

(1975) 03 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 273 of 1969 (Reference No. 92 of 1969)

CONTROLLER OF ESTATE DUTY, MADRAS

APPELLANT

Vs

V. S. SURYANARAYAN.

RESPONDENT

Date of Decision : 09-03-1975

Acts Referred:

Transfer of Property Act, 1882 — Section 3

Citation : (1978) 114 ITR 599

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. RAMASWAMI J. - One V. S. Suryanarayanan died on August 28, 1962. He was a partner in concern of book seller and publishers. His son,

Suri, as the accountable person, submitted the return under the Estate Duty Act (hereinafter called ""the Act""). Originally, the business of book

sellers and publishers was carried on by the deceased as a sole proprietary concern. On October 1, 1957, he had converted this into a partnership

concern with his son, the accountable person, the widow and son of the predeceased brother of the deceased with widow and son of a pre-

deceased brother of the deceased with another minor son of the deceased admitted to the benefits of the partnership.

As seen from the order of the Tribunal, which is extracted in the stated case, the deceased credited his two sons and the widow and son of his

pre-deceased brother on October 1, 1957, with Rs. 10,950 each and debited his account for the total. This account was treated as the capital

contribution of the deceased in the partnership. A deed of partnership itself was entered into on October 25, 1957. On that day, deceased also

executed a settlement deed by which he settled on his minor son, who was

admitted to the benefits of the partnership, among others, the house and ground in which the partnership business was being carried on.

The Assistant Controller of Estate Duty considered that the gift of Rs. 10,950 to each of his two sons and the widow and son of a pre-deceased

brother, which totalled Rs. 43,800 was within the clutches of section 10 of the Act and that, therefore, it is liable to be included in the estate of his

own on death. He was also of opinion that a sum of Rs. 65,000, which is the value of the house settled on the minor son, was also liable to be

included in the estate of the deceased for the purpose of section 10 of the Act. This was in the view that though there were gifts of these amounts

and the house to the respective donees they did not retain possession of the same to the exclusion of the donor subsequent to the gift. This order

was confirmed by the Appellate Controller of Estate Duty.

But, on a further appeal, the Tribunal held that there was a cash gift of Rs. 10,950 each on October 1, 1957, that donees became entitled to these

amounts absolutely and that when the partnership was formed these amounts were contributed as the respective donees' share capital and that,

therefore, section 10 was not applicable. In coming to this conclusion it purported to follow the earlier decision of the same Tribunal. In regard to

the settlement also the Tribunal was of the view that there was a genuine gift, the business of the firm in which the deceased was partner was

continued to be carried on in the said premises and the firm was paying rent of Rs. 300 to the donee and that, therefore, section 10 was not

applicable. At the instance of the revenue, the following question has been referred :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sums of Rs. 43,800 and Rs.

65,000 could not be included in the principal value of the estate of the deceased as property deemed to pass on the death of the deceased u/s 10

of the Estate Duty Act, 1953 ?

In regard to the sum of Rs. 43,800 sought to be included in the dutiable estate the facts are not very clear. The Tribunal stated that there was a gift

of these amounts to the respective donees on October 1, 1957, and on the same day the parties formed a partnership. The learned counsel for

the accountable person contended that there was no cash gift at all in this case,

that there was only passing of entries in the books of the deceased crediting each of the donees with the Rs. 10,950 and later transferring these credit entries to the account of the partnership as capital contribution of the respective donees. In these circumstances, according to the learned counsel, there was only a gift of an actionable claim which will not attract the provisions of section 10 of the Act.

We have gone through the order of the Assistant Controller and the Appellate Controller and they disclose that the rights were effected only by giving credits to the donees and debiting the capital account of the donor in his proprietary concern. When the proprietary concern was converted into a partnership these credits were treated as the capital contribution of the respective donees. The question for consideration is whether there was any gift of money by the donor to the donees when he credited their accounts in the proprietary concern with the said amounts. We have no doubt that there was a completed gift of money by making of those entries in the proprietary concern of the donor. Since the amount was available in the proprietary concern, there was no restriction on the donee in the matter of disposal of the money. There is no dispute about the acceptance of the gift by the donees. In those circumstances, we consider that the gift was of the money which was absolute and not shorn of any rights over the same.

The learned counsel relied on the decision in *Controller of Estate Duty Vs. N.R. Ramarathanam and Others*, *Godavari Bai Vs. Controller of Estate Duty*, *Balkishan Muchhal Vs. Controller of Estate Duty*, in the support of his arguments that when a gift is made by entries in the account books it would amount to only a gift of an actionable claim. All these cases related to a gift made by a partner in a partnership firm by debiting his deposit account with the firm. It was held in these cases that with respect to deposit amount of a partner in the firm he had only an actionable claim and, therefore, when an entry was made crediting the deposit account and debiting the deposit account there was only a transfer of the actionable claim and the donor could not have granted anything more than what he had. Surely, with respect to the capital account of a donor in a proprietary concern, it could not be said that he had only an actionable claim which he could have gifted. The right of the donor in respect of his

money in a proprietary concern is unrestricted and when an entry is made crediting with respect to the amount gifted. In fact, the right of the proprietor in the proprietary concern will not come within the definition of "actionable claim" in section 3 of the Transfer of Property Act. Thus, the gift by the donor in respect of each of these fones was absolute and unrestricted. The amount which was gifted to the doness later formed their respective capital contribution in the partnership firm which came into existence after the gift. In that partnership the donor also was a partner. It is well settled that the property of a firm vests in all partners and possession by the firm is possession by all the partners. Therefore, when the amount gifted to the doness were invested as capital of the partnership in which of the donor was a partner, the donor also became entitled to the possession of the money and the doness ceased to hold the property to the exclusion of the donor.

In order to take it out of the provisions of section 10, the donee must have not only the benefit from the possession and enjoyment of the property but also thenceforward retain such possession and enjoyment to the the entire exclusion of the donor or of any benefit to him by contract or otherwise. Since the later condition relating to the retention or possession and enjoyment to the entire exclusion is not satisfied in this case, section 10 is clearly attracted. We are, therefore, of the view that the Tribunal was not right in holding that the sum of Rs. 43,800 was not includible in the principal value of the estate of the deceased.

So far as the value of the house which was settled on them in or son of the deceased, the argument of the learned counsel for the revenue was that the settlement deed was absolute in terms and no reservation of any right was made. We are unable to agree with this contention of the learned counsel for the revenue. As already noticed, the proprietary concern was converted into a partnership on October 1, 1957, long before the settlement deed was executed and the partnership business was being carried on in the premises when the settlement deed was executed. The deed itself did not contain any statement to the effect that the partnership would not be entitled to continue the business in the property. The business of the partnership was also continued even after the settlement deed, though paying a rent of Rs. 300 to the settle. In those circumstances,

we consider that the gift itself was subject to the rights of the partnership to be in possession and carry in its business in the same. In other words,

the subject-matter of the gift was shorn of the rights of the partnership to the continue its business in the premises, and that the subject-matter of the

gift continued with the settlee ever since the gift till the date of death of the deceased. Therefore, the case will clearly fall within the principle laid

down in *Munro v. Commissioner of Stamp Duties* [1934] AC 61; 2 EDC 462 and *Controller of Estate Duty, Madras Vs. C.R. Ramachandra*

Gounder, and section 10 of the Act will not be applicable.

The learned counsel for the revenue contended, relying on the decision in *controller of Controller of Estate Duty, Madras Vs. Parvathi Ammal*, ,

that even in a case where the partnership in which the settlement deed in terms did not reserve any right in the partnership but was in absolute

terms, the principle in *Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder*, or *Munros case* [1934] AC 61; 2 EDC 462 would not

be applicable. In particular he relied on the following on the following sentence in that judgment, which reads as follows *Controller of Estate Duty*,

Madras Vs. Parvathi Ammal, :

The principle to kept in view in such case is to examine the deed of gift and find out as to what is the subject-matter of the gift.

The learned counsel for the revenue read the facts in that case as if the gift was made on March 11, 1955, which was the subject-matter related to

the building and not to the business. Since there was a controversy relating to the exact facts in that case we referred to the original records. It is

seen from the stated case and the grounds of appeal before the Central Board of Direct Taxes filed in that the gift made on March 11, 1955, by

the deceased in favour of his sons was not only the building but also the hotel business carried on in that premises. Subsequent to the gift two of the

donees took the business on lease paying rent for the other. Later, on June 25, 1955, the deceased donor himself took the property on lease from

the sons and carried on the business. It is, in these circumstances, the Supreme Court held that the original gift was of the entirety of the building

and the business with all its rights but the donees did not continue to hold the possession exclusively, but, thereafter, by allowing the property on

lease to the deceased, they made section 10 applicable to the gift. In fact, the

Supreme Court held that the facts were similar to the one in Clifford

John Chick v. Commissioner of Stamp Duties [1959] 37 ITR 89; 3 EDC 915 and
Controller of Estate Duty, Madras Vs. C.R. Ramachandra

Gounder, was not applicable. Far from helping the revenue the decision only
reaffirms our view that the subject-matter of the gift was subject to

the rights of the partnership to carry on the business in the premises. it follows,
therefore, that the value of Rs. 65,000 of this property is not

includible in the principal value of the estate u/s 10. We accordingly answer the
reference as follows. The sum of Rs. 43,800 was liable to be

included in the principal value of the business but the sum of Rs. 65,000 was not
liable to be included in the principal value of the estate. As neither

side succeeded in the reference, the parties will bear their respective costs.