
(1971) 10 AHC CK 0013

In the Allahabad High Court

Case No : Estate Duty Reference No. 59 of 1969

Controller of Estate Duty

APPELLANT

Vs

T.N. Kochhar

RESPONDENT

Date of Decision : 29-10-1971

Acts Referred:

Estate Duty Act, 1953 — Section 10, 6

Citation : (1973) 89 ITR 216

Hon'ble Judges : T.N. Misra, J; Satish Chandra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Satish Chandra, J.—The Appellate Tribunal has submitted this statement of the case and has referred the following question of law for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the value of the Kanpur property was not includible in the estate of the deceased ? "

2. The dispute relates to the estate of Shri T.D. Kochhar who died on August 24, 1961. The property in dispute was built between 1931 and 1937, and was registered in the name of the wife of the deceased, namely, Smt. Tulsa Devi. The source of money spent on this property was the husband, Shri T. D. Kochhar. Shri Kochhar continued to reside in the house till his death. On these facts the Assistant Controller of Estate Duty included the same in the estate of the deceased. The accountable person filed an appeal.

3. The Zonal Appellate Controller held that in view of Section 6 of the Estate Duty Act the deceased had no disposable interest in the property and hence it could not be included in his estate. The Appellate Controller rejected the alternative submission raised on behalf of the department that the property was includible u/s 10 of the Estate Duty Act. On appeal the Tribunal affirmed the findings of the Appellate Controller and dismissed the appeal in respect of this

Kanpur property.

4. The facts are not disputed. The deceased gifted the money to his wife. From this gifted amount the house property in dispute was built and registered in the name of the wife. The husband continued to live in it till his death.

5. Section 6 of the Estate Duty Act provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. It is well-settled that the property which stands benami in the name of another is one in respect of which the beneficial owner has no competency to dispose of. Before he can dispose of such a property he has to acquire a declaration from the appropriate court of law releasing the property in his favour. See *Alok Mitra v. Controller of Estate Duty*, [1971] 82 ITR 450 (All.) .

6. In the alternative it was urged that the case is covered by Section 10 of the Act which provides :

" 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. "

7. In *Abbas Ali Meerza Vs. The Controller of Estate Duty*, U.P., Lucknow, a Bench of this court has held that the second proviso to Section 10 of the Act is not retrospective and that the second proviso came into operation only from April 1, 1965. In view of this decision, the second proviso, will not be applicable to the instant case, because, here, the deceased died on 24th August, 1961.

8. The question, however, is whether the main part of Section 10 of the Act is applicable to a property which was in the possession and enjoyment of the deceased, but the same was not the subject-matter of the gift from the deceased to the other person. Here, the deceased had made the gift of the cash money from out of which the house property in dispute was built. It is evident that when the house was built out of the cash money gifted by the deceased, the deceased could not be held to remain in possession of the gifted property. The cash money gifted had been utilised in the construction of another property, namely, the house in dispute. Hence, the donor could not be said to have remained in bona

fide possession of the property gifted by him. In this view of the matter Section 10 of the Act would be inapplicable.

9. It was, however, urged that since the house in dispute was built out of the money gifted by the deceased, the deceased would be deemed to have gifted the house itself. Whether in law that position is justified or not is unwarranted here as we are concerned here with the question whether Section 10 of the Act would apply to a property, which has been converted from another gifted property. Here, the subject-matter of the gift is cash money, from out of which another property, namely, immovable property was constructed. The cash and the immovable property were not the same thing. They are distinctly describable and identifiable. Section 10 applies when the donor is in bona fide possession and enjoyment of the gifted property. This section presupposes that the donor continues in possession and enjoyment of the property which he had gifted. It does not, in terms, apply to properties which may have been brought into existence after converting the gifted property. Here, the house property was not the subject-matter of the gift made by the deceased. He had gifted cash money. There is no evidence to the effect that he remained in possession and enjoyment of the cash money itself. We affirm the view of the Tribunal that Section 10 was not applicable.

10. We, therefore, answer the question referred to us in the affirmative, and in favour of the accountable person.

11. The accountable person is entitled to his costs which we assess at Rs. 200. Counsel's fee is also assessed at the same figure.