
(1987) 02 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No. 851 (NT) of 1974

Controller of Estate Duty, Kanpur

APPELLANT

Vs

Vithal Das

RESPONDENT

Date of Decision : 03-02-1987

Acts Referred:

Estate Duty Act, 1953 — Section 7

Citation : AIR 1987 SC 791 : (1987) 60 CTR 120 : (1987) 165 ITR 23 : (1987) 1 JT 348 : (1987) 1 SCALE 232 : (1987) 2 SCC 37 : (1987) 31 TAXMAN 170 : (1987) 1 UJ 369

Hon'ble Judges : Sabyasachi Mukherjee, J;S. Natarajan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sabyasachi Mukharji, J.—This appeal is directed against the judgment and order of the High Court of Allahabad dated 15th July, 1971. The following two questions were referred by the Central Board of Direct Taxes u/s 64(1) of the Estate Duty Act, 1953 (hereinafter called the Act) to the High Court :

(1) Whether, on the facts and in the circumstances of the case, only half share of the properties included in the Estate Duty Assessment of the deceased should have been included as property passing or deemed to pass on his death u/s 7 of the Act?

(2) Whether, on the facts and in the circumstances of the case, the amount of Rs. 80.000/- standing in the names of the grand children of the deceased was correctly included in his estate?

2. This reference arose out of the proceedings in connection with the estate duty assessment in respect of the estate of late L. Kedar Nath, who died on the 8th September, 1955. Shri Vithal Das, the eldest son of the deceased, filed the estate duty return in respect of the properties left by Kedar Nath and had showed the value of the estate by the deceased at Rs. 1.57.764/-. The Assistant Controller of

Estate Duty, however, computed the value at Rs. 3,09,972/-and levied the estate duty on accountable person. The Assistant Controller also discovered certain deposits amounting to Rs. 80.000/- in the names of five grandsons and one grand-daughter of the deceased Rs. 15.000/- each in the name of the grandsons and Rs. 5.000/- in the name of the granddaughter. It was claimed that these amounts had been gifted by the deceased to his grand-children on 9th May, 1952 more then two years before his death. It was found that a debit entry of Rs 80.000/- was made in the deceased's account with Messrs. Girdhari Lal Keder Nath of Tanda. There were corresponding credit entries in the newly opened account in the names of the deceased's grandsons and granddaughter. The Assistant Controller found that the cash balance of the firm on the date on which the above entry was made was Rs. 7,745/-only. According to the Assistant Controller, there was neither a registered instrument of transfer nor delivery of possession of the property alleged to have been gifted by the deceased, and that there was no valid and completed gift. The assessee had brought to the notice of the Assistant Controller that the aforesaid gifts were made by book entries and were accepted on behalf of the minors by their respective fathers. These sums were later on withdrawn from the books of Messrs. Girdhari Lal Kedar Nath of Tanda and got credited in the books of Bhawani Prasad Girdhari Lai Hatia, Kanpur where the deceased was not a partner. The latter firm paid interest to the minors on the amount standing in their names. The Assistant Controller found that the transfer of accounts from the books of Girdhari Lal Kedar Nath, Tanda to the books of Messrs Bhawani Prasad Girdhari Lai, Kanpur, took place only on 3rd November, 1953. At that time the amount was transferred only by making book entries and no cash passed from the Tanda firm to the Kanpur firm. It was only on 4th August, 1955 that for the first time an amount of Rs. 6000/-was remitted from Tanda to Kanpur. This was followed by remittances amounting to Rs. 20.000/-, Rs. 12.000/- and Rs. 25.000/- made on 16th of August, 1955, 5th September, 1955 and 6th September, 1955 respectively. According to the Assistant Controller, neither the transfer entries made in the books of the two firms, nor the remittances of cash had the effect of validating the gift alleged to have been made on 9th May, 1952. In any case as these remittances were made within two years of the death of the deceased, the amount gifted was liable to be included in the estate of the deceased u/s 10 of the Act. In the result he included the sum of Rs. 80.000/- also in the value of the estate which according to him passed on the death of the deceased; The accountable person in appeal claimed that the amount of Rs. 80.000/- was gifted on 9th May, 1952 by debiting the account of the deceased in the books of the firm Girdhari Lai Kedar Nath and opening corresponding accounts in the names of the grand children.

3. The Board was unable to accept this position that there was any valid gift. The Board concluded that the signatures underneath the debit and the credit entries in the books of the Tanda firm were appended after wards so as to create evidence indicating acceptance of the gift. The Board therefore came to the conclusion that even if the deceased wanted to make a gift of the money to his

grand-children on 9th May, 1952, the gift was incomplete and invalid.

4. The High Court dealt with this aspect by setting out the aforesaid facts and observing that there could be no doubt that the signatures underneath the entries were affixed in order to show that a gift had been made by the deceased to the minOrs. According to the High Court, however, it did not mean that the signatures were fraudulent. The High Court was of the view that where sufficient amount stood in the personal account of the donor in a firm, a valid gift could be made by making entries in the books of the firm at the instance of the donor. It followed earlier decision in the case of Copal Raj Swarup v. Commissioner of Wealth Tax, Lucknow 1. 77 ITR 912.

5. The High Court in granting the certificate limited the appeal to the question namely "Whether, in a case where there was not sufficient cash balance from out of which the amount should be physically gifted to the donee, there could be valid gift?"

6. We have considered this question in Civil Appeal No 1713 (NT) of 1973- The Commissioner of Income Tax, Kanpur v. Dr. R.S. Gupta (judgment delivered today). In view of the position as decided by us in that decision, we must allow this appeal. The appeal is accordingly allowed. The judgment and order of the High Court on this aspect are set aside. The respondent will pay the cost of this appeal.