

(1979) 02 GUJ CK 0001
In the Gujarat High Court
Case No : ED Ref. No. 5 of 1975

Controller of Estate Duty

APPELLANT

Vs

Smt. Lilavati Muljibhai

RESPONDENT

Date of Decision : 06-02-1979

Acts Referred:

Estate Duty Act, 1953 — Section 10, 2(15), 34(4), 64(1), 9(1)

Citation : (1979) 2 TAXMAN 74

Hon'ble Judges : B.J. Divan, C.J.; B.K. Mehta, J

Bench : Division Bench

Advocate : N.U. Raval and R.P. Bhatt, for the Appellant; K.C. Patel, for the Respondent

Judgement

B.K. Mehta, J.—Shri Mulji Valji died on November 13, 1968. He was a partner in M/s. Liberty Rest House and was also deriving income from interest from M/s. Gunvantrai Mulji and. Brothers. The deceased made cash gift in a sum of Rs. 69,000 on March 16, 1963, to his eldest son Kantilal. The said Kantilal in his turn made gift of Rs. 23,000 to each of his two minor brothers on March 17, 1963. The said three brothers subsequently purchased a property known as "Mahesh Niyas" situate in the town of Junagadh for Rs. 1,71,000. The aforesaid consideration included the amount of the cash gift by the deceased, viz., Rs. 69,000. There were shops on the ground floor of the said property, which were let out to various tenants. The first floor of the building was, however, partly used for the residential purposes of the deceased Mulji Valji and his three sons. It was partly used for accommodating Liberty Rest House. The Asst. CED on these facts held that the deceased Mulji Valji was not entirely excluded from the benefit and enjoyment of the subject-matter of the gift and he, therefore, added Rs. 69,000 to the taxable estate.

2. The accountable person, therefore, carried the matter in appeal before the Appellate Controller before whom it was, inter alia, contended that section 10 of the Estate Duty Act, 1953, was not attracted to the case as the subject-matter of

the gift was a different property from the one, the partial use of which by the donor attracted section 10. This contention of the accountable person did not impress the Appellate Controller, who, in view of the definition of the word "property" in section 2(15) of the Estate Duty Act held that the property taken under the gift would also include the converted property and, therefore, confirmed the order of the Assistant Controller.

3. In further appeal before the Tribunal, at the instance of the account able person, it was contended that conversion as stipulated in section 2(15) of the Act could not cover the conversion made by the donee and, therefore, section 10 was not attracted on the facts and in the circumstances of the case. The Tribunal accepted this contention of the accountable person and reversed the order of the Assistant Controller. At the instance of the revenue, therefore, the following question is referred to us for our opinion u/s 64(1) of the Estate Duty Act:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the value of the property to the extent of Rs. 69,000 was not includible in the principal value of the estate of the deceased u/s 10 of the Estate Duty Act, 1953, and thereby deleting the addition of Rs. 69,000 from the dutiable estate?

4. In order to appreciate the contention urged on behalf of the revenue in this reference, we will first read section 10 under which an attempt has been made by the Assistant Controller to include Rs. 69,000 within the taxable estate as being a part of the house property purchased by the donees. Section 10 of the Estate Duty Act, 1953, provides as under:

10. 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:

Provided further that a house or part thereof taken under any gift made to the spouse, son, daughter, brother or sister, shall not be deemed to pass on the donor's death by reason only of the residence therein of the donor except where a right of residence therein is reserved or secured directly or indirectly to the donor under the relevant disposition or under any collateral disposition.

5. Analysing the prerequisites for application of section 10, the Supreme Court in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, observed at page 501:

The crux of the section 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....

The second part of the section has two limbs: the deceased must be entirely excluded, (i) from the property, and (ii) from any benefit by contract or otherwise. "

(Emphasis supplied by us).

6. The contention of the revenue is that both these conditions are satisfied in the present case, inasmuch as the possession and enjoyment of the house property purchased with the aid of the amount of cash gift was not immediately assumed by the donee and the deceased was not entirely excluded from the enjoyment of the property and from any benefit by contract or otherwise. In so far as the deceased was allowed to reside in the house property in question, it was fairly conceded on behalf of the revenue that the second proviso to section 10 will take out to that extent the case from the purview of section 10. An issue was, however, joined on the finding of the Tribunal that the house property in question was not the property taken in gift nor was it referable to the gift. It was urged that the Tribunal committed an error of law in not appreciating that the Legislature has provided dictionary meaning in the interpretation clause and the word " property " is to be read in the same meaning in which it is defined in section 2(15) of the Act. In other words, the opening condition of section 10, viz., "the property taken under any gift ", would take in its sweep not only the very property taken under the gift but also the property converted from one specie to another by any method. On the other hand, the contention of the accountable person was that the context of section 10 circumscribes the meaning of the word " property " because it is the " property taken under any gift", the possession and enjoyment of which should be assumed by the donee and retained by him to the exclusion of the donor from its enjoyment or from any benefit therein by contract or otherwise.

7. We are of the opinion that the view which the Tribunal has taken is perfectly justified, on the facts and in the circumstances of the case. The first question which is to be answered whenever section 10 is sought to be pressed in service, is: what was the property given or what was the subject-matter of the gift? The other questions, whether the donee immediately assumed benefit, possession and enjoyment of the given property, and whether he retained thenceforward the possession and enjoyment to the entire exclusion of the deceased of whatever nature, will arise subsequently. If the revenue cannot succeed in making the first point good, namely, that the house property was the subject-matter of the gift in the present case, then this reference, at the instance of the revenue, must fail. It is common ground that under the gift of the cash amount by the deceased, there was no obligation attached that the donee had to purchase an immovable

property from or with the aid and assistance of the said amount of gift. The Tribunal has examined the question on the assumption that even assuming for the sake of argument that there was a nexus between the gift of Rs. 69,000 and the house property purchased, it could not be successfully urged from that mere fact that the subject-matter of the gift was the house property in question. It is no doubt true that, according to section 2(15) of the Estate Duty Act, the term "property" would include any property converted from one specie to another by any method. However, this definition is subject to the context provided by section 10. Section 10 enjoins on us that it is only the property which is taken under any gift which can be deemed to pass on the donor's death to the extent its benefit, possession and enjoyment is not taken over by the donee or retained by him to the exclusion of the donor. In that context, therefore, we cannot read or interpret the term "property" as to include the converted property also. The legislative intent as evinced in section 10 is clearly set out and we have to construe this section literally and grammatically on the recognised principles of interpretation of statute. We have to consider what was the property in question at the time of gift. In other words, what was the subject-matter of the gift itself since it can be only that property which can be taken under the gift. If that interpretation is correct, and we do not feel any doubt in our mind as to the construction of the phrase "property taken under any gift", the answer is obvious that in the present case, the subject-matter of the gift was the cash amount. It should be recalled that the gift was in the sum of Rs. 69,000 only, whereas the price of the house property purchased by the sons was to the tune of Rs. 1,71,000. It is not clear from the record of the case as to when the house property in question was purchased. Our attention has been invited on behalf of the revenue to the decision of the Kerala High Court in T. O. HYDROSE Vs. CONTROLLER OF ESTATE DUTY, ERNAKULAM., , where the question before the Kerala High Court was, whether the value of a particular cash amount representing the balance in the drawing account, of the wife and children of the deceased inclusive of the property, was liable to be included in the taxable estate of the deceased. The deceased, in that case, had made a gift by way of settlement to his wife and eight children of stock-in-trade, cash and cheques of the value of Rs. 40,000 on March 31, 1960. On the next day, that is, on April 1, 1960, he entered into a partnership with them admitting the minor child to the benefits of the partnership. He died on March 14, 1961. In the balance-sheet of the partnership business for the year ending March 31, 1961, an amount of Rs. 31,069 was shown as profit coming to the share of the wife and children. Since the donor died within two years of the date of the gift, the sum of Rs. 40,000 was deemed to pass to the donees on the death of the donor u/s 9(1) of the Estate Duty Act, and consequently, the amount of profit of Rs. 31,069 was sought to be included in the estate of the deceased. The Appellate Controller excluded the amount but the Tribunal restored the order of the Assistant Controller. In that context, the court held on interpretation of section 34(4) of the Estate Duty Act that if, in the cash or property gifted either by way of an out and out gift or by way of a settlement, the donee gets absolute dominion and he invests the same in any

manner he likes, then the profit or the income resulting " from such investment will not form part of the estate of the deceased, since the profit or income could not be said to have " accrued "-to have resulted as a natural growth, accession or increment from the property gifted. The learned advocate for the revenue relied on this decision for the limited purpose in support of his contention that converted property must also be held to be property taken under the gift. The observation on which reliance has been placed by him is to be found at page 750. It reads:

If the property or cash gifted is converted into another type of property, the property into which the gifted property is converted will be the property gifted....

8. We do not think that this observation supports the case of the revenue for two reasons: in the first place, the entire observation is not taken into consideration by the learned advocate for the revenue, and, in the second place, the question which the Division Bench of the Kerala High Court was called upon to consider was : what is the meaning of the word " accrue " in section 34(4) of the Estate Duty Act? In order to appreciate the opinion of the Division Bench of the Kerala High Court in its proper perspective, we must read the observation relied upon by the learned advocate for the revenue in its context. The opinion reads as under (p. 750):

In section 34(4) (section 6(5) of the British Finance Act of 1894) the word used is "accrue". "Accrue" means "to fall (to any one) as a natural growth or increment; to come as an accession or advantage" in the Shorter Oxford English Dictionary.... It is in the light of this meaning that we have to interpret section 34(4) which will also recognise the principle of the Sneddon case [1954] AC 257; [1954] 25 ITR (ED) 6; 3 EDC 491 (HL). If, in the cash or the property gifted either by way of an out and out gift or by way of a settlement, the donee gets absolute dominion and he invests the same in any manner he likes, then the profit or the income resulting from such investment will not form part of the estate of the deceased. In such a case, the profit or income cannot be said to have "accrued"-to have resulted as a natural growth, accession or increment from the property gifted. On the other hand, if the property gifted yields as a natural growth or result, without the intervention of the donee, income or profit, then such income or profit can be said to have "accrued" from the property gifted, with the result that the income or profit will also form part of the estate left by the deceased. If the property or cash gifted is converted into another type of property, the property into which the gifted property is converted will be the property gifted, but, in such a case, the income or profit derived from the converted property may not form part of the estate left by the deceased, since the income or profit can very well be said to be the result of the intervention of the donee.

9. The Division Bench of the Kerala High Court was speaking in the context of section 34(4) of the Estate Duty Act. Even in that context, the Division Bench said that if the donee has absolute dominion over the amount gifted and can

invest the same in any manner he likes, then the profit or income resulting from such income or interest will not form part of the estate of the deceased. The question was only pertaining to the accretion of the very property gifted. The question with which we are concerned is about the conversion of the original property gifted. We have, therefore, to read the mandate of the legislature in section 10 in that context. We are of the opinion that we have to look to the very subject-matter of the gift itself and not to any further dealings with the said property or conversion thereof. Unless, on the facts of the case, it can be established that there was an obligation on the donee that the amount of gift is to be invested in any particular manner, section 10 would not be attracted, though we are not expressing a final opinion in the matter. Our attention is invited to the decision of the Allahabad High Court in *Controller of Estate Duty Vs. T.N. Kochhar*, as well as the decision of the Calcutta High Court in *MRS. SHAMSUN NEHAR MANSUR Vs. CONTROLLER OF ESTATE DUTY, WEST BENGAL I.*, , where the courts have taken similar view. On a plain reading of section 10, we are of the opinion that no other interpretation is possible. The result is that this reference is rejected and the question referred to us is answered in the affirmative, that is, in favour of the accountable person and against the Controller of Estate Duty. The Controller of Estate Duty, Gujarat, will pay the costs of this reference to the accountable person.