
(1978) 01 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 457 of 1971

Frenibai G. Anklesaria

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64(5)

Citation : (1978) 113 ITR 885

Hon'ble Judges : P.D. Mulye, J;G.L. Oza, J

Bench : Division Bench

Advocate : K.A. Chitle, for the Appellant; A.M. Mathur, for the Respondent

Judgement

Oza, J.—This is a reference u/s 64(1) of the Estate Duty Act 1953, made by the Income Tax Appellate Tribunal.

2. The Income Tax Appellate Tribunal has submitted the statement of case seeking the opinion of this court on the question of law as stated in the statement of case which is as under ;

" Whether, on the facts and in the circumstances of the case, the deposit of Rs. 1,00,000 by Smt. Frenibai in the firm of G.D. Anklesaria and Co., in which the deceased was a partner with 50% share, was correctly included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 of the Estate Duty Act, 1953 ? "

3. The facts necessary for disposal of this reference are that the deceased, G. D. Anklesaria, had 50% share in the firm of M/s. G. D. Anklesaria and Co., Ratlam.

4. The firm came into existence on October 24, 1957. The constitution of the firm was as under :

(1)

Shri G.D. Anklesaria

50%

(2)

Smt. Frenibai G. Anklesaria (wife of No.1)

10%

(3)

Smt. Daulatibai (sister of No.1)

30%

(4)

Master T. Soharabji (minor) (nephew of No.1)

10%

5. It is alleged that on various dates in the calendar year 1958, the deceased, G.D. Anklesaria, withdrew sums of cash from the said firm and made gifts of the same to his wife, Smt. Frenibai, from time to time during the calendar year 1958. These amounts totalled up to Rs. 1,00,000. Smt. Frenibai, in turn, kept this money with her for some time and later on invested the same in the said firm on the dates mentioned below :

Rs.

2-5-1958

30,000

17-7-1958

10,000

13-8-1958

10,000

29-8-1958

10,000

8-9-1958

18,000

7-10-1958

7,000

6-11-1958

15,000

1,00,000 (one lakh)

6. These amounts were credited to the account of Smt. Frenibai in the firm's books. The deposits carried interest at the rate of 3%.

7. Admittedly, these gifts had taken place more than two years prior to the death of the deceased, G. D. Anklesaria. The Assistant Controller included this sum of Rs. one lakh in the principal value of the estate passing on the death of the deceased applying Section 10 of the Estate Duty Act and relying on the decision of Clifford John Chick v. Commissioner of Stamp Duties [1959] 37 ITR 89; 3 EDC 915 (PC).

8. Before the Appellate Controller it was submitted by the accountable person that Chick's case [1959] 37 ITR 89; 3 EDC 915 (PC) was distinguishable and the ratio of the decision in Munro's case (H.R. Munro v. Commissioner of Stamp Duties) [1934] AC 61 ; 2 EDC 462 (PC) should be applied. It was pointed out that the firm in which the deceased as well as the donee were partners was already in existence and that all the deposits were made by the donee some months after the receipt of the gifts. This contention was not accepted by the Appellate Controller and he held that the decision in Chick's case [1959] 37 ITR 89 applied and, therefore, he maintained the inclusion of rupees one lakh in the principal value of the estate. The accountable person preferred a further appeal and ultimately it was held that the provisions of Section 10 of the Estate Duty Act were attracted.

9. Learned counsel for the accountable person contended before us that in Chick's case [1959] 37 ITR 89 , the father had gifted away pastoral property absolutely to one of his sons and some 17 months after these gifts the father, the donee-son and another son entered into an agreement to carry on partnership business of graziers and stock dealers. It was provided in the agreement that the property brought in by such partner would remain his sole property and the firm would only be entitled to make use of it for purposes of partnership. On these facts, it was held that the father, the donor, as one of the partners was in possession and enjoyment of the property till the date of his death. According to learned counsel, this case will not be applicable because in the present case the partnership was in existence even before the gifts were made and it was contended that it will be the principle of Munro's case [1934] AC 61 ; 2 EDC 462 (PC) that would be applicable to the facts of the present case, and Section 10 of the Estate Duty Act could not be applied. In Munro's case [1934] AC 61 ; 2 EDC 462 (PC), the facts were that Munro was the owner of 36 acres of land on which he had carried on business of graziers. In 1909, he admitted his six children for carrying on the business from that date as a partnership at will and each partner was to receive a specified share of the profit. The business was being managed by Munro himself. In 1913, by six registered transfers portions of land were transferred to the six children. The partnership was till then an oral partnership and in 1919 a formal partnership agreement was drawn up. Munro died on November 4, 1929. The question in the case was as to whether the property

comprising the transfers to the sons could be included in the principal value of the estate u/s 102 of the New Zealand Stamp Duty Act which corresponds to Section 10 of the Estate Duty Act (ours), and it was held that the transfers were not hit. It was observed that the transfers of portions of land in 1913 were subject to the partnership rights. It was held that what was comprised in the gifts was the property share of the rights which already belonged to the partnership and on that ground it was observed that the donee in each case assumed enjoyment of the gift immediately upon the gift and retained it to the exclusion of the donor. Learned counsel also referred to us a number of decisions applying either of the principles in these two cases in order to support his contention that to the facts of the present case the principles of Munro's case [1934] AC 61 ; 2 EDC 462 would be applicable.

10. Learned counsel for the department on the other hand contended that the distinction between Munro [1934] AC 61 (PC) and Chick's case [1959] 37 ITR 89 depends upon the nature of the property which was initially gifted. He contended that unfortunately in the statement of case submitted by the Tribunal it is stated that on different dates in the calendar year 1958, the deceased withdrew various sums of money from the partnership account and gifted them to his wife, Smt. Frenibai, who, in turn, deposited again these amounts in the partnership account. But it is riot stated from what account the deceased withdrew the sums as, according to learned counsel, if he withdrew these sums from the profit account out of his share different considerations would arise, and if he had withdrawn these amounts from the capital account of his share, different considerations may arise. In view of this it was contended by learned counsel that it would be appropriate that before the question referred to this court is considered or answered, the Tribunal should be called upon to send an additional statement of case clarifying this position. Learned counsel for the accountable person frankly conceded that this further statement will, no doubt, make the position clear and it would be easy to apply the principle to see as to whether Section 10 of the Estate Duty Act will be attracted or not. In this view of the matter, therefore, in our opinion, it would be proper that we direct the Income Tax Appellate Tribunal to submit an additional statement of case stating clearly as to from what account the deceased, G. D. Anklesaria, had withdrawn various sums in the calendar year 1958, as it could be that either Shri Anklesaria had kept some money merely in deposit with the firm and out of this amount he withdrew these sums. It may also be that he might have withdrawn these amounts from the profit account of his share which might be lying in deposit with the firm or he might have withdrawn from the capital account of the firm. This additional statement would be necessary in order to find out as to whether to the facts of this case Section 10 of the Estate Duty Act could be made applicable.

11. In our opinion, therefore, in exercise of the powers conferred under Sub-clause (5) of Section 64 of the Estate Duty Act, we direct that the Appellate Tribunal may submit an additional or a modified statement of case stating the facts clearly as indicated above. The reference shall be listed for hearing after

the modified statement of case is received from the Income Tax Appellate Tribunal.