

(1980) 04 MAD CK 0020
In the Madras High Court
Case No : Tax Case No. 361 of 1976

Controller of Estate Duty, Madras

APPELLANT

Vs

R.K. Chettiar (Decd.) by Lrs.

RESPONDENT

Date of Decision : 15-04-1980

Acts Referred:

Estate Duty Act, 1953 — Section 10, 34(1)

Citation : (1980) 125 ITR 605

Hon'ble Judges : V. Ramaswami, J;P. Venugopal, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Venugopal, J.—Under a settlement deed March 28, 1960, the deceased gifted 5.41 acres of wet land in favour of his grand-daughter,

Sulochana, and her minor children. By another settlement deed dated March 26, 1964, the deceased gifted in favour of his granddaughter, Prema

81 cents of wet land in one village and 2.41 acres of wet land in another village. By another settlement deed dated November 7, 1964, the

deceased gifted to his grandson, Ganesan, 4.66 acres of wet land in one village and 10.05 acres of wet land in another village. The deceased also

gifted by settlement deed dated March 28, 1960, 20.20 acres of wet land in favour of one Ramaswamy Chettiar. The donees assumed possession

of the lands gifted to them and the pattas for those lands were transferred in the respective names of the donees. The lands were leased out and the

income from these lands were periodically credited to the accounts of the donees in the books of the deceased and they were at the disposal of the

deceased and utilised by him in his money-lending business.

2. The Asst. Controller came to the conclusion that the deceased had utilised the income from the lands gifted by him in his money-lending business

and the deceased had not been entirely excluded from benefit, possession and enjoyment of the properties gifted and the lands gifted should

therefore, be deemed to have passed under s. 10 of the E. D. Act and the value of the lands amounting to Rs. 2,17,080 was included in the

principal value of the estate of the deceased. It was also contended before the Asst. Controller that the property bearing door No. 1, Kallukara

Street, was an ancestral property and the deceased had a half share therein and the property passed under s. 7(1) of the E. D. Act. The property

was valued at Rs. 30,000 and Rs. 15,000 was included in the assessment. The Asst. Controller also included in the assessment another sum of Rs.

15,000, being the value of the lineal descendant's half share in the said property under s. 34(1)(c) of the E. D. Act.

3. It was contended before the Appellate Controller that merely because the donees had kept the income derived from the gifted properties with

the deceased, it did not follow that the deceased had not been totally excluded and the inclusion of the value of the gifted lands deemed to have

passed under s. 10 of the E. D. Act was erroneous and inclusion of Rs. 15,000 as the value of the lineal descendant's share in the ancestral

property was not proper. Both these contentions were rejected by the Appellate Controller.

4. On further appeal, the Tribunal held that the donees had been given possession of the lands gifted to them and the pattas for the lands were also

transferred in their favour and the donees could have, at any time prevented the deceased from utilising the income from the gifted lands and the

benefit which the deceased had by way of utilising the income from the gifted lands in the money-lending business carried on by him, could not be

referable to the gifts made by him and the value of the lands gifted by the deceased to the various persons, should not, therefore, be included in the

computation of the principle value of the estate under s. 10 of the E. D. Act. The Tribunal, following the decision of this court in V. Devaki Ammal

Vs. Assistant Controller of Estate Duty, , held that the inclusion of Rs. 15,000 as the value of the lineal descendant's share in the principal value of

the estate was not correct and should be deleted.

5. At the instance of the revenue, the following questions were referred to this court for opinion under s. 64(1) of the E. D. Act, 1953:

(1) Whether, on the facts and in the circumstances of the case, Rs. 2,17,080 being the value of the lands gifted by the deceased to various

persons should be included in the computation of the principal value of the estate u/s 10 of the Estate Duty Act ?

(2) Whether, on the facts and in the circumstances of the case, Rs. 15,000 being the lineal descendant's share in the ancestral property, should be

included in the assessment u/s 34(1)(c) of the Estate Duty Act ?

6. The learned counsel for the revenue contended that inasmuch as the deceased was utilising the income from the gifted lands in the money-lending

business carried on by him, the deceased cannot be said to have been excluded from enjoyment of the gifted properties and s. 10 of the E. D. Act

is, therefore, attracted and the value of the gifted lands should, therefore, be included in computing the principal value of the estate of deceased.

7. In *Controller of Estate Duty Vs. Mrs. Kamala Pandalai*, , the deceased had gifted to his wife some house properties and a vacant site and the

wife was collecting the rents from the houses. The deceased had also acquired certain shares in the name of his wife. The rents from the house and

the dividends from the shares were credited to a bank account in the sole name of the deceased till a particular date and thereafter, a joint account

was opened in the name of the deceased and his wife. There were also withdrawals both by the husband as well as by the wife. On these facts, it

was held that the donee had assumed such possession and enjoyment of the properties as was possible in the circumstances, and that as the donee

was in receipt of rents, profit and dividends from the settled properties, the crediting of the amounts in the deceased's bank account would not

bring the case within the scope of s. 10 of the E. d. Act.

8. In *Controller of Estate Duty Vs. Estate of Late V. Shyamala Anni*, , the deceased had executed settlement deeds gifting the properties to

various relations and the properties were transferred absolutely in favour of the donees, who assumed possession to the entire exclusion of the

donor. No separate accounts were maintained by the donees, but only separate folios were opened for each of the donees in the books of the

deceased in respect of the income from the lands gifted. This court held that the

lease deeds in favour of the donees and the transfer of pattas in the names of the respective donees, showed that the donees immediately assumed possession of the gifted lands in pursuance of the settlement deed and a joint account in which moneys of the donees are accounted or the maintenance of a common account book is not enough to establish enjoyment so as to bring into operation s. 10 of the E. D. Act.

9. In the latest decision of the Supreme Court in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, , the Supreme Court was considering two types of cases. In one case, the deceased who was a partner in a

firm gifted to his son and wife by making debit entries in his account in the firm and corresponding credit entries in the accounts of his wife and son and later both the wife and son were taken as partners in the firm and, affirming the decision of the High Court, the Supreme Court held that s. 10

of the E. D. Act did not apply to the gifts made by the deceased in favour of his wife and son. The Supreme Court also considered another type of

case, where the deceased made a cash gift in favour of his son and daughters-in-law and the donees invested the entire amounts gifted to them in

the firm in which the deceased was a partner and the sums gifted were being utilised by the firm and it was held that s. 10 of the E. D. Act is not

attracted. The Supreme Court pointed out (p. 463):

When a property is gifted by a donor the possession and enjoyment of which is

allowed to a partnership firm in which the donor is a partner, then the mere fact of the donor sharing the enjoyment or the benefit in the property is not sufficient for the application of s. 10 of the E. D. Act until and

unless such enjoyment or benefit is clearly referable to the gift, i. e., to 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. If the possession, enjoyment or benefit of the donor in the property is

consistent with the other facts and circumstances of the case, other than those of the factum of gift, then it cannot be said that the donee had not

retained the possession and enjoyment of the property to the entire exclusion of the donor, or, to the entire exclusion of the donor in any benefit to

him by contract or otherwise. It makes no difference whether the donee is a partner in the firm from before or is taken as such at the time of the gift

or he becomes a creditor of the partnership firm by allowing it to make use of the gifted property for the purposes of the partnership.

10. In the present case, it is seen that gifted lands were taken possession of by the respective donees and pattas also have been transferred in their

names. From para. 8 of the order of the Appellate Controller and from para 10 of the order of the Tribunal, it is seen that the gifted lands have

been leased out and the entire income from those lands was periodically credited to the accounts of the donees in the books maintained by the

deceased indicating that the deceased had been utilising the income for his own money-lending business. The mere fact that the income from the

gifted lands was credited in the individual accounts of the donees, in the books of the accounts maintained by the deceased, is not sufficient to

establish that the donees did not intend to retain possession and enjoyment of the gifted properties exclusively for themselves. The fact that the

deceased was utilising the income from the gifted properties in the money-lending business is not sufficient for the application of s. 10 of the E. D.

Act, unless and until such enjoyment or benefit by the deceased is clearly referable to the gift. Since the possession, enjoyment or benefit of the

donor in the property is consistent with the facts and circumstances of the case, other than those of the factum of gift, it cannot be said that the

donees have not retained the possession and enjoyment of the property to the entire exclusion of the deceased. Since the benefit which the

deceased had by way of utilising the income from the gifted lands in the money-lending business carried on by him is not referable to the gifts made

by him, the Tribunal is justified in coming to the conclusion that s. 10 of the E. D. Act is not attracted and the value of the gifted lands should be

excluded while computing the principal value of the estate of the deceased.

11. With regard to the inclusion of the sum of Rs. 15,000, being the value of the lineal descendant's half share in the ancestral property, bearing

door No. 1, Kallukara Street, the Tribunal, following the decision of the court in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, , has

held that the value of the lineal descendant's share in the principal value of the estate should be excluded. The finding of the Tribunal is in

accordance with the decision of this court in V. Devaki Ammal Vs. Assistant Controller of Estate Duty, . The questions referred to above are

accordingly answered in the negative and in favour of the assesseees. The assesseees are entitled to costs. Counsel's fee Rs. 500.