(1994) 01 MP CK 0027

In the Madhya Pradesh High Court

Case No : M.C.C. No. 238 of 1984

Controller of Estate Duty APPELLANT

Vs

Tarabai RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:
Estate Duty Act, 1953 — Section 10, 27

Citation : (1994) 210 ITR 394 : (1994) 76 TAXMAN 349

Hon'ble Judges : U.L. Bhatt, C.J;P.P. Naolekar, J

Bench : Division Bench

Advocate : V.K. Tankla, for the Appellant; B.L. Nema, for the Respondent

Judgement

U.L. Bhat, C.J.—The following question has been referred by the Income Tax Appellate Tribunal u/s 64(1) of the Estate Duty Act, 1953 :

"Whether the findings of the Tribunal that the value of the property known as ''Lal Godam'' will not be includible in the dutiable estate is in keeping with the provisions of Section 10, read with Section 27 of the Estate Duty Act ?"

2. The late Kundanlal Singhai owned the property known as "Lal Godam". He executed a trust deed dated January 31, 1959, creating a trust in respect of "Lal Godam" with certain cash amount. The document was registered on the same day. He got the trust registered as a public charitable trust also. On February 7, 1959, he executed a registered gift deed in regard to "Lal Godam" property in favour of his daughter who resided therein, and contended that the trust deed had not taken effect and his signatures were obtained thereon by fraud practised upon him by the husband of his other daughter. The Assistant Controller of Estate Duty upheld the trust deed treating it as part of the estate in view of the provisions of Section 12 of the Estate Duty Act, 1953 (hereinafter referred to as "the Act", for short). Accordingly, assessment followed. This conclusion was upheld by the appellate authority.

3. The Income Tax Appellate Tribunal, in the appeal filed by the assessee, held

that the trust deed was never acted upon and, therefore, the gift deed was valid. Since the gift deed did not attract the provisions of Section 9 of the Act, the value of the subject-matter of the gift deed was directed not to be included in the principal value of the estate. Thereupon, the present reference was made.

4. It is significant to note that the question referred to the court does not relate to the correctness of the finding of the Tribunal that the trust deed was not acted upon and that the gift deed was valid. Therefore, we have to proceed on the basis of the finding of the Tribunal in this regard which remains unchallenged. Therefore, the question is whether the exclusion of the value of the property of "Lal Godam" from the principal value of the estate is in accordance with sections 10 and 27 of the Act. Section 27 has obviously no application to the facts of the case. The purport of Section 27 is to declare certain dispositions as gift for the purposes of the Act. Section 10 of the Act declares that property taken under any gift under certain circumstances shall be deemed to pass on the donor''s death. The condition precedent is that bona fide possession and enjoyment was not immediately assumed by the donee, but retained to the entire exclusion of the donor. The Appellate Tribunal has held--rightly or wrongly--that the gift is valid and has taken effect. That being so, it cannot be said that bona fide possession and enjoyment was not immediately assumed by the donee. Therefore, Section 10 of the Act is also not attracted to the facts of the case.

5. Learned standing counsel for the Revenue strenuously contended that the finding of the Tribunal that the trust deed was never acted upon is unsustainable. Such a contention is not the subject-matter of the question referred to us and, therefore, we cannot consider the same.

6. We answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue. The finding of the Tribunal is in keeping with the provisions of Section 10 of the Act. Section 27 of the Act is not relevant for the purpose of this case.

7. A copy of the judgment under the signature of the Registrar and the seal of the High Court will be transmitted to the Appellate Tribunal. There shall be no directions as to costs.