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**(1974) 01 AHC CK 0010**

**In the Allahabad High Court**

**Case No : Estate Duty Reference No. 427 of 1971**

Controller of Estate Duty

APPELLANT

Vs

Thanwar Dass

RESPONDENT

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**Date of Decision :** 07-01-1974

**Acts Referred:**

Estate Duty Act, 1953 — Section 10

**Citation :** (1974) 94 ITR 101

**Hon'ble Judges :** Satish Chandra, J; R.L. Gulati, J; C.S.P. Singh, J

**Bench :** Full Bench

**Advocate :** R.R. Misra, for the Appellant; R.C. Sharma, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.L. Gulati, J.—The Income Tax Appellate Tribunal, Allahabad, has submitted this reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as " the Act "), for the opinion of this court on the following question of law :

" Whether, on the facts and in the circumstances of the case, the sum of Rs. 35,000 was liable to estate duty as the property of the deceased u/s 10 of the Estate Duty Act, 1953 ?"

2. When this reference came up before a Division Bench of this court, it noticed that there was a conflict between the decisions of two Division Benches of this court in Behari Lal Matanhelia Vs. Controller of Estate Duty, . and Controller of Estate Duty Vs. Ramesh Chand Gupta, . The case was accordingly referred to a Full Bench and that is how it has now come up before us.

3. u/s 5 of the Act, a tax called estate duty is levied upon the estate of a deceased, which passes on his death. Section 10 of that Act creates a fiction, as a result of which property gifted by the deceased before his death is " deemed to pass " on his death in certain circumstances. That provision, as it stood at the material time, provided :

" 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. . . ."

4. The question in the instant case is as to whether Section 10 applies to the facts of the present case.

5. The deceased person in the instant case is one Smt. Sita Bai. She was a partner in a firm of the name and style of M/s. Nekumal Pawan Dass, She had a four anna share in the firm. On different dates she made gifts of the aggregate value of Rs. 40,000 to her daughter-in-law, Smt. Hira Bai. The gifts were made by transfer entries in the books of accounts of the firm by debiting the amounts to her account and crediting them to the account of the donee Smt. Hira Bai. The Assistant Controller of Estate Duty found that out of the aggregate sum of Rs. 40,000, a sum of Rs. 5,000 was gifted within one year of the donor's death and hence it was liable to be ignored in the computation of the value of the estate of the deceased, as provided in Section 9 of the Act. As regards the balance of Rs. 35,000, he found that the same was not withdrawn by the donee immediately after the gifts were made. It was, however, withdrawn after a lapse of some time on different occasions between November, 1962, to February, 1963. From a copy of her accounts, which has been annexed to the statement of the case as annexure "C", it appears that in the year 1962-63, she transferred in her account with the firm a sum of Rs. 33,680-78 from another concern called N. P. Oil Industries and deposited a sum of Rs. 5,000 in cash. Thus, a sum of Rs. 35,000 which she had withdrawn earlier was once again brought back in the partnership firm as deposits in her name. Those deposits remained with the firm until the donor's death. The firm, however, continued to pay interest to the donee on these deposits. On these facts the Assistant Controller of Estate Duty held that Section 10 was applicable and the sum of Rs. 35,000 was liable to be included in the estate of the deceased liable to estate duty for the following reasons:

"Since this amount was deposited with the firm and the firm had invested it in its business, it is quite clear that the firm was getting some income from the utilization of this amount and since the deceased was also a partner in this firm, a share of income of the firm from the utilisation of this gifted amount was coming to the deceased also. Hence, it is absolutely clear that the deceased was not entirely excluded from the enjoyment of the benefits of this amount."

6. This finding was affirmed on appeal by the Zonal Appellate Controller of Estate Duty, Delhi, but on second appeal, the Income Tax Appellate Tribunal took a

different view and held that the sum of Rs. 35,000 was not liable to be included in the estate of the deceased. The Commissioner of Income Tax is aggrieved and at his instance this reference has been made,

7. A large number of authorities have been cited on both sides which reveal a clear cleavage of opinion between various High Courts. Some High Courts have taken the view that on the facts like the present, Section 10 is not applicable, whereas other High Courts have taken a contrary view. It is, however, not necessary to refer to those authorities because the law has recently been settled by the Supreme Court by its two decisions, namely. *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, and *Commissioner of Income Tax and Controller of Estate Duty, Madras Vs. N.R. Ramarathnam and Others*, .

8. In the first case, the deceased, who was a partner in a firm, owned a house property let to the firm as tenant-at-will. Before his death, he executed a deed of settlement under which he transferred this property to his two sons absolutely and irrevocably and thereafter the firm paid the rent to the donees by crediting the amount in their accounts in equal shares. The deceased further directed the firm to transfer from his account a sum of Rs. 20,000 to the credit of each of his five sons in the firm's books. The sum of Rs. 20,000 was thus credited in each of the sons' account with the firm. The sons did not withdraw any amount from their accounts in the firm and the amount remained invested with the firm for which interest was being paid to them. The deceased continued to be a partner of the firm till April 13, 1957, when the firm was dissolved and thereafter he died on May 5, 1957. A question arose as to whether the value of the house property and the sum of Rs. 1,00,000 could be included in the principal value of the estate of the deceased u/s 10 of the Act. The Supreme Court held that neither the house property nor the sum of Rs. 1,00,000 was liable to be included in the estate of the deceased u/s 10 of the Act.

9. After analysing Section 10, the Supreme Court has laid down the following propositions. Firstly, that the donor must give such possession of the gifted property as the property is capable of, and, secondly, that he must not retain any benefit for himself by contract or some such other obligation. Applying this principle the Supreme Court held that, so far as the property is concerned, it being in the tenancy of the firm, the owner could transfer the possession only subject to the tenancy. The law did not require that he should get the property vacated and then hand over possession to the donee in order to escape the mischief of Section 10. Similarly, there was a complete transfer of possession of the sum of rupees one lakh gifted to the sons. The amounts were credited in the sons' accounts and the firm acknowledged its liability of payment of the aforesaid amount and the interest thereon.

10. The second requirement, namely, that the donor should be excluded from the enjoyment of the gifted property was also fulfilled inasmuch as the benefit which he derived as a partner from the firm which retained the house in its tenancy and the sum of Rs. one lakh as a loan arose from the agreement of partnership and

not from any agreement with the donor. In other words, in the opinion of the Supreme Court, the benefit derived by the donor as a partner was not referable to the gift for which proposition the Supreme Court relied upon the following observations of Lord Tomlin:

" The benefit which the donor had as a member of the partnership in the right to which the gift was subject was not in their Lordships" opinion a benefit referable in any way to the gift. "

11. In the second case, namely. Commissioner of Income Tax and Controller of Estate Duty v. N. R. Ramarathnam the facts are identical with the facts of the case before us. In that case the deceased, his three sons and daughters were partners in a firm which carried on money-lending business. The deceased transferred to his sons and daughters certain amount by adjustment entries in the books of the firm against the balance standing to his credit. The gifted amount continued to remain with the firm which utilised them in its business and the deceased continued to be a partner of the firm till his death. The revenue sought to apply Section 10 on the following three grounds:

" (i) The gifts were made by mere adjustment entries in the books and the partnership did not lose its funds.

(ii) These moneys were used in the money-lending and financing business, which earned profits.

(iii) By retaining the amounts to the business in which he was a partner, the deceased continued to enjoy the benefit of this capital."

12. The Supreme Court negated all these contentions and held, following its decision in the case of C. R. Ramachandra Gounder that Section 10 was not applicable. The reason is not far to seek. The gifted amount was once invested in the firm by the donor as his capital. As soon as it was transferred to the accounts of his sons, it ceased to be a part of his capital and became a debt due to the sons. Thereafter, the firm utilised that loan in carrying on its business, but the benefit which the donor derived as a partner was not referable to the gift but to the agreement of partnership.

13. We may now briefly examine the cases decided by this court. In Behari Lal Matanhelia v. Controller of Estate Duty, one Kanhaiya Lal Matanhelia made a gift of Rs. 51,000 to his wife by adjustment entries in the books of accounts of a firm in which he was a partner. At the time of his death a sum of Rs. 48,513 was still standing to her credit in the books of the firm. A question arose as to whether this amount was liable to be included in the estate of the deceased u/s 10 of the Estate Duty Act. A Division Bench of this court held that Section 10 was not applicable. The Bench disagreed with the contrary view taken by the Gujarat High Court in Shantaben S. Kapadia Vs. Controller of Estate Duty, Gujarat, and Controller of Estate Duty, Gujarat Vs. Chandravan Amratlal Bhatt, ..

14. In Controller of Estate Duty Vs. Ramesh Chand Gupta, the deceased had

made certain gifts to his grandsons on various dates, some in cash and some by adjustment entries in the books of accounts of a firm in which he was a partner. The Tribunal held that the gift by transfer entries was not valid. The position with respect to the gift made in cash was that the donees after receiving the money deposited it with the firm in which the deceased was a partner. The Tribunal held that the sum of Rs. 30,000 gifted in cash was not liable to be included in the estate of the deceased. A Division Bench of this court, however, took a contrary view and held that inasmuch as the gifted amount was invested in the firm in which the deceased was a partner, the deceased continued to derive benefit from the gifted amount and as such Section 10 was attracted. In this case the earlier decision of this court in the case of Behari Lal Matanhelia has not been referred to, but, instead, the Bench relied upon another decision of this court in Abdul Alim and Another Vs. Controller of Estate Duty, .

15. In Abdul Alim's case also the position was somewhat similar. The deceased had gifted a sum of Rs. 44,000 to his minor sons by adjustment entries in the books of accounts of a firm in which he was a partner. Subsequently the minors were also admitted to the benefits of the partnership and the gifted amount remained to their credit in the books of the firm. This court held that inasmuch as the money gifted was utilised by the firm in which the deceased was also a partner before his death, Section 10 was applicable. In this case the case of Behari Lal Matanheliaa has been distinguished. We are, however, unable to find any material distinction. The question involved in all the three cases was the same, namely, where a person makes a gift of money either by cash or by adjustment entries in the books of accounts of a firm in which he is a partner and the money so gifted is not withdrawn by the donee but is allowed to remain with the firm, can the donor be said not to have excluded himself from the benefit of the gifted property so as to attract the provisions of Section 10 of the Estate Duty Act ? In view of the two decisions of the Supreme Court referred to above, Section 10 is not applicable to such a case. We are, therefore, of opinion that the case of Controller of Estate Duty v. Ramesh Chand Gupta 1 as well as of Abdul Alim v. Controller of Estate Duty have been wrongly decided.

16. We, accordingly, answer the question in the negative in favour of the assessee and against the department. The assessee is entitled to the costs which we assess at Rs. 200.