
(1987) 04 BOM CK 0067

In the Bombay High Court

Case No : Estate Duty Reference No. 14 of 1975

Controller of Estate Duty

APPELLANT

Vs

Vasantrao S. Dempo

RESPONDENT

Date of Decision : 16-04-1987

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1988) 170 ITR 608

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Sugla, J.—The deceased had been a member of the society known as Dempo Family Society which was constituted by his forefathers under the Portuguese Law under a decree dated December 16, 1880. The society was reconstituted as per the deed dated February 20, 1930, between Srinivas and his wife, Satiabamabai, on the one hand, and Vitola and his wife, Rocumbai, on the other, each group having 50% share. As per a subsequent deed dated April 22, 1950, the deceased and his wife had jointly gifted half of their shares to their sons, Ventexa and Voicunta who, thereafter, became members of the society along with their parents, all of them having 12-1/2% share each. The deceased, his wife and their two sons continued as members of the society till its dissolution on May 6, 1967, when all the immovable properties of the society were distributed amongst its members. Soon thereafter, i.e., on May 26, 1967, the deceased passed away.

2. The Assistant Controller of Estate Duty held that the gift jointly made by the deceased and his wife to the extent it related to his share was includible in the principal value of the estate u/s 10 of the Estate Duty Act, 1953, as the deceased had continued to enjoy his entire share in the family society till his death. He estimated the value of the said 12-1/2% share at Rs. 1,75,000 and included the said amount in the dutiable estate of the deceased. The inclusion was confirmed by the Appellate Controller of Estate Duty. The Tribunal, however, deleted the

inclusion.

3. The following question of law has been referred to us by the Tribunal at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the sum of Rs.1,75,000 is not includible in the aggregate value of the estate of the deceased ?"

4. Shri Dhanuka, learned counsel for the Revenue, took us through the relevant portions of the deed of gift and the deed of dissolution referred to in the order of the Tribunal at page 18 of the paper book. It was stated that the deceased had made a gift of his 12-1/2% share in the family society to the donees which share the donees could possess and dispose of in any manner they liked. The deed of dissolution, it was stated, clearly indicated that all the proportions belonging to the family society were enjoyed by all the members till the dissolution of the society and were distributed amongst the members only thereafter. This fact, according to him, conclusively proves that bona fide possession and enjoyment over the gifted property was not assumed by the donees to the exclusion of the deceased and, therefore, the provisions of section 10 of the Estate Duty Act, 1953, were attracted.

5. We do not agree with Shri Dhanuka that by the deed of gift the deceased had gifted any specific property so that the donees could possess and enjoy the same to the exclusion of the deceased. The portion of the deed of gift extracted in the Tribunal's order makes it clear that the gift was of a portion of the deceased's and his wife's share in the family society and the donors had specifically reserved the usufruct for life for themselves. It is true that on the dissolution of the society on May 6, 1967, the distribution of properties by metes and bounds amongst the members of the society took place. There is, however, no conflict between the deed of gift and the deed of dissolution. The gift itself was made with reservation. The deceased's possession and/or enjoyment over the properties of the family society is referable to the gift itself and it is not a case where something is, though gifted, not possessed and enjoyed by the donee to the exclusion of the donor. On the above facts, we find that the Supreme Court's decision in the case of *Controller of Estate Duty, A.P. Vs. Godavari Bai*, is squarely applicable. The relevant portion of the judgment as extracted in the headnote reads as under :

"The question whether gifted property should be regarded as a part of the estate of the deceased donor passing on his death for the purpose of section 10 would depend upon as to what precisely is the subject-matter of the gift and whether the gift is of absolute nature or whether it is subject to certain rights. If the gift is made without any reservation or qualification, that is to say, where the gift carries the fullest right known to law of exclusive possession and enjoyment, any subsequent enjoyment of the benefit of that property by way of possession or otherwise by the donor would bring the gift within the purview of section 10; but

where the gift is subject to some reservation or qualification, that is to say, if the subject-matter of the gift is property shorn of certain rights and the possession or enjoyment of some benefit in that property by the donor is referable to those rights, i.e., rights shorn of which the property is gifted, then in that case the subject-matter of the gift will not be deemed to pass on the death of the deceased donor. In other words, if the deceased donor limits the interest he is parting with and possesses or enjoys some benefit in the property not on account of the interest parted with but because of the interest still retained by him, the interest parted with will not be deemed to be a part of the estate of the deceased donor passing on his death for the purpose of section 10."

6. Following the Supreme Court's decision, we answer the question in the affirmative and in favour of the accountable person. No order as to costs.