

(1968) 10 GUJ CK 0011

In the Gujarat High Court

Case No : Estate Duty Reference No. 4 of 1966

Controller of Estate Duty, Gujarat

APPELLANT

Vs

Chandravadan Amratlal Bhatt

RESPONDENT

Date of Decision : 04-10-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1969) 73 ITR 416

Hon'ble Judges : P.N. Bhagwati, J;B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, for the Appellant; G.N. Shah, for the Respondent

Judgement

Divan, J.—In this reference u/s 64(1) of the Estate Duty Act (hereinafter referred to as the Act), the following questions have been referred to us by the Tribunal :

"(1) whether on the facts and in the circumstances of this case, the gifts of Rs. 10,000 each to the three sons purported to have been made on October 20, 1946, were valid in law ?

(2) Whether even if the gifts of Rs. 10,000 each were valid the same would be hit by the provisions of section 10 of the Estate Duty Act ?

(3) Whether, on the facts and in the circumstances of the case, the provisions of section 10 would apply to the gift of the sum of Rs. 24,000 ?

(4) Whether the accumulated interest on the sum of Rs. 30,000 could be included in the computation of the principal value of the estate ?"

2. The facts giving rise to this reference are as follows :

This reference is in connection with the estate of Amritlal alias Bhailalbai, who died on February 21, 1962. The deceased was a partner along with two other persons, Revashankar and Nandlal, in a partnership firm which carried on business in the firm name and style of M/s. Revashanker Balashanker. Each of

the three partners had an equal share in the profits of the firm. In S. Y. 2002, the deceased had to his credit in the books of the partnership firm a sum of Rs. 54,858. On October 22, 1946, the account of the deceased was debited with the sum of Rs. 30,000 and each of his three minor sons, Jayantilal, Chandravadan and Navinchandra, was credited with a sum of Rs. 10,000. Accounts were opened in the names of the three minor sons and each of the three accounts was credited with a sum of Rs. 10,000 and the entries clearly show that the amount of Rs. 10,000 was given by the deceased to the son in whose name the account stood. Thereafter, the accounts of the three sons were continued in the partnership books. On January 1, 1958, the account of the deceased with the partnership firm was debited with a sum of Rs. 24,000. By this time, the two sons, Chandravadan and Jayantilal, had attained majority and, according to the narration in the entries in the books of the firm, out of this sum of Rs. 24,000 debited to the account of the deceased, a sum of Rs. 12,000 was paid in cash to Chandravadan, and a similar amount of Rs. 12,000 was paid in cash to Jayantilal. It has been found by the Tribunal that Chandravadan and Jayantilal each deposited the sum of Rs. 12,000 received by him in his own account with the State Bank of India. Jayantilal deposited the amount on January 31, 1958, and Chandravadan did so on January 15, 1958. Later on Chandravadan drew a cheque for Rs. 11,000 on his account with the State Bank of India for the sum of Rs. 11,000 and deposited that sum with the firm of Revashanker Balashanker, that is the partnership firm in which the deceased was a partner. Subsequently, a sum of Rs. 1,000 was brought in by Chandravadan and the entire sum of Rs. 12,000 was thus credited in the account of Chandravadan though not immediately after the gift was made in 1958. In the same manner Jayantilal withdrew a sum of Rs. 10,000 from the State Bank of India by a cheque and deposited the said amount with the partnership firm on or about Maha Sud 10, S. Y. 2014. Later on, Jayantilal brought in the sum of Rs. 1,500 in his account with the partnership firm on Jeth Sud 1, S. Y. 2017, and ultimately a sum of Rs. 500 was brought in by Jayantilal on May 14, 1962, i.e. in S. Y. 2018. Thus, by the time the deceased died, the entire amounts of Rs. 12,000 each that had been gifted to Chandravadan and Jayantilal in January, 1958, were brought back by them and were credited in their respective accounts. It has been found by the Tribunal that interest on the amounts standing to the credit of the three sons in their respective accounts were not being charged prior to S. Y. 2014, but after that year interest was being credited in their respective accounts; and the interest which the partnership firm was paying to these three sons was claimed and allowed as a deduction in the Income Tax assessment proceedings of the partnership firm.

3. On these facts, the Assistant Controller held that the alleged gifts of Rs. 30,000 in the first instance and of Rs. 24,000 subsequently made by the deceased to his sons were invalid and in the alternative he held that, in any event, bona fide possession and enjoyment of the amounts has not been immediately assumed by the donees. Since these amounts were retained in the

firm, wherein the deceased was a partner, the provisions of section 10 of the Act would apply. In the result, he brought to charge the sum of Rs. 58,166, i.e., principal amount of Rs. 54,000 and interest on that amount. The accountable person thereafter preferred an appeal to the Appellate Controller and he held that the sum of Rs. 30,000 could not be said to have been gifted by the deceased and hence the sum of Rs. 30,000 together with interest referable to the same was includible in the principal value of the estate of the deceased. As regards the amount of Rs. 24,000, the Appellate Controller held that, though the gifts were genuine, the principle laid down by the Privy Council in *Clifford John Chick v. Commissioner of Stamp Duties* applied and hence he included the sum of Rs. 54,000 in the principal value of the estate of the deceased. He held that the interest referable to the sum of Rs. 24,000 should be ignored inasmuch as section 10 of the Act would not be applicable to the subsequent accretion to the amounts gifted. Thereafter, there was an appeal to the Tribunal and the Tribunal held that the gifts of Rs. 30,000 and Rs. 24,000 were valid gifts. The Tribunal also held that section 10 of the Act would not be applicable and the provisions of section 10 were not attracted in this case. In the alternative, the Tribunal held that the interest referable to the sum of Rs. 30,000 could not be included in any event in the principal value of the estate passing on the death of the deceased and it also held that, according to the department's own case, the interest in respect of the sum of Rs. 24,000 was not to be included in the principal value of the estate. Thereafter, at the instance of the Controller, the Tribunal has referred the abovementioned four questions to us.

4. We may point out that a question similar in facts to the present case, came up for consideration before us in Estate Duty Reference No. 1 of 1965, decided by us on September 20, 1968. In that particular case, the deceased had made a gift of a sum of Rs. 60,000 to his brother and on the very day on which the amount was debited to the account of the deceased, a new account in the name of the donee, Subhashchandra, was opened in the books of account of the partnership firm and thereafter the amount remained as a deposit with the partnership firm in the account of Subhashchandra. No interest was to be paid by the partnership firm either to any of the partners in respect of their capital contribution nor was any interest to be paid by the partnership firm to Subhashchandra in respect of this amount of Rs. 60,000. On these facts, we held that, on the assumption that there was a valid gift in favour of Subhashchandra, the donee in that case, the provisions of section 10 of the Act would apply because, in any event, the amount which was gifted to Subhashchandra remained at the disposal of the partnership firm and hence, in the light of the decision of the Privy Council in *Chick's* case and on the decisions of the Supreme Court in *Narayanappa v. Bhaskara Krishnappa* and *George Da Costa v. Controller of Estate Duty*, and we pointed out that the decision of the Privy Council in *Chick's* case was also followed by the Supreme Court in *George Da Costa's* case and we distinguished certain observations of this court in *Commissioner of Income Tax v. Jayantilal Amratlal*.

5. Mr. Shah, on behalf of the accountable person, drew our attention to a recent decision of the Andhra Pradesh High Court in Mohammed Bhai v. Controller of Estate Duty. This judgment of the Andhra Pradesh High Court was not available to us when the judgment in Estate Duty Reference No. 1 of 1965 was delivered by us and it can only be considered in the present judgment since Mr. Shah relied upon it. In that case, the deceased made gifts of his business in stationery goods and certain house properties to his sons. Subsequently, he made a gift to his wife of his house in which he was residing and continued to reside in it thereafter. All these gifts were made in 1952 and the deceased died in 1958. Ever since the gifts, the sons were making payments to the deceased regularly at the rate of Rs. 200 per months and they also gave an amount of Rs. 16,902 to him for the marriage expenses of his daughters, in accordance with oral promises made by them. The Assistant Controller included in the estate of the deceased these properties u/s 10 of the Act on the ground that the deceased was deriving benefit from the properties gifted by him. The house property was also included on the ground that the deceased was living in that house even after the gift of the same to his wife. The sons and the widow filed appeals contending that the payments made to the deceased were only out of filial love and that, even if the payments were taken as benefits derived by the deceased, they were not legally enforceable and, hence, section 10 could not be applied, and in any case the infirmity attached to the gift of business interest would not affect the gift of immovable property. The Board rejected the appeals of the accountable persons and, on a reference to the High Court by the Board, the Andhra Pradesh High Court held :

"(i) Only so much of the business as was relatable to the value of rent of Rs. 200 that was being paid by the sons to their father could be included in the estate;

(ii) that the infirmity attaching to the gift of the business interest will not affect the gift of the immovable property;

(iii) that merely because the deceased was living in the house gifted by him to this wife, it did not mean that the deceased was deriving any benefit from the subject-matter of the gift; and

(iv) the payments made for the wedding of the daughters of the deceased were subsequent acts, not referable to the gifts and, hence, not covered by section 10."

6. The decisions in George Da Costa's case and Chick's case were referred to in the judgment of the Andhra Pradesh High Court; and at page 780 of the report, P. Jaganmohan Reddy C.J. observed in connection with the observations of Ramaswami J. in George Da Costa's case :

"The whole basis of this dicta is that there must be an enforceable right. Unlike in English law, there is no equitable right enforceable by a court of equity in India. That right, if enforceable, is at law only, and this requirement was only a condition of the second limb of section 10 and would not control the words "to

the entire exclusion of the donor" in the first limb. In our view, the ratio decidendi of the Supreme Court case rested on the question whether the donor was not entirely excluded from possession of the property as an infringement of the first limb of section 10, and having regard to the facts of the case it was held that it was. That is not to say that in this case also the facts and circumstances justify the conclusion that merely because the wife and husband resided in the house after he gifted the property to his wife, he derived a benefit therefrom."

7. If this is the basis of the decision of the Andhra Pradesh High Court, with great respect to the learned Chief Justice, we are unable to agree with his conclusions, because it is clear in the light of the principles laid down in Chick's case and also in George Da Costa's Case that, so far as the first limb of the second part of section 10 is concerned, what the court has to look at is whether there has been entire exclusion of the donor from possession and enjoyment of the property. In that connection whether there is any benefit derived from the property or not does not arise for consideration. It is only under the second limb of the second part of section 10 that the question arises whether there was any exclusion from any benefit by contract or otherwise. If there is non-exclusion of the donor from the property, that is, if the first limb of the second part of section 10 applies, as explained by the Supreme Court in George Da Costa's case, there is no question of invoking the second limb of the second part of the section. With great respect to the learned judges of the Andhra Pradesh High Court, this aspect of non-exclusion from the property which is gifted by the donor has been overlooked by them and hence we are unable to accept the reasoning of the Andhra Pradesh High Court in this particular case.

8. In Chick's case, Viscount Simonds, delivering the opinion of the Judicial Committee, observed : "..... The simple question is whether the donor has been entirely excluded from the subject-matter of the gift...." and in George Da Costa's case, Ramaswami J. has observed at page 503 of the report as follows :

"It appears from all these cases that the first limb of the section may be infringed if the donor occupies or enjoys the property or its income, even though he has no right to do so which he could legally enforce against the donee".

9. Thus, the only question that has to be considered when one comes to the first limb of the second part from the point of view of the question of fact is, whether the donor has been excluded from the subject-matter of the gift.

10. In the instant case, as happened in Chick's case and also in Estate Duty Reference No. 1 of 1965, the subject-matter of the gift was made available to the partnership and placed at the disposal of the partnership in which the deceased had an interest as a partner; and that being the case in the light of the decision of the Privy Council in Chick's case and also in the light of our decision in Estate Duty Reference No. 1 of 1965 the deceased was not entirely excluded from the subject-matter of the gifts of Rs. 30,000 and Rs. 24,000. The fact that there was an interval of time between the gift of Rs. 24,000 in January, 1958, and the

dates on which the amounts of Rs. 12,000 were brought in by each of the two sons, Jayantilal and Chandravadan, is again immaterial. In Chick's case the subject-matter of the gift was brought into the partnership firm nearly 17 months after the date of the gift and even then it was held that the entire property included in the gift was liable to be included in the principal value of the estate of the deceased. In our opinion, the provisions of section 10 clearly apply in this case and the case clearly falls within the first limb of the second part of section 10 of the Act. As regards the accumulated interest referable to the sum of Rs. 30,000, in our opinion, the view taken by the Tribunal is correct because section 10 applies to that property which is the subject-matter of the gift and not the income from or subsequent accretion to that originally gifted property.

11. We, therefore, answer the questions referred to us as follows.

Question No. Answer. (1) Not necessary, in the light of our conclusions regarding section 10. (2) In the affirmative. (3) In the affirmative. (4) In the negative.

12. The accountable person will pay the costs of this reference to the Controller.