

**(1971) 08 KAR CK 0022**  
**In the Karnataka High Court**  
**Case No : T.R.C. No. 8 of 1968**

Gajra Bai

APPELLANT

Vs

Controller of Estate Duty, Bangalore

RESPONDENT

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**Date of Decision :** 16-08-1971

**Acts Referred:**

Estate Duty Act, 1953 — Section 10, 65 (1)

**Citation :** (1972) 86 ITR 92

**Hon'ble Judges :** Mohammad Sharif, J;G.K. Govind Bhat, J

**Bench :** Division Bench

**Advocate :** S.B. Bhat, for the Appellant; Rajasekhara Murthy, for the Respondent

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**Judgement**

Govinda Bhat, J.—The question of law referred for the opinion of this court u/s 65(1) of the Estate Duty Act, 1953, hereinafter called the Act, is :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in upholding the inclusion of the amount of Rs. 35,000 gifted by the deceased to his grand-daughters, in the total value of the estate of the deceased under the provision of section 10 of the Estate Duty Act ?"

2. The deceased, Kasturchand Kundanmull, was one of the two partners of the firm, Messrs. Kasturchand Kundanmull, the other partners being his son, Pukraj. On November 6, 1953, the deceased gifted a total sum of Rs. 35,000 to his three grand-daughters who were then minors. These gifts were made by means of transfer entries in the books of the firm by debiting the amount in the personal account of the deceased and crediting the respective amounts in the accounts of the three donees. The deceased also executed a trust deed, dated March 31, 1954, under which he appointed his son, Pukaj, to be the trustee for the amounts gifted by him. The trust deed authorised the said trustee to withdraw the gifted amounts from the firm at any time at his discretion. But the gifted amounts were not withdrawn from the firm and the same continued to remain with the firm till the death of the deceased on October 29, 1961.

3. In the estate duty proceedings, the Assistant Controller proposed to include the aforesaid sum of Rs. 35,000 representing the total amount of the made by the deceased to his grand-daughters in the estate of the deceased on the ground that the donees did not retain possession of the gifted amounts to the total exclusion of the deceased. The accountable person contended that the donor himself was not responsible for the investment in the firm, that the firm itself was a debtor of the donees and that the deceased as a partner of the firm did not have possession of the said amounts. The Assistant Controller rejected the said contentions and held that the deceased was not entirely excluded from possession of the subject-matter of the gift and that, therefore, the sum was includible in the estate of the deceased u/s 10 of the Act.

4. The Appellate Assistant Commissioner and also the Tribunal have affirmed the order of the Assistant Controller.

5. The material portion of section 10 of the Act reads thus :

"10. Gifts whenever made where donor not entirely excluded. - Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :"

6. (Provision omitted)

7. The above provision is similar to section 102(2)(d) of the Stamp Duties Act, 1920-56 (New South Wales), which came up for consideration before the Judicial Committee of the Privy Council *Clifford John Chick v. Commissioner of Stamp Duties*. Lord Simonds, who delivered the judgment of the Board, had stated that :

"Where the question is whether the donor has been entirely excluded from the subject-matter of the gift, that is the single fact to be determined. If he has not been so excluded, the eye need look no further to see whether his non-exclusion has been advantageous or other wise to the donee."

8. In the said case, the deceased transferred by way of gift to his son a pastoral property without reservation or qualification or condition. The donee was then living in a homestead erected on the property and continued to do so until the death of the deceased in 1952. On July 25, 1935, some seventeen months after the gift, the deceased and the donee and another son entered into an agreement to carry on in partnership the business of graziers and stock dealers under the name and style of John Chick and Sons. The agreement of partnership by clause 4 provided that the capital of the business should consist of the livestock and plant then owned by the respective partners or thenceforth to be acquired in connection with the business; by clause 5 it provided that the said business should be conducted on the respective holding of the partners at or near Gurley and such holding should be used for the purpose of the partnership only. Each partner brought into the partnership livestock and plant and their priorities were

used for the depasturing of the partnership stock. The property of the donee which had been gifted by the deceased was also on of the properties used for the partnership business. That continued up to the death of the father in 1952. The question was whether the value of the property given to Clifford John Chick in 1934 was to be included in computing the value of the father's estate for the purposes of death duty. The Privy Council held that the value of the property given to the son was to be included in computing the value of the father's estate for the purpose of the death duty.

9. The principles laid down in Chick's case were followed by the Gujarat High Court in *Smt. Shantaben S. Kapadia v. Controller of Estate Duty and Controller of Estate Duty v. Chandravadan Amratlal Bhatt*, and by the Punjab High Court in *Controller of Estate Duty v. Robnaq Ram Bakshi Ram Gupta* and applied to facts similar to the instant case.

10. Sri S. P. Bhat, learned counsel for the accountable person, submitted, that the facts in the instant case are distinguishable from the facts in Chick's case and, therefore, the principles laid down therein should not be applied. He urged that the relationship between the donees represented by the trustee and the firm is one of creditor and debtor and that interest was charged on the amounts invested and further that under the terms of the trust deed, the trustee had the absolute discretion either to allow these amounts or any part thereof to be invested in any manner he deemed fit and, therefore, he could have withdrawn the amounts at any time.

11. In our opinion, the consideration relied on by Mr. Bhat are wholly irrelevant for the purpose of deciding the question of the applicability of section 10 of the Act. As stated by Lord Simonds in Chick's case, the sole question is whether the donor has been entirely excluded from the subject-matter of the gift. When the amounts were invested in the firm in which the donor was a partner until his death, it cannot be said that he was entirely excluded from the subject-matter of the gift. All the partners of the firm are entitled to the use of all the assets of the firm including the movies invested therein. Therefore, in our opinion, the Tribunal was right in upholding the inclusion of the amount of Rs. 35,000 gifted by the deceased to his grand-daughters in the total value of the estate of the deceased u/s 10 of the Act.

12. Accordingly, we answer the question referred in the affirmative and in favour of the department.

13. The accountable person will pay the costs of this reference, advocate's fee Rs. 250.

14. Question answered in the affirmative.