
(1974) 12 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 97 of 1969 (Reference No. 18 of 1969)

Controller of Estate Duty

APPELLANT

Vs

S.M.M. Subramanian Chettiar

RESPONDENT

Date of Decision : 10-12-1974

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1975) 99 ITR 400

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : V. Balasubrahmanyam and J. Jayaraman, for the Appellant; K. Srinivasan and K.C. Rajappa, for the Respondent

Judgement

Sethuraman, J.—This reference arises out of the estate duty proceedings consequent on the death of one S. M. M. Muthukaruppan Chettiar

on October 19, 1961. He was a partner in a firm of money-lenders in Malaya called ""Messrs, S. M. M. Firm"". He made gifts during his lifetime as

follows:

Date of Amount out of the gifted Name of donee Relationship Date of deed

original property included u/s. 10 evidencing

gift the transaction

(1) (2) (3) (4) (5)

6-4-1938 Malayan Dollars 2,059 Valliammal Achi Married 7-4-1955

daughter

12-4-1950 7,405 Sornavalli Achi do. 7-4-1955

13-4-1954 3,000 S. M. M. Dharma Charity 29-3-1955

Kanakku (Trust
Account)

10-6-1954 15,000 Krishnan Grandson 7-4-1955

-do. 15,000 Ramanathan do. do.

do. 15,000 Venkatachalam do. do.

do. 15,000 Sornathan do. do.

6-2-1939 17,587

S. M. M. Subramanian

Son 7-4-1955

10-6-1954 6,250 Chettiar

96,301

2. It is not clear as to when the deceased Muthukaruppan Chettiar became a partner in S. M. M. Firm. From the table given above it would be

seen that one of the gifts is on April 6, 1938, another on February 6, 1939, a third one on April 12, 1950, and a fourth one on April 13, 1954.

The firm was reconstituted with effect from 10th June, 1954. On that date his son joined the firm as a partner. Prior to the son joining the firm the

deceased had 12 1/2% share in the firm. As a result of the son joining the firm, his share was reduced to 6 1/4 per cent, and the son got 6 1/4 per

cent, in the firm. On that day four sums of 15,000 Malayan dollars were gifted to the four grandsons, as mentioned above, and another sum of

6,250 dollars was gifted to his son, who became a partner.

3. With reference to Valliammal Achi, who is the married daughter, and the gift in whose favour is referred to as item No. 1 in the above table, the

position was as follows :

On 17th December, 1937, a house was purchased in No. 33, Jalan Deva Road, Sungaipattani, Malaya, for \$ 4,941. The relevant consideration

was debited to her account in the books of S. M. M. Firm, Sungaipattani, Malaya. She received as gift on 6th April, 1938, a sum of 7,000 dollars

as a result of which her account stood with a credit balance of \$ 2,059. It is this amount which has been included in the assessment. It may be

mentioned here that on 7th April, 1955, the deceased executed a deed of declaration saying that he gifted to her on several dates certain sums

which had accumulated to \$ 21,971.94 with interest, etc., and that she and her heirs were the absolute and free owners of the said sums. The

deceased declared that he had no interest whatsoever in the said sum. All the other transactions fall into the same pattern, i.e., entries in books

followed by the deed evidencing the transactions as shown in column (5) above.

4. To the gifted amounts, as lying in deposit with the aforesaid firm, were added interest and other receipts from time to time and there were also

drawings for various purposes by the respective donees. We are concerned here with the gifted amounts totalling \$ 96,301.

5. On the above facts, the Assistant Controller of Estate Duty considered the applicability of Section 10 of the Estate Duty Act. He took a sum of

\$ 1,03,708 as the amount with respect to which Section 10 was considered applicable. After referring to the gifts, he held that the donees invested

the monies either wholly or in part in the firm of Messrs. S. M. M. Firm, Sungaipattani, Malaya, in which the deceased was a partner till his death

so that the investments by the donees, to the extent they had originated from the gifts referred to above, fell within the mischief of Section 10 of the

Estate Duty Act. He referred in this connection to the decision of the Privy Council in Clifford John Chick v. Commissioner of Stamp Duties,

[1958] AC 435 ; [1959] 37 ITR 89 ; 3 EDC 915 (PC).

6. The Appellate Controller reduced the addition to \$ 96,301 as set out in the table given earlier here. He confirmed the applicability of Section 10

to the extent of the said amount. On further appeal, the Appellate Tribunal held as follows :

..... by reason of the donor being a partner in the firm in which the amounts gifted by him to the donees are deposited or invested, it cannot be

said that the possession and enjoyment of the property taken under gift was not retained to the entire exclusion of the donor the enjoyment

contemplated u/s 10 of the Estate Duty Act, 1953, is enjoyment of the rights of the donees, and the enjoyment of the money after it was deposited

is different from the enjoyment by the firm of the rights of the donees. As far as the donees are concerned, they did not share any of their right--

right to income, right to assign, right to pledge--with the deceased partner of the firm. Moreover, a partner in the firm cannot be said to be the

owner of any specific share in any partnership property and in that view he can

neither transfer nor be the transferee of such specific share in the property. The deceased had no right or interest in and, therefore, could not be said to have enjoyed the deposit made by the donees in a firm in which he was a partner.

7. In coming to this conclusion it cited several decisions and observed that the matter had been dealt with by them in another order dated 31st

October, 1967. The Tribunal deleted the said sum of \$ 96,301 from the assessment on the ground that Section 10 did not apply.

8. On the above facts, at the instance of the Controller of Estate Duty, the following question of law has been referred :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the gifted property of \$ 96,301 was not hit

by the provisions of Section 10 of the Estate Duty Act, 1953 ?

9. On behalf of the Controller, Mr. Jayaraman, learned counsel, submitted that in cases where Section 10 of the Estate Duty Act has to be applied,

one has to first ascertain the subject-matter of the gift and find out whether the donor has been entirely excluded. In his submission, this is a case

where there was a current account in favour of the deceased in the books of the Malayan Firm which had been debited and that the donees were

operating the said account. He referred to the finding of the Tribunal that the gifts were not"" conditioned upon the retention of the moneys of the

firm"", that there was no documentary evidence to show the transfer of any actionable claim and that, in the absence of any such documentary

evidence, it would only be a case of cash gift. His attempt was to show that where there was no transfer of an actionable claim as such in the

manner contemplated by Section 130 of the Transfer of Property Act, and that the gift was only of cash, and that the subsequent investment of the

amounts in the firm in which the deceased was a partner, brought the case within the scope of Section 10 of the Estate Duty Act.

10. For the taxpayer it was pointed out that there was no current account, that this was a case of a transfer of an actionable claim and that for the

purpose of finding out whether there was any evidence in writing at the time of the transfer, the matter might, if necessary, be sent back to the

Tribunal. The learned counsel also attempted to show that the documents of 7th April, 1975, referred to already, were sufficient to support the

case of a transfer of an actionable claim.

11. The document dated 7th April, 1955, is not contemporaneous with any of the transactions set out in the table given already. The declaration is

long after the event and was obviously intended for some other purpose. We are, therefore, unable to proceed on the basis that the declarations of

7th April, 1955, in all cases except one, in any way affected the present position. We may, however, mention that the one document, namely, the

one dated 29th March, 1955, in the case of a trust account is item No. 3 in the table. With reference to this trust, there was declaration made on

29th March, 1955. Even that declaration related to what happened earlier on 27th July, 1954, and that was by setting apart monies for

performance of several charities. Thus, with reference to none of the transactions, is there any contemporaneous document in writing as

contemplated by Section 130 of the Transfer of Property Act, to which any reference has been made before us. As the matter has been examined

by the estate duty authorities and the Tribunal at a time when they did not have the benefit of several decisions which were rendered subsequently,

it is necessary to refer to the decisions so as to find out whether the property gifted was retained by the donee to the entire exclusion of the donor,

which is the only point in dispute here.

12. The law on this point has been laid down by the Supreme Court in two decisions which were appeals from this court and where the decisions

of this court were confirmed. In *Controller of Estate Duty Vs. C.R. Ramachandra Gounder*, the facts were as follows :

One Ramiah Gounder was a partner of a firm called ""N. Desai Gounder & Co."" at Coimbatore. He asked the firm on 30th March, 1953, to

transfer from his loan account with it a sum of Rs. 1,00,000 to the credit of each of his five sons in equal shares of Rs. 20,000 by opening separate

accounts in their individual names in the firm's books. The assessability of this sum of Rs. 1,00,000 u/s 10 of the Estate Duty Act was the subject

of dispute which reached this court. He had, in August 1953, transferred an immovable property to his two sons. The assessability of the value of

that property was also the subject of dispute, but that is not relevant for our present purpose. With regard to the sum of Rs. 1,00,000 this court

observed :

The donor had lent moneys to the firm and from out of the credit in his favour with the firm, he directed it in writing signed by him to transfer a sum

of Rs. 20,000 to each of his sons by way of a gift.

13. After pointing out that this was an actionable claim and that the donor had directed the firm in effect to transfer part of his actionable claim in

favour of his sons, and that the requirements of Section 130 of the Transfer of Property Act had been complied with, it was held :

Once we hold, as we do, that the subject-matter of the gift was not the sum of Rs. 1 lakh as money but an actionable claim of that value, it follows

that the donor was completely excluded from it.

14. This decision was confirmed by the Supreme Court on appeal in Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, The

main discussion in the Supreme Court's judgment is with reference to the property that was transferred by the deceased in favour of his two sons

under the document of August, 1953, and the same conclusion was applied with reference to the aforesaid amount of Rs. 1,00,000.

15. The other decision of this court is reported in Controller of Estate Duty Vs. N.R. Ramarathanam and Others, . In that case the deceased was

the partner of a firm of money-lenders. He transferred by book adjustment in the accounts of the firm two sums totaling Rs. 1,29,924 to his sons

and daughter apparently out of the profits earned and lying to his credit in the firm. With reference to the assessability of this sum u/s 10 of the Act,

this court observed:

As the funds belonged to the donor, who was a partner, their repayment would be subject to the provisions of the partnership law. It is in this

background we have to view what precisely was the subject-matter of the gift; was it, the two sums, free of any conditions or liabilities or subject

to them ? We are inclined to think that, on a consideration of the entire facts, the book entries of the two amounts were made in effecting the

transfer, the donor being fully alive to the fact that there would be no handing over of those two sums in cash to the donees and they would be

available for the continued use of the partnership in the business and in that contingency, therefore, the amounts, while being used in the firm, would

be looked after, managed and controlled by the father in his capacity as the managing partner.

16. The decisions of the Privy Council in Clifford John Chick v. Commissioner of Stamp Duties and Munro v. Commissioner of Stamp Duties,

[1934] AC 61; 2 EDC 462 (PC) were discussed and it was found that the case before this court came within the scope of the principle in

Munro's case. This decision was taken on appeal to the Supreme Court and the decision of the Supreme Court is reported in Commissioner of

Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others, . The Supreme Court held that the question of law was

completely covered by the decision in the case of Ramachandra Gottnder.

17. We may refer to two other cases to which one of us was a party. In Godavari Bai Vs. Controller of Estate Duty, the deceased, who was a

partner in a firm carrying on business as bankers, transferred a sum of Rs. 1,00,000 each to the three minor grandsons of his deceased brother. In

each case he drew a cheque against his account with the firm. The cheque was in favour of the firm itself. The account of the deceased was debited

with the sum of Rs. 3,00,000 and simultaneously the three amounts of Rs. 1,00,000 each were credited to the accounts of the respective minors.

One of the contentions taken before this court was that a partner was not a creditor of the firm in which he was a partner and that there was no

jural relationship of a creditor and debtor between the partner and the firm. A decision of the Kerala High Court in K.A. Mohammed Kassim Vs.

The Controller of Estate Duty, Kerala, Ernakulam, was referred to in this context. This court did not agree with the decision of the Kerala High

Court and after referring to passages in Lindley on Partnership and to a decision in Karri Vankata Reddi v. Kollu Narasayya, [1908] ILR 32 Mad

76 it was pointed out that unless great injustice would be caused, courts would not refuse to recognize a claim for payment of the amount

advanced by a partner to the firm and that even if no partial accounting could be ordered, the creditor-partner could file a suit for dissolution and

general accounting and claim to be paid before the division of the assets as provided u/s 48 of the Partnership Act. It was pointed out that, in either

case, viz., of partial accounting or a suit for dissolution, a partner had a right of an action. With reference to this aspect as to whether there could

be a relationship of creditor and debtor between a firm and a partner, we may also refer to a Full Bench decision of five judges reported in The

Commissioner of Income Tax Vs. A.L.S.P.P.L. Subramanian Chettiar and Others, . In that case a distinction was made between the capital

contributed by a partner and a separate loan advanced by the partner to the firm, and it was held that the interest paid to the partner was

deductible in the assessment of the firm. That case arose prior to the introduction of Section 10(4)(b) into the Act of 1922.

18. In Godavari Bai's case the further question was whether the transfer had complied with the provisions of Section 130 of the Transfer of

Property Act. It was held that, as the transaction had been effected by cheques, Section 137 of the Transfer of Property Act took the case out of

Section 130 of that Act. It was, therefore, held that Section 10 was not applicable on the facts there.

19. The only other decision of this court to which reference need be made is not yet reported and it was rendered in T.C. No. 292 of 1968

Radhabai Ramchand Vs. Controller Of Estate Duty, Madras, . In that case the question related to a sum of Rs. 85,000. This sum was the total of

two sums, viz., Rs. 60,000 and Rs. 25,000. As regards the gifts covered by the sum of Rs. 60,000 it was found that the deceased gifted Rs.

15,000 each to his four sons on 1st April, 1955. They were first invested in a proprietary concern and later withdrawn and invested in a firm in

which the deceased was a partner. As the sum of Rs. 60,000 was gifted in cash by the deceased and as it was subsequently invested in a firm in

which the deceased was a partner, this court held that Section 10 was applicable to it. As regards the sum of Rs. 25,000 the contention before the

High Court was that the gifts were effected by making credit entries in favour of the assessee in the partnership accounts by making debit entries

against the deceased partner. The further contention, with reference to the said sum, was that it was a gift "shorn of the rights of the partnership to

use the same". Alternatively, it was contended that it should be treated as a transfer of "actionable claim". It was pointed out in the judgment that if

the gift was made only by book entries in the firm's accounts, then, in view of the decision of the Supreme Court in Ramachandra Gounder's case

and under the principle laid down in Munro's case, the gift had to be taken as shorn of the rights of the partnership to use the monies, in which

case Section 10 could not stand attracted; but if it was a case of gift of cash, then Section 10 would apply. The Tribunal was directed to determine

the factual question as regards the sum of Rs. 25,000 in consequential proceedings to be taken u/s 64(6) of the Estate Duty Act.

20. We may also point out that the Gujarat High Court in Sakarlal Chunilal and Others Vs. Controller of Estate Duty, Gujarat, had also to consider

the scope of the applicability of Section 10 and have considered it in the light of the decision of the Supreme Court in Ramachandra Gounder's

case. With reference to the sum credited to donees by book entries, the Gujarat High Court applied the decision of Ramachandra Gounder's case

and held that Section 10 did not apply. With reference to the cases where the amounts were gifted outright by the deceased in favour of the

donees who actually received the amounts gifted and thereafter deposited the amounts with the firm in which the deceased was a partner, it was

found that the subject-matter of the gift was a sum of money which was given without reservation or qualification, and that, therefore, the gift was

not liable to be taken as ""shorn of the rights of the partnership"".

21. The above discussion would go to show that we have to first ascertain the subject-matter of the gift. We have to see whether it was merely an

existing balance in the shape of an actionable claim in which event the provisions of the Transfer of Property Act should have been adhered to.

Then the transfer would be subject to the rights of the partnership. If, however, the amounts were gifted in cash, then, there will be nothing to show

that the gifts are subject to any particular condition of user in the partnership in which the deceased was a partner. The question as to whether the

relevant debits were made in the account of the deceased at the time when he was a partner so that what he had could be treated as an ""actionable

claim"" has not been specifically gone into. If the debit was made in the books of the individual there would be no question of any ""actionable claim"".

Therefore, the Tribunal would have first to ascertain in the proceedings to follow u/s 64(6) the nature of or the subject-matter of the gift to see if it

is an ""actionable claim"" or if it is a gift of cash. If it is a gift of cash, no further consideration is likely to arise as the authorities are clear on the point

that the amount is liable to be taxed by applying Section 10. If it was a transfer of ""actionable claim"", Section 10 would not apply. This question

has to be considered as at the point of time when the gifts were made.

22. There is one other aspect which has to be examined as contended by the

learned counsel for the Controller of Estate Duty. If it was a current account, then the contention of the learned counsel was that it could not be treated as an "actionable claim". "Actionable claim" has been defined in

Section 3 of the Transfer of Property Act as follows :

"Actionable claim " means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of

movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the

civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

23. The "actionable claim" contemplated in the above definition is what is known to English law as a "chose in action". A "chose" is a chattel

personal and is either in possession or in action. "Choses in possession" are movable chattels such as furniture, horses and generally all goods and

merchandise. A "chose in action" is a right of proceeding in a court of law to procure the payment of a sum of money (example, a bill of exchange,

a policy of insurance, an annuity or a debt)

24. An undivided share in a partnership is a chose in action *Ex parte Fletcher* : In *re Bainbridge*, [1878] 8 Ch D 218 . As there were difficulties

envisaged in applying the English law, the Indian legislature enacted the definition of an actionable claim as given above. In Mulla's Transfer of

Property Act (sixth edition), at page 807, it is observed :

A partner's right to sue for an account of a dissolved partnership is an actionable claim, being a beneficial interest in movable property not in

possession.

25. In the case of a current account, it is a matter of agreement between the partnership and the partners that the partner is free to withdraw the

amount. It is not, therefore, possible to say that it is a mere actionable claim. It is a debt due which was recognised by the partners as payable on

demand and its recovery could be enforced against the firm without recourse to a suit for dissolution--*Karri Venkata Reddi v. Kollu Narasayya*.

The current account would thus stand out of the category of actionable claims. Any transfer of money from that account would be equivalent to gift

of cash, as the donee will be free to deal with it in any manner and at any time he liked. In other words, the donor was not inhibited from

demanding and getting back the amount during the currency of the partnership and the donee would have the same right. In such a case, there would be no condition applicable to the amount subject to which alone the transfer is effected. The transfer would thus be unconditional. We would, therefore, hold that, if the amount was a transfer from a current account as such, then it would stand in a distinct category and the applicability of Section 10 would follow. If, however, the transfer was from the capital account or loan account or any other general account to which profits are credited, then Section 10 cannot be applied. We would answer the question as indicated above. In passing the orders u/s 64(6), the Tribunal would be free to go into all the facts and consider the matter as if it was hearing the appeal by itself. We have in East India Corporation Ltd. Vs. Commissioner of Income Tax, judgment in which was delivered on 20th November, 1974, indicated the scope of the powers of the Tribunal in a matter which goes back to it as a result of the reference. We have held that the powers of the Tribunal in such a matter are as ample as they were at the time when it dealt with an appeal for the first time. We are making these observations only to avoid any misapprehension about the scope of the enquiry which is to be conducted hereafter.

26. As neither party has succeeded, there will be no order as to costs.