

(1982) 03 BOM CK 0083

In the Bombay High Court

Case No : Estate Duty Reference No. 8 of 1973

Controller of Estate Duty, Bombay City

APPELLANT

Vs

Mohammed Habib A. Valiwalla

RESPONDENT

Date of Decision : 20-03-1982

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1981) 132 ITR 414(1)

Hon'ble Judges : M.N. Chandurkar, J;Kania, J

Bench : Division Bench

Judgement

Chandurkar, J.—The two question which have been referred in this reference under s. 64(1) of the E.D. Act referred to us at the instance of the Controller of Estate Duty are as follows :

"(1) Whether, on the facts and in the circumstances of the case, two amounts of Rs. 25,000 gifted by the deceased to his two sons were to be included in the principal value of his estate u/s 10 of the Act ?

(2) Whether, on the facts and in the circumstances of the case, the value of the share in the immovable properties gifted by the deceased was liable to be included in the estate of the deceased u/s 10 of the Act ?"

2. The deceased, Abdulkadar Nanamiya, was the owner of immovable property bearing No. 3/100/154 in Nagpada Street, Bombay. He gifted the whole of his property equally to his wife and three married daughters. The property was in the possession of tenants. The rent received was credited in the joint accounts of the wife and the three daughters in the books of M/s. Abdullabhai Abdul kadar, in which the deceased, Abdulkadar, was a partner. After debiting the expenses in respect of the said property and keeping apart a reasonable amount for meeting further expenses, the rent was divided equally and paid to each of the four donees by cheque.

3. The deceased along with other partners of the firm, Abdullabhai Abdul kadar,

owned another property bearing No. 206/208, Nagdevi Street, Bombay. He had one-sixth share in this property which also he gifted equally to his son, Abdul Razak, and to his grandson, Mohammed Kasam. This property is also rented out and the income from rent was equally divided amongst the co-owners including the two donees. The deceased had also similarly gifted his 3/16th share in another property situated at Kalbadevi Road to his son and grandson. The other co-owners of the property were the other partners of the firm. The rental income of this property was also similarly distributed between the co-owners including the donees. The deceased had also gifted Rs. 25,000 each to his son and grandson by crediting the amount in the respective gift accounts in the book of the firm with a corresponding debit entry in the account of the deceased. These amounts were later transferred to the current account of the firm. No interest, however, paid by the firm on these accounts presumably, according to the Tribunal, because it was against the religious principles of Muslims.

4. After the death of the deceased the Asst. Controller of Estate Duty held that the deceased had not entirely excluded himself from the possession and enjoyment of the gifted property, namely, the cash and the immovable property, and included the value of all the gifted property in the principal value of the estate of the deceased under s. 10 of the E.D. Act. This order was upheld in appeal by the Appellate Controller.

5. The accountable person took the matter in appeal to the Appellate Tribunal. With regard to cash gifts, the Tribunal took the view that once the sums were deposited with the firm, they became actionable claim and parcel of the capital of the firm and the sons obtained actionable claim in exchange, with the result that the sons had exchanged and converted one form of their property, namely, money, into another form of intangible property, namely, actionable claim, and when the firm used this fund, it was used as the fund of the firm and not as the fund of the two sons. The Tribunal, therefore, did not accept the contention of the Revenue that the deceased did not entirely exclude himself from the possession and beneficial enjoyment of the gifted amounts. With regards to gifts of immovable property, the Tribunal found that the Revenue's stand was still weaker because the net amount left from recovery of rent was actually distributed to the co-owners including the donees and the donees used to withdraw the amount whenever they needed money. Thus, according to the Tribunal, even in respect of this property, the provisions of s. 10 were not applicable. The correctness of this view is challenged in the two questions reproduced above.

6. The position which obtains when the property is gifted by a donor, the possession and enjoyment of which is allowed to a firm in which the donor is a partner was considered by this court in *Khatijabai Abdulla Soomar Vs. Controller of Estate Duty, Bombay*, , after reviewing several decisions of the Supreme Court and other courts. It had been held in that decision that when a property is gifted by a donor, the possession and enjoyment of which is allowed to a firm in which

the donor is a partner, then the mere fact of the donor sharing the enjoyment of the benefit in the property is not sufficient for the application of s. 10 of E.D. Act, 1953, unless and the parting with such enjoyment or benefit by the donee or permitting the donor to share them out of the bundle of rights gifted in the property. It was pointed out that it makes no difference whether the donee was a partner in the firm already or is taken as such at the time of the gift or he became a creditor of the firm by allowing it to make use of the gifted property, and that the rights of a partner in the property and assets of the firm are wholly different from the rights which a person has in the properties which belong to him alone. The ratio of this decision must clearly apply in so far the gift of Rs. 25,000 to each of the two sons is concerned. It is clear from the findings recorded by the Tribunal that the respective amounts were transferred to the current accounts of the donees with the firm. The mere fact that the donor was a partner of that firm does not attract the provisions of s. 10 of the E.D. Act. The donees became the creditors of the firm in their own right by allowing the firm to make use of the gifted properties.

7. So far as the immovable properties are concerned it is difficult to see how the provision of s. 10 will be attracted. On the finding recorded by the Tribunal and the E.D. authorities that the rents were credited to the joint account of the donees and after meeting the necessary expenditure were divided between the donees separately, it would be clear that bona fide possession and enjoyment of the property was immediately assumed by the donees and was retained to the entire exclusion of the donor. The rents received by the donees were in their own right to the exclusion of the donor. The property was rented out and the only manner in which possession and enjoyment could be assumed was by receiving their respective share of rents in their own rights. In our view therefore, there is no error in the findings recorded by the Tribunal that s. 10 was not attracted at all both in the case of the cash gifts as well as in the case of the gifts of immovable property.

8. Accordingly, question No. 1 is answered in the negative and against the Revenue. Question No. 2 is also answered in the negative and against the Revenue. The revenue to pay the costs of this reference.