(1964) 11 KAR CK 0012

In the Karnataka High Court

Case No : Tax Referred Case No. 1 of 1964

George Da Costa — APPELLANT

Vs

Collector of Estate Duty, Mysore — RESPONDENT

Date of Decision : 17-11-1964

Acts Referred:
Estate Duty Act, 1953 — Section 10, 63, 64 (1)

Citation : (1965) 58 ITR 58

Hon'ble Judges : M. Santosh, J;K.S. Hegde, J

Bench : Division Bench

Advocate : D''Souza, for the Appellant; S.R. Rajasekhara Murthy, for the Respondent

Judgement

Hegde, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953 (to be hereinafter referred to as the "Act"). The question referred for our opinion i :

"Whether, on the facts and in the circumstances of the case, the property at No. 34, Mahatma Gandhi Road, Bangalore, was correctly included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 to the Ac ?"

By his application dated the 27th September, 1961, Shri George da Costa (hereinafter referred to as the applicant) requires the Central Board of Revenue (hereinafter referred to as the Board) to refer to the hon''ble High Court of Mysore certain questions of law which are said to arise out of the Board''s Appellate Order in Estate Duty Appeal No. My/31 (F. No. 28/62/60-ED) dated the 3rd July, 1961. As in the Board''s opinion a question of law does arise out of their said appellate order, the following statement of the case is drawn up and referred to the hon''ble High Court as required by sub-section (1) of section 64 of the Estate Duty Act, 1953 (as the said section stood prior to its amendments by the Estate Duty (Amendment) Act, 1958 (hereinafter referred to as the Act).

2. This reference arises out of the estate duty assessment of the estate of late Dr. C. F. da Costa (hereinafter referred to as the deceased) who died on 30th

September, 1959. The material facts of the case are as follow :

(i) On the death of the deceased, the applicant (son of the deceased and an accountable person in the case) filed the estate duty return before the Assistant Controller of Estate Duty, Bangalore, showing the principal value of the estate at Rs. 93,739. The Assistant Controller determined the principal value of the estate at Rs. 2,57,249 and the estate duty payable thereon at Rs. 15,751.54 nP.

(ii) In the principal value aforesaid, the Assistant Controller included, inter alia, a sum of Rs. 1,58,000 as the value of the house property at No. 34 Mahatma Gandhi Road, Bangalore. The applicant objected to this on the ground that the deceased had gifted the house to him and his brother (another son of the deceased) more than four years before the date of death. The Assistant Controller found that although the deceased had gifted the property to his children more than four years before his death, he continued to stay in the house till his death as the head of the family and was also looking after the affairs of the house. The Assistant Controller held, therefore, that the done did not enjoy the property to the entire exclusion of the donor (the deceased). The Assistant Controller rejected the contention of the applicant and included the property in the estate of the deceased u/s 10 of the Act.

3. A copy of the assessment order is made part of the statement of the case and marked as annexure "B".

(3) The applicant thereupon preferred an appeal to the Board u/s 63 of the Act. The only point taken in the appeal was that the Assistant Controller was not justified in including the above-mentioned property in the estate of the deceased.

(4) It was stated before the Board that the property was purchased by the deceased jointly in his own name and that of his wife; that the deceased and his wife had gifted the property to their two sons under a gift deed dated the 20th October, 1954; and that the gift was absolute, with no reservation whatsoever. It was therefore contended that the gift having taken place four years prior to the death of the deceased, the property should not be include in the estate. It was also contended that as the property stood in the joint names of the deceased and his wife, only a 1/2 share thereof should be taken for the purpose of the estate duty assessment of the deceased.

4. The board found that admittedly, even after the alleged gift to the sons, the deceased, along with his wife continued to reside in the property till his death as the head of the household and was looking after the affairs of the house, though the municipal taxes were being paid by the sons. It was however argued that though the deceased continued to stay in the house, he had no enforceable right to do so and as such the; property was not liable to estate duty. The United Kingdom decision in Attorney-General v. Seccombe was relied on in support of this argument. The Board were unable to accept this contention. They held that the fact of continued residence of the deceased in the house till the date of his death showed that he was till then in enjoyment and possession of the property;

that the property was not retained by the donees to the entire exclusion of the donor (the deceased) and that, therefore, the provisions of section 10 were clearly attracted, in view of the Privy Council decision in Clifford John Chick v. Commissioner of Stamp Duties, which was applicable to the present case. The Board observed that the question for consideration in Seccombe''s case to which the applicant had referred was quite different and the decision in that case was not therefore relevant.

(5) The Board also rejected the contention that only a half share of the property should be taken for the purpose of the estate duty assessment of the deceased. They found that the property was purchased entirely out of the funds of the deceased. They also found that for the purpose of Income Tax assessment, the property was shown as belonging to the deceased and the income therefrom was exclusively assessed in his hands. On these facts, the Board held that though the property stood in the joint names of the deceased and his wife, the latter was merely a name-lender and the entire property belonged to the deceased and was therefore rightly included in his estate. In the result the Board confirmed the order of the Assistant Controller.

5. A copy of the Board''s order is made part of the statement of the case and is marked as annexure "A".

6. A copy of the deed of gift dated the 22nd October, 1954, is also made part of the statement of the case and is marked as annexure "C".

7. On the above said facts, the applicant has formulated the following questions of law for references to the High Cour :

"(1) Whether bona fide possession and enjoyment of the immovable property bearing No. 34., Mahatma Gandhi Road Bangalore, was not assumed by the donees merely because the donor continued to reside in the property without any right there ?

(2) Whether the permissive occupation of the donor by the donees in the present case constitutes reserved benefit as contemplated u/s 10 of the Estate Duty Ac ?

(3) Whether the occupation of the donor as a member of the donees'' household militates against the bona fide possession and enjoyment of the property by the donee ?

(4) Whether the execution of the deed of gift accompanied by delivery of possession by the donor to the donees and the assumption and the exercise of ownership by them does not constitute immediate passing of the property under the Estate Duty Act.

(5) Whether the ratio dissidence in Attorney-General v. Seccombe should not be deemed to apply to the facts of this case and whether it is not deemed to be good in law in India.

(6) Whether the analogy in Clifford John Chick v. Commissioner of Stamp Duties

is applicable in the present instance and whether it is not differentiable ?

(7) Whether even permanent residence as a guest will offend the condition of entire exclusio ?

(8) Whether the normal conduct of an aged father residing with his sons without any legal rights will operate in law as reservation of benefit ?

(9) Whether in any event the acquisition of the property in the name of the wife along with the deceased is benami and whether it would not constitute ownership as tenants-in-common in which the wife would have an equal share ?"

8. The Board are of the opinion that the question of law arising out of their order may be appropriately groomed in the following term :

"Whether, on the facts and in the circumstances of the case, the property No. 34, Mahatma Gandhi Rose, Bangalore was correctly included in the estate of the deceased as property passing or deemed to pass on his death u/s 10 of the Ac ?"

9. They accordingly refer the above question of law for the opinion of their Lordships of the Mysore High Court as required by sub-section (1) of section 64 of the Act.

10. The statement of the case was shown to the applicant and has been finalised after taking into consideration his comments thereon.

11. The Assistant Controller of Estate Duty held that through the deceased had gifted the house in question to his children four years before the date of this death, he still continued to stay in that house till his death as the head of the family and also was looking after the affairs of the house. In view of that finding he came to the conclusion that the donees did not enjoy that house to the entire exclusion of the donor and hence the value of the house had to be taken into consideration in determining the estate duty payable. The Central Board of Revenue (the appellate authority) agreed with that finding. Those are findings of fact and they are binding on us. We have now to see whether in view of these findings, the assessee is right in his contention that the value of the house should not have been taken into consideration in computing the net value of the estate left by the deceased.

12. Section 10 of the Act, to the extent material for our present purpose, read :

"Property taken under any gift, whenever made, shall be deemed to pass on the donor''s death to the extent that bona fide possession land enjoyment of its was not immediately assumed by the done and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

13. In view of the above findings of fact, it cannot he said that the enjoyment of the house gifted was immediately assumed by the donees and thenceforward retained by them to the entire exclusion of the donor. Quite clearly the donor was jointly in possession of the house gifted along with the donees. In fact the

findings reached go further. They show that he was in active management of the household which includes the house.

14. It was urged by the learned counsel for the assessee that so far as the gift was concerned it was complete the moment the gift deed was executed. Thereafter, the donees were in legal possession of the house. The donor in view of his close relationship with the donees was merely permitted to live with the donees as a guest and was not having any interest in the house in question and, therefore, the case falls within the rule laid down in Attorney-General v. Seccombe. This contention is opposed to the facts found in the present case. In Seccombe''s case the facts found are that after the gift the donees were in exclusive possession of the property gifted. The donor was an old man of over 80 years. He was dependent on the donees. He was merely permitted to live with the donees. The facts of that case are clearly distinguishable from the facts of the present case. That apart, the provisions of the corresponding English Act are not in pari materia with the provisions that we are called upon to construe. We do not think that the decision given by a Bench of the Madras High Court in Controller of Estate Duty, Madras v. Estate of Late Dr. Guruswamy Mudaliar, while summarily dismissing the petition, bears on the point under consideration. That was a case where a husband built a house on the property belonging to his wife and thereafter gifted the superstructure to the wife. He continued to live with his wife, till his death. In that case, the donor was not the owner of the building as such. He was merely the owner of the superstructure.

15. On behalf of the revenue, reliance was placed on the decision of the Privy Council in Clifford John Chick v. Commissioner of Stamp Duties. The Board of Revenue had also relied on that decision. We have not thought it necessary to consider whether the rule laid down in that decision is applicable to the facts of the present case as in out opinion the facts of the present case fall directly within the ambit of section 10 of the Act.

16. In the result, our answer to the question referred to is in the affirmative and in favour of the revenue. The assessee shall pay the costs of the revenue. Advocate''s fee Rs. 250.

