the Controller and that the Tribunal erred in taking a contrary view. There will be no order as to costs.

S. S. Sandhawalia, J.

8. I agree.

Question answered in the affirmative.