
(1979) 02 MAD CK 0029

In the Madras High Court

Case No : Tax Case No. 288 of 1975 (Reference No. 246 of 1975)

Controller of Estate Duty

APPELLANT

Vs

S. Kuppuswami

RESPONDENT

Date of Decision : 06-02-1979

Acts Referred:

Estate Duty Act, 1953 — Section 10, 2(15), 27, 27(2), 27(6)

Citation : (1979) 13 CTR 319 : (1981) 131 ITR 709

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Sethuraman, J.—This is reference u/s 64(1) of the E.D. Act. The following two questions have been referred to us :

(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that a sum of Rs. 47,739

representing the value of 22% of interest surrendered by the deceased in the firm of M/s. T. Purushotham & Co., Madras, in favour of his sons is

not includible in terms of Section 9 of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that out of the value of the chit fund

contributions made by the deceased a sum of Rs. 10,122 is not includible in terms of Section 10 of the Estate Duty Act ?

2. As the two questions refer to two distinct matters, we shall deal with each one of them separately. The estate duty assessment came to be made

on the death of one K. Subramania Iyer, on 17th November, 1969. He was a partner in the firm of T. Purushotham & Co., with 22% share till 8th

November, 1969, when he retired from the partnership. On the 9th November, 1969, his two major sons were admitted as partners and his minor

son was admitted to the benefits of the partnership, each one of them having a $7\frac{1}{3}$ per cent. share in the firm with the consequence that the 22%

share held by him till then came to be held by the two major sons and the minor son after his retirement. The Asst. CED came to the conclusion

that there was a transfer by the deceased of interest in the partnership firm in favour of his sons and that it was gift u/s 9 of the E.D. Act (hereinafter

referred to as the Act). The net assets of the firm were valued and 22% share representing the interest of the deceased was included in the dutiable

estate as the deceased died within a very short period after he retired and the two major sons and the minor joined the partnership. The amount so

included came to Rs. 47,739.

3. The accountable person appealed to the Appellate Controller who confirmed the assessment by applying Section 9 of the Act to the aforesaid

facts. On further appeal, the Appellate Tribunal deleted the sum of Rs. 47,739 holding that Section 9 of the Act did not apply. It is on those facts

that the first question has been referred to this court.

4. In appreciating this question, reference has to be made to one more fact. In the partnership deed that was executed on November 9, 1969, after

the retirement of the deceased and at the time when the two major sons and the minor son of the deceased joined the firm, there is the following

recital:

And whereas the said K. Subramania Iyer due to old age and ailment expressed his intention to retire from the partnership in favour of his sons

with effect from today for which the other parties agreed.

5. The learned counsel for the revenue submitted that this clause clearly showed that there was a transfer of the interest of the deceased in favour

of his sons as a result of which the sons joined the firm. It is this aspect which is required to be gone into. This contention is essentially based on the

manner in which the Asst. CED understood the transaction. He was of the opinion that the interest of the deceased in this business was given to the

sons within a period of two years and that, therefore, there was a liability u/s 9.

Section 9, in so far as it is material, runs as follows:

(1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer,

delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made two years or more

before the death of the deceased shall be deemed to pass on the death.

6. Sub-section (2) provides for exemption from the operation of this provision in cases of (a) gifts made in consideration of marriage, subject to a

maximum of rupees ten thousand in value, and (b) gifts which represent the normal expenditure of the deceased, subject to a maximum of rupees

ten thousand.

7. This is not a case which comes within the scope of Sub-section (2) of Section 9. The opening words of Section 9, "property taken under a

disposition made by the deceased" contemplate a transaction of which the deceased was the author or to which the deceased was a party. He

must have made the disposition. In the present case, the document dated November 9, 1969, came to be executed by the partners who

constituted the firm from that date. The deceased was not a party to this partnership deed. Therefore, this document by itself cannot be taken to be

a transaction or a disposition made by the deceased. The learned counsel for the revenue, however, placed strong reliance on the recital in which it

is stated that the deceased, due to old age and ailment, expressed his intention to retire from the partnership in favour of his sons, to which the

other parties agreed. As the recital is part of a document to which the deceased was not a party, the learned counsel for the accountable person

submitted that the deceased cannot be held responsible for the recital, and that if persons made such a recital for their own purposes, that would

not have any consequence as far as the deceased was concerned. Unfortunately, no fact has been brought on record to show that there was an

agreement as such between the deceased and the other partners who constituted the firm up to November 8, 1969. As a father, the deceased may

have requested his erstwhile partners to take his sons into the firm. The other partners may not have objected to it. But the point is whether there

was any enforceable agreement between the deceased and the other partners. He was ill and aged and died soon after retirement. If the other

partners, after agreeing to his retirement and after allowing him to retire, did not

take the sons into the firm, there would have been no scope for specifically enforcing any such agreement for which there was no consideration. Partnership is a contract between parties, and the parties who entered into the transaction on November 9, 1969, were free to do what they liked, in accordance with their own wishes. Therefore, the recital by itself cannot support the contention that the transaction was in a way a tripartite transaction to which the deceased, his sons and the other partners in the firm up to November 8, 1969, were all parties. It may be that the recital was introduced to ward off any idea of a gift by the surviving partners of the 22% share in favour of those that joined. There is, thus, no disposition or transfer of any interest held by the deceased as his interest was gone on the 8th November. He could not have entered into any transaction in the present case to transfer any interest which had lapsed by his retirement. The learned counsel for the revenue relied on Section 27 in this context. Her submission was that Section 27 has to be read into Section 9; it may be mentioned that there is no reference to Section 27 in the order of the Tribunal or of the estate duty authorities.

8. Section 27 provides that any disposition made by the deceased in favour of a relative of his is to be treated for the purpose of this Act as a gift under certain circumstances. The provision, so far as it is material, runs as follows:

Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of this Act as a gift unless-

(a) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit;

or

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(b) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only;

and references to a gift in this Act shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his

own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

9. The learned counsel for the revenue is quite right in drawing our attention to

Section 27, even though that provision has not been noticed either by the Appellate Controller or by the Tribunal. This provision is in the nature of a definition provision of the word "gift" in so far as relatives are concerned. Therefore, wherever a gift in relation to relatives has to be considered, then this provision will have to be taken along with Section 9. Absence of reference to this provision in the orders of the authorities or in the questions will not have, therefore, any significance.

10. Even with reference to this provision what is required is that there must be a disposition made by the deceased in favour of a relative, This provision contemplates the deceased having an interest in the particular asset and his disposing of it in favour of a relative. On November, 8, 1969, the interest of the deceased ceased in the partnership and when on November 9, 1969, the new partners came to join the firm, there was no interest to be disposed of.

11. A sum of Rs. 22,000 appeared in the capital account of the deceased and this sum was taken over to the account of the two major sons and the minor sons. This sum was utilised for their capital contribution for the new firm when the firm was reconstituted. There is no dispute about the assessability of this sum of Rs. 22,000 and the matter is not in issue. There is, however, nothing to show that the deceased stipulated that he was transferring the amounts only because his sons were taken into the firm. Thus, the transfer entries do not afford any assistance to the revenue in this case.

12. The word "disposition" occurring in this provision has been the subject of consideration in three decisions of this court in relation to Section 9 itself. In S.P. Valliammai Achi Vs. Controller of Estate Duty, , the deceased in consideration of Rs. 5,000 received from his son relinquished his share in the joint family assets. On his death, the revenue applied Exln. 2 to Section 2(15) of the Act and added the net value of the deceased's half share as having passed on his death, rejecting the contention that Section 9 had no application, as the document in question did not operate as a transfer. It was held that Section 9 read with Exln. 2 to Section 2(15) was rightly invoked by the revenue for the inclusion of the value of the half share of the father, after deduction of a sum of Rs. 5,000, in view of the proviso to Section 27 of the Act. That was a case of a partial

consideration for a release and, therefore, the proviso came in for application. In the present case, there is no question of any partial consideration

emanating from the deceased and the proviso has no application.

13. In *A.N.K. Rajamani Ammal Vs. Controller of Estate Duty*, , the question arose as to the applicability of Section 9 when a coparcener threw

his separate property into the common stock. The question was whether the transaction came within the scope of Section 27 of the Act. It was

held that the word ""disposition"" occurring in Section 27(1) referred to a bilateral or multilateral act and would not include the unilateral act of a

person by which he threw his self-acquired property into the common stock of the joint family. It was, therefore, held that the transaction was not

hit by the provisions of the E.D. Act.

14. Subsequently, the same learned judges, who decided the case cited above, went into the question of an unequal partition of family property in

Ranganayaki Ammal and Others Vs. Controller of Estate Duty, . In that case, the karta took less than what was due to him as his share in the joint

family properties at the time of the partition. The question was whether on the death of the karta, the provisions of Section 9 read with Expln. 2 to

Section 2(15) and Section 27 were attracted. The learned judges after referring to the decision in *A.N.K. Rajamani Ammal Vs. Controller of*

Estate Duty, , pointed out that they agreed with the decision in *S.P. Valliammai Achi Vs. Controller of Estate Duty*, , and they did not agree with

the decisions taking a contrary view [to *S.P. Valliammai Achi Vs. Controller of Estate Duty*, .

15. The decision in *S.P. Valliammai Achi Vs. Controller of Estate Duty*, was approved by the Supreme Court in *Controller of Estate Duty, Gujarat*

Vs. Kantilal Trikamlal, . In this decision the Supreme Court pointed out that where on the partition of a HUF, a coparcener takes less than his

share, there was a disposition within the meaning of Expln. 2 to Section 2(15) by him of that part of his share which he relinquished, and on his

death within two years of the partition, that part of his share would be property deemed to pass u/s 9(1) read with Section 27(1) and Expln. 2 to

Section 2(15). In construing the word ""disposition"", it was pointed out that the word had acquired, beyond its normal ambit, an extended meaning

on account of the special definition in Section 2(15) with Expln. 2 and the

Explanation was deliberately designed to take into its embrace what otherwise may not be disposition or conform to its traditional concept. The decision in Ranganayaki Ammal and Others Vs. Controller of Estate Duty, was also the subject-matter of appeal to the Supreme Court and heard with Controller of Estate Duty, Gujarat Vs. Kantilal Trikamlal, and the Supreme Court affirmed the decision of this court. The result is that the decision in the case of A.N.K. Rajamani Ammal Vs. Controller of Estate Duty, will have to be confined to cases of throwing individual property into the common hotchpot. The Tribunal has merely applied the decision in A.N.K. Rajamani Ammal Vs. Controller of Estate Duty, . The said decision can have no manner of application to a case like this, and the Tribunal is wrong in relying on it.

16. Though in the present case, we are not concerned either with the question of unequal partition or with throwing into common stock of the separate property of the coparcener, however, in so far as the word ""disposition"" has been construed in all these cases, these decisions are relevant. But the word ""disposition"", however widely understood, would not take in a case, where the person had nothing to do with the transaction. The result of the above discussion is that in the present case there is no disposition on the part of the deceased so that Section 9 even read with Section 27 and Expln. 2 to Section 2(15) will have no scope for application.

17. There is one other aspect which requires consideration. Before the Tribunal the contention taken on behalf of the revenue was that the transaction of retirement of the deceased from the partnership by the transfer of the amount standing to his capital in favour of his sons and the reconstitution of the firm taking the sons into the firm are all integrated transactions so that they will come within the scope of the expression associated operations"" defined in Section 27(7)(iv). But this provision will have scope for application only in case Sub-section (2) of Section 27 or Sub-section (6) of the same provision has to be applied. There are no facts here on the basis of which the matter can be gone into for ascertaining whether there were any associated operations so as to attract the operation of Sub-section (2) of Section 27. In fact, the Tribunal has pointed out in its order that the deceased's retirement from the partnership firm

and the admission of the deceased's sons to the partnership firm were two independent transactions with different contracting parties, and in the absence of privity of contract between the deceased and his sons it could not be held that the deceased has transferred his interest in the partnership firm in favour of his sons. Therefore, there is no scope for applying this part of Section 27 also. The result is that the first question is answered in the affirmative and in favour of the accountable person.

18. We shall now consider the second question. The deceased was contributing to two chit funds in the names of his relatives, Smt. Chellammal

and Smt. Lakshmi. These contributions were made by debiting the capital account of the deceased in the books of the firm. In May, 1967, the

amount due in respect of these chits was received and this came to Rs. 9,450 in each case. The total amount thus received came to Rs. 18,900.

This sum of Rs. 18,900 came to be credited in the books of the firm in the names of these two ladies; and the deceased, as seen already, was a

partner in the firm till November 8, 1969. The question is whether the deceased was excluded from the enjoyment of Rs. 18,900. The Asst. CED

included this sum of Rs. 18,900 applying Section 10 of the Act, and the decision was confirmed by the Appellate Controller. But the Tribunal, on

further appeal, relying on the decision of the Supreme Court in *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, and the

decision in *Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others*, held that the sum of Rs.

18,900 was not liable to estate duty as property deemed to pass on the death of the deceased. There was, however, an alternative contention on

the part of the department that the amounts contributed towards the chit funds by the deceased within a period two years prior to his death was

dutiable u/s 9, and the amounts contributed within two years came to Rs. 8,778. The Tribunal accepted this part of the contention of the revenue

and assessed the amount to the extent of Rs. 8,778. The balance out of the total amount of Rs. 18,900 received from the chit funds and deposited

into the firm after taxing Rs. 8,778 by invoking Section 9, comes to Rs. 10,122 and it is this amount which has been exempted by the Tribunal in

view of those two decisions of the Supreme Court mentioned already.

19. The Appellate Controller of E.D. has pointed out that the contributions for the

chit funds were made out of the funds of the deceased and that the chit transactions were only in the names of the two ladies with the Premier Chit Corporation to which subscriptions were made. This factual position is not in dispute. From the copy of the account, it was found that the monthly contributions towards the chit funds were made by debit to the capital, account of the deceased, and the narration in those entries showed the exact amount of contribution made directly to the chit Corporation, and as and when such chit commission was due from the chit fund company, that amount was adjusted and it is only the net amount that was paid by the deceased direct to the chit funds. It is in these circumstances that it was held that the chits were taken by the deceased in the names of two ladies, when he contributed directly to the chit fund company, and that the interest in the chit itself was provided by the deceased in the names of the two ladies. The Appellate Tribunal, as mentioned already, has merely relied on the decisions of the Supreme Court as if they apply to a case like this and concludes the matter in issue.

20. In *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, the deceased who was a partner in a firm owned a house property which was let to the firm as tenant-at-will. In August, 1953, he executed a deed of settlement by which he transferred the said property to his two sons absolutely. The firm paid the rent to the donees thereafter. The deceased further transferred from his account in the firm a sum of Rs. 20,000 each to the credit of his five sons in the firm's books. The sons did not withdraw the amount from their accounts and they were credited with interest at the rate of 7 1/2% and the deceased continued to be a partner till 13th April, 1957, when the firm was dissolved and he died on May 5, 1967. The question was whether the value of the house property settled on his sons and the sum of Rs. one lakh transferred to his sons could be taxed by reference to Section 10 of the Act. The Supreme Court held that neither the house property nor the sum of Rs. one lakh could be deemed to pass u/s 10. The Supreme Court went into the question as to what was the subject-matter of the gift and it was found that the transfer of the property was subject to the tenancy in favour of the firm and that the transfer of the sum of Rs. 20,000 each to his sons was subject to its being retained with the firm. The Supreme Court held that Section 10 did not

apply. That was a gift with reservations. We do not find that this case has any scope for application to the present case, which is absolute and without reservations as will be seen presently.

21. The other decision of the Supreme Court is Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and

Others, . In that case, the Supreme Court merely followed the decision in Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, .

Therefore, this decision also does not take the matter further. The Tribunal is wrong in applying those decisions to the facts here.

22. Section 10 of the Act, in so far as it is material, runs as follows:

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.....

23. It is unnecessary to extract the rest of the provision. As pointed out in several decisions of the Supreme Court, it is necessary to find out what

was the subject-matter of the gift when applying Section 10. The subject-matter of the gift in the present case is the moneys that were remitted to

the chit funds in the account of Smt. Chellammal and Smt. Lakshmi as and when necessary. The entire amount received as gift by these two ladies

or paid on their behalf, was brought back into the firm as deposit. There is nothing to show that there was any understanding at the time of the gift

that the amounts were to be brought back and deposited in the accounts of the firm. It would be clear on the facts here that the deceased was not

entirely excluded from the gifted amount, because the amounts came back into the firm in which he was a partner. Where there is an interval

between the gift and the deposit, it may be necessary to go into the question as to whether the gifted property itself came back into the hands of the

deceased in some manner or other or some other property. But, in this case, the very property gifted is identifiable when it was brought into the

firm, because it is the exact amount that was received from the chit fund that was brought into the firm. The deceased in this case was identifying

himself with some kind of an interest in the contribution to the chit fund, because it was he who took credit for the commission due in respect of the

chit transaction and remitted only the balance. The gift clearly comes under the provision of Section 10. There was some reference during the

course of the arguments as to whether the entire sum of Rs. 10,122 could be subjected to tax or whether any part of it could be excluded. The

exclusion envisaged was in respect of the interest component or the profit component in the deposit. However, the accountable person has not

filed a reference on that aspect and, therefore, we do not think it proper or necessary to go into that question in the present reference.

24. The result is that the second question is answered in the negative and in favour of the revenue. There will be no order as to costs.