
(1968) 11 AP CK 0002

In the Andhra Pradesh High Court

Case No : Case Referred No. 47 of 1964

Mumtaz Ahmed Khan

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-11-1968

Acts Referred:

Estate Duty Act, 1953 — Section 10

Citation : (1969) 1 APLJ 245 : (1969) 73 ITR 592

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Ramachandra Rao, J

Bench : Division Bench

Advocate : P. Ramachandra Rao, for the Appellant; T. Ananta Babu, for the Respondent

Judgement

P. Jaganmohan Reddy, C.J.—The Central Board of Direct Taxes has referred the following question for our opinion, viz.:

" Whether, on the facts and in the circumstances of the case, the estate duty authorities had any material to come to the conclusion that the donees had not immediately assumed possession of the properties and thenceforward retained the same to the entire exclusion of the deceased and that the provisions of Section 10 were attracted ? "

2. The facts, as narrated in the statement of the case, are that the applicant who was a son of the deceased, late Inayatpur Rahaman Khan, who died on June 25, 1958, submitted a statement of account before the Assistant Controller of Estate Duty, declaring the principal value of the estate of the deceased at Rs. 38,637. The Assistant Controller determined the principal value of the estate at Rs. 1,49,937. The principal value so determined included a sum of Rs. 45,000 being the value of six house properties at Secunderabad. It was claimed before the Assistant Controller that the deceased had transferred these house properties to his sons and daughters by oral gift known as hiba under Muhammadan law, more than two years before the death of the deceased and as such the properties should not be included in the estate passing on the death of the deceased. The

Assistant Controller held that there was no delivery of possession of the properties gifted so as to make the gifts valid as kiba. It was also stated that there were no accounts to show how the rents realised from the house properties were actually utilised. The Assistant Controller -further held that, even assuming that all these properties were validly gifted by the deceased, the properties should be deemed to pass on the death of the deceased under the provisions of Section 10 of the Estate Duty Act, 1953 (hereinafter called " the Act"), since the deceased could not be said to have been entirely excluded from the benefits from the properties gifted by him. He accordingly included these properties in the estate of the deceased. On appeal, the Central Board of Direct Taxes, while holding that the gift was valid as it had been completed two years prior to the death of the deceased, and as such the properties gifted were outside the scope of Section 9, came to the conclusion that the donees did not enjoy the properties to the entire exclusion of the deceased, and that, therefore, the provisions of Section 10 of the Act applied to these properties. The applicant, being aggrieved by this decision, required the Board to refer the aforesaid question to this court for its opinion.

3. The main question which we have to consider is whether the Income Tax authorities were right in holding that the donor continued to be in possession and enjoyment of the properties gifted to his sons and daughters. This question, in our view, is one of fact to be determined from the facts and circumstances of each case. The learned advocate for the assessee has taken us through the statement of Faru Ahmed, son of the donor, in which he said that he used to collect rents from all the properties and hand them over to his elder brother, Mumtaz Ahmed Khan, who after defraying expenses such as municipal taxes, etc., used to spend the rest of the money on maintenance of the family consisting of all brothers, sisters, till their marriage and his late father, that there are accounts maintained and that he shall produce them the next day. After this statement on February 4, 1960, the next day he appeared again before the Assistant Controller of Estate Duty and gave a further statement that there are no accounts maintained. He stated that even the municipal taxes were being paid in the name of his late father since no mutation took place. On 1st of April, 1960, two months after this statement, he filed an affidavit in which he tried to correct certain statements made by him on the ground that they created some misapprehension. In this affidavit, he stated that when he deposed that their late father was also living with them in the same house, it has been interpreted as meaning that the late father was being maintained out of rental receipts of the property gifted to the children by their late father, which is not correct. He further stated that his father was a widower and a pensioner drawing pension of Rs. 428 per month and his personal expenses were much less than his pension and in fact he used to meet a part of the family expenses from out of his pension. He then stated that no part of the rental income from the houses gifted was utilised to meet the expenses of his late father, the donor. It will be observed that while he had stated in his deposition on February 4, 1960, that the rents

after paying the municipal taxes were being utilised for the family expenses including that of the father, he tried to resile from that statement and stated that no part of the, rental income was utilised to meet the expense of his late father. It is clear, however, that, as the Central Board of Direct Taxes observed, the children to whom the gift was made by the donor did not enjoy the property to the entire exclusion of the donor which is also one of the requirements u/s 10 for excluding the gifted properties from the estate of the deceased. Section 10 of the Estate Duty Act is as follows:

" 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"

4. A reading of this provision would show that not only that the bona fide possession and enjoyment of it was not retained by the deceased should be established, but that from the date of the gift, it was enjoyed to the entire exclusion of the donor or of any benefit to him by the donee. If any of these requirements are not fulfilled the estate would be deemed to be the estate of the deceased. As we said earlier, all the authorities, while holding that the gift was a valid gift under the Mohammadan law, held that the donees did not enjoy exclusive benefit. Apart from this, it is also apparent that, even though the gift was alleged to have been made as early as 1954 or 1955, no steps were taken to mutate the properties in favour of the donees. The house property gifted being still in the name of the donor, the donor living in the same house along with his sons as also the income from it being utilised for the purpose of the family including that of the donor would cumulatively show that not only did the donor enjoy the possession of the properties but also the donees did not have exclusive enjoyment thereto. It may be pointed out that the statement in the affidavit of April 1, 1960, was made subsequent to the assessment order and is an after-thought. Even otherwise, it does not help the assessee. Their Lordships of the Supreme Court in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, , in similar circumstances, held that the property gifted in favour of the son who lived with the father belonged to the deceased inasmuch as the donee had not immediately assumed possession and enjoyment of the properties. This case was distinguished in *MOHAMMED BHAI AND ANOTHER Vs. CONTROLLER OF ESTATE DUTY, A.P.*, by a Bench of this court, which dealt with possession by a husband of a gift given to his wife.

5. In the result, our answer to the question is in the affirmative and against the assessee with costs. Advocate's fee, Rs. 250.