
(1988) 03 KAR CK 0016
In the Karnataka High Court
Case No : Tax Reference Case No. 5 of 1980

M.J. Rodrigues

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 19-03-1988

Acts Referred:

Estate Duty Act, 1953 — Section 10, 64 (1)

Citation : (1988) 03 KAR CK 0016

Hon'ble Judges : S.A. Hakeem, J;S. Rajendra Babu, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; K. Srinivasan, for the Respondent

Judgement

S. Rajendra Babu, J.—This is a reference made u/s 64(1) of the Estate Duty Act, 1953 (hereinafter referred to as "the Act"), requiring our opinion on the following question :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in holding that the value of the Eliza Estate gifted by the deceased to his two sons, Michael and James, was includible in the principal value of the estate of the deceased u/s 10 of the Estate Duty Act, 1953 ?"

2. The facts leading up to this reference are set out hereinafter :

Shri A. A. Rodrigues, in his letter dated December 11, 1957, suggested to his son, James, who was in U.S.A., to form a partnership to manage the coffee estate between themselves and his other son, Michael, to which the latter son had already assented. On April 26, 1958, he gifted one portion of the coffee estate, namely, Eliza Estate, to Michael and another portion of the same estate to James by two deeds which were registered on April 28, 1958. On April 28, 1958, a partnership deed was also executed between the said Rodrigues and his two sons, Michael and James, the share in respect of Rodrigues at 40 per cent., and that of each son Michael and James at 30 per cent. Rodrigues died on March 3, 1969. The estate of the deceased Rodrigues was charged with duty under the

Act. However, the Assistant Controller of Estate Duty did not include in the principal value of the estate of the deceased, the shares of the two sons, James and Michael, in the said coffee estate which was an asset of the partnership firm. In the appeal filed by the accountable person before the Appellate Controller, the Assistant Controller sought for enhancement of duty by including the properties gifted by the deceased, Rodrigues, which were includible in the estate as passing on the death of Rodrigues in view of section 10 of the Act. The Appellate Controller held that section 10 was not applicable to the facts of the case in view of the ratio of the decision in the case of *Munro (H.R.) v. Commissioner of Stamp Duties* [1934] AC 61 (PC); 2 EDC 462 (PC). The Revenue filed a further appeal to the Tribunal. The Tribunal held that the material on record did not support the view of the Appellate Controller that the formation of the partnership preceded the gift executed by the deceased in favour of his two sons and, therefore, remanded the matter to the Appellate Controller directing him to pass a fresh order after considering such evidence as may be led by either party. The Appellate Controller heard the matter afresh and held that the ratio of the case in *Controller of Estate Duty, Kerala Vs. R.V. Viswanathan and Others*, would apply to the facts of the case and, therefore, section 10 would not be applicable to the facts of the case. Again, the Revenue preferred a second appeal to the Tribunal, which ultimately held that if there is an absolute transfer of property by way of gift without any reservation and that property is subsequently put into partnership, of which the donor was a partner, then the principal value of such property is includible u/s 10 of the Estate Duty Act as property passing on the donor's death and, therefore, allowed the appeal of the Revenue and directed the Assistant Controller to include the value of the estate gifted by the deceased, Rodrigues, in the principal value of his estate u/s 10 of the Estate Duty Act.

3. Aggrieved by the said order of the Tribunal, the accountable person sought for reference and at his instance, this reference has been made on the question referred to above.

4. On behalf of the accountable person, it is submitted that section 10 was not applicable to the facts of the case and the same had been wrongly applied inasmuch as the gift having become complete and the partnership deed having come into existence subsequently and the gifted property having been invested in the partnership firm would not be a benefit conferred upon the donor within the meaning of section 10 of the Act and, therefore, such property was not includible in the estate of the deceased in respect of which the duty has to be levied. However, the Revenue contended that inasmuch as the transfer of property is absolute and not being subject to rights of partnership, the principles set out either in *Munro's case* [1934] AC 61 (PC) or in *Controller of Estate Duty, Kerala Vs. R.V. Viswanathan and Others*, are not applicable and, therefore, the order of the Tribunal was correct.

5. The relevant portion of the section of the Act with which we are concerned reads as under :

"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 henceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise ..."

6. This section has been considered in a number of decisions by the Supreme Court. It is unnecessary to refer to all of them in view of the decision in *Controller of Estate Duty, Punjab, Haryana, J. and K., U.P., Chandigarh and Patiala Vs. Smt. Kamlavati and Shri Jai Gopal Mehra*, in which the Supreme Court has reviewed practically all the decisions rendered by it and those cited at the bar on the above provision of law. In that case, the facts were that one Maharaj Mal, the deceased, was a partner in a partnership firm with a half share. There were two other partners with 1/4th share each. The deceased made a gift of Rs. 1,00,000 to his son, Lalit Kumar, and Rs. 50,000 to his wife, Kamlavati, on March 27, 1957. Lalit Kumar was taken as a partner in the firm with 1/4th share with effect from March 28, 1957, and from that date the deceased had half share instead of 1/4th share. On the death of the said Maharaj Mal on January 9, 1962, the firm was reconstituted and his widow was taken into the firm with 1/8th share. So, the Supreme Court had to consider the applicability of section 10 of the Act to the gifts of Rs. 1,50,000 made by the deceased to his wife and son. On these facts, it was held by the Supreme Court that the said provisions did not apply and came to the following conclusions (p. 463) :

"To avoid the conflict in the application of the ratio of the various Supreme Court cases as seems to have been done by some of the High Courts, we would like to clarify and elucidate some of the aspects and facets of the matter a bit further. 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 section 10 of the 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."

7. In that case, it was further observed by the Supreme Court as to the manner of application of its decisions and in this context it observed thus (P. 465) :

"But we want to emphasise that the principles of law laid down by this court in several decisions which we have reviewed in this judgment with some further

clarification and elucidation should be carefully and broadly applied to the facts of each case without doing too much of dichotomy and hair splitting of facts so as not to easily apply or not to apply the provision of law contained in section 10 of the Act."

8. The clear enunciation of the law made by the Supreme Court in the above case is that 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 of the property is not sufficient to attract section 10 of the Act, inasmuch as such enjoyment or benefit is not relatable to the gift. Therefore, the test for the applicability of section 10 of the Act in a situation as in the present case is whether the possession, enjoyment or the benefit of the donor in the property is consistent with facts and circumstances other than those of the factum of the gift. If the answer to this is in the affirmative, it cannot be said that the donees have not retained possession of the property to the exclusion of the donor. The admission of the donor into the partnership or the enjoyment of the property as partnership property cannot be taken as bringing the transaction within the scope of section 10 of the Act.

9. In the present case, from the findings of the Tribunal, it is clear that the possession and enjoyment of the properties were assumed by the donees on April 26, 1958, immediately after the making of the gift and the first two conditions of section 10 were satisfied as there was an unequivocal bona fide transfer of the property by gift the possession of which the donor had parted with to the donees, but, in their opinion, the second limb of section 10 was applicable in this case, because, the donees did not, thereafter, retain the possession and enjoyment of the property to the entire exclusion of the donor as the property was subsequently put into partnership, of which the donor was a partner. The crucial question, therefore, is whether the possession assumed by the donees was retained to the exclusion of the donor. On assuming possession of the property, the donees invested the same in the firm for deriving profit on their own investment just as the donor was deriving profit on his investment and, therefore, no portion of the property was being enjoyed by the donor or any benefit derived by him under a contract or through a circumstance relatable to the gift. Such enjoyment or benefit in the partnership of the donor is not relatable to the gift but consistent with the facts and circumstances other than the gift. Where property is gifted by the deceased to his sons and the possession and enjoyment of which is allowed to a partnership firm in which the donor is a partner, section 10 is not attracted, merely on the fact that the donor is sharing the enjoyment or the benefit in the property as a partner, which circumstance is clearly not relatable to the gift, that is, 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. The benefit the donor had as a member of the partnership was not relatable to the gift, but was unconnected with the same. Therefore, respectfully following the decision of the Supreme Court, we have got

to answer the question referred to us in the negative and in favour of the assessee.